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CFR PARTS AFFECTED IN THIS ISSUE

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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–97–001]

Revision of User Fees for 1997 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is reducing user fees for cotton producers for 1997 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1996 user fee for this classification service was $1.50 per bale. This rule would reduce the fee for the 1997 crop to $1.40 per bale. The reduction in fees resulted from increased efficiency in classing operations. The fee is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on March 17, 1997, (62 FR 12577). A 30-day comment period was provided for interested persons to respond to the proposed rule: No comments were received.

This final rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposal on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). It has been determined that the implementation of this rule will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 40,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) The fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services (the 1996 user fee for classification services was $1.50 per bale; the fee for the 1997 crop will be reduced to $1.40 per bale; the 1997 crop is estimated at 17,587,000 bales);

(2) The cost reduction will not affect competition in the marketplace; and

(3) The use of classification services is voluntary.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The changes will be made effective July 1, 1997, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.50 per bale during the 1996 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, supervision, and development and maintenance of cotton standards.

This rule establishes the user fee charged to producers for HVI classification at $1.40 per bale during the 1997 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1996. Therefore, the 1997 producer's user fee for classification service is based on the 1996 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1996 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.04 per bale. A two percent, or four cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.04 results in a 1997 base fee of $2.08 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1997 crop is estimated at 17,587,000. The 1997 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 31 cents per bale reduction and was subtracted from the 1997 base fee of $2.08 per bale, resulting in a fee of $1.77 per bale.

With a fee of $1.77 per bale, the projected operating reserve would be 41.93 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.77 was reduced by 37 cents per bale, to $1.40 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This establishes the 1997 season fee at $1.40 per bale.

Accordingly, § 28.909, paragraph (b) will be revised to reflect the reduction in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents will continue to incur no additional fees if only one method of receiving classification data is requested. The fee for each additional method of receiving classification data in § 28.910 will remain at five cents per bale, and it will be applied even if the same method is requested. The fee in § 28.910(b) for an owner receiving classification data from the central database will remain at five cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period will remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 will be reduced from $1.50 per bale to $1.40 per bale.

The fee for returning samples after classification in § 28.911 will remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedures, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for Part 28 continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.40 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.40 per bale.

* * * * *

Dated: May 6, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–12345 Filed 5–9–97; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150—AE87

Standard Design Certification for the U.S. Advanced Boiling Water Reactor Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to certify the U.S. Advanced Boiling Water Reactor (ABWR) design. The NRC is adding a new provision to its regulations that approves the U.S. ABWR design by rulemaking. This action is necessary so that applicants for a combined license that intend to construct and operate the U.S. ABWR design may do so by appropriately referencing this regulation. The applicant for certification of the U.S. ABWR design was GE Nuclear Energy.

EFFECTIVE DATE: The effective date of this rule is June 11, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415–3145 or Geary S. Mizuno, Office of the General Counsel, telephone (301) 415–1639, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Background

On September 29, 1987, General Electric Company applied for certification of the U.S. ABWR standard design with the NRC. The application was made in accordance with the procedures specified in 10 CFR Part 50, Appendix O, and the Policy Statement on Nuclear Power Plant Standardization, dated September 15, 1987. The application was docketed on February 22, 1988 (Docket No. STN 50–605).

The NRC added 10 CFR Part 52 to its regulations to provide for the issuance of early site permits, standard design certifications, and combined licenses for nuclear power reactors. Subpart B of 10 CFR Part 52 established the process for obtaining design certifications. A major purpose of this rule was to achieve early resolution of licensing issues and to enhance the safety and reliability of nuclear power plants.

On December 20, 1991, GE Nuclear Energy (GE), an operating component of General Electric Company's power systems business, requested that its application, originally submitted pursuant to 10 CFR Part 50, Appendix O, be considered as an application for design approval and subsequent design certification pursuant to Subpart B of 10 CFR Part 52. Notice of receipt of this request was published in the **Federal Register** on March 20, 1992 (57 FR 9749), and a new docket number (52–001) was assigned.

The NRC staff issued a final safety evaluation report (FSER) related to the certification of the U.S. ABWR design in July 1994 (NUREG–1503). The FSER documents the results of the NRC staff's safety review of the U.S. ABWR design against the requirements of 10 CFR Part 52, Subpart B, and delineates the scope of the technical details considered in evaluating the proposed design. Subsequently, the applicant submitted changes to the U.S. ABWR design and the NRC staff evaluated these design changes in a supplement to the FSER (NUREG–1503, Supplement No. 1). A copy of the FSER and Supplement No. 1 may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328 or the National Technical Information Service, Springfield, VA 22161. A final design approval (FDA) was issued for the U.S. ABWR design on July 13, 1994 and revised on November 23, 1994 to provide a 15 year duration. An FDA, which incorporates the design changes, will be issued to supersede the current FDA after issuance of this final design certification rule.

The NRC staff originally proposed a conceptual design certification rule for evolutionary standard plant designs in SECY–92–287, ''Form and Content for a Design Certification Rule.'' Subsequently, the NRC staff modified the draft rule language proposed in SECY–92–287 to incorporate Commission guidance and published a draft-proposed design certification rule in the **Federal Register** on November 3, 1993 (58 FR 58665), as an Advanced Notice of Proposed Rulemaking (ANPR) for public comment. In accordance with the Administrative Procedure Act of 1947 (APA), as amended, 10 CFR Part 52 provides the opportunity for the public to submit written comments on proposed design certification rules. However, Part 52 went beyond the requirements of the APA by providing the public with an opportunity to request a hearing before an Atomic Safety and Licensing Board in a design certification rulemaking. Therefore, on April 7, 1995 (60 FR 17902), the NRC published a proposed rule in the **Federal Register** which invited public comment and provided the public with the opportunity to request an informal hearing before an Atomic Safety and Licensing Board. The period within which an informal hearing could be requested expired on August 7, 1995. The NRC did not receive any requests for an informal hearing during this period. The NRC staff conducted public meetings on the development of this design certification rule on November 23, 1993, May 11 and December 4, 1995, and May 2 and July 15, 1996, in order to enhance public participation.

The Commission has considered the comments received and made appropriate modifications to this design certification rule, as discussed in Sections II and III, and revised the numbering system used in the proposed rule. With these modifications, the Commission adopts as final this design certification rule, Appendix A to 10 CFR Part 52, for the U.S. ABWR design.

II. Public Comment Summary and Resolution

The public comment period for the proposed design certification rule, the design control document, and the environmental assessment for the U.S. ABWR design expired on August 7, 1995. The NRC received twenty letters containing public comments on the proposed rule. The most extensive comments were provided by the Nuclear Energy Institute (NEI), in a letter dated August 4, 1995, which provided comments on behalf of the nuclear industry. In general, NEI commended the NRC for its efforts to provide standard design certifications but expressed serious concerns about aspects of the proposed rule that would, in NEI's view, undermine the goals of design certification. These concerns are addressed in the following responses to the public comments. Fourteen utilities and three vendors also provided comments. All of these comment letters endorsed the NEI comments of August 4, 1995, and some provided additional comments. The Department of Energy and the Ohio Citizens for Responsible Energy, Inc. (OCRE) also submitted comment letters. OCRE provided two sets of comments, the first addressed the NRC's specific requests for comment and the second addressed OCRE's concerns about certain aspects of the U.S. ABWR design.

The NRC received other letters that were entered into the docket and are part of the record of the rulemaking proceeding, including an August 4, 1995 letter from NEI to the Chairman of the NRC, which submitted a copy of the Executive Summary of their public comment letter, and a May 11, 1995 letter, which provided suggestions on finality, secondary references, and other explanatory material. Also, the NRC received a second letter from the General Electric Company, which commented on the comments provided by OCRE.

On February 6, 1996, the NRC staff issued SECY–96–028, ''Two Issues for Design Certification Rules,'' which requested the Commission's approval of the staff's position on two major issues raised by NEI in its comments on the proposed design certification rules. The NRC staff issued this paper because of fundamental disagreements with the nuclear industry on the need for applicable regulations and the matters to be considered in verifying inspections, tests, analyses, and acceptance criteria (ITAAC). Both NEI and DOE commented on SECY–96–028 in letters dated March 5 and 13, 1996, respectively.

On March 8, 1996, the Commission conducted a public meeting in which industry representatives and NRC staff presented their views on SECY–96–028. During this meeting, NEI and the NRC staff both indicated agreement on the ITAAC verification issue. Subsequently, in a staff requirements memorandum (SRM) dated March 21, 1996, the Commission requested the NRC staff to meet again with industry to try to resolve the issue of applicable regulations. The NRC staff met with representatives of Combustion Engineering, Inc. (ABB–CE), GE, and NEI in a public meeting on March 25, 1996 and were unable to reach agreement. As a result, the NRC staff provided revised resolutions of applicable regulations and ITAAC determinations in SECY–96–077, ''Certification of Two Evolutionary Designs,'' dated April 15, 1996, that superseded the proposals in SECY–96–028. SECY–96–077 addressed the comments on the proposed design certification rules and provided final design certification rules for the Commission's consideration. Subsequently, notice of a 30 day comment period for SECY–96–077 was published in the **Federal Register** (61 FR 18099), and the comment period was extended for an additional 60 days (61 FR 27027) at the request of NEI.

In response to the supplementary comment period, ABB–CE, GE Nuclear Energy, and NEI submitted additional comments on the final design certification rules in letters dated July 23, 1996. Westinghouse also submitted comments in a letter dated July 24,

1996. NEI sent an unsolicited letter, dated September 23, 1996, to the Director of the Office of Nuclear Reactor Regulation on three design certification issues. NEI also sent a letter, dated September 16, 1996, to Chairman Jackson that provided additional information in response to questions that were asked by the Commission in its August 27, 1996 briefing on design certification rulemaking.

The following discussion is separated into three groups: (1) Resolution of the principal issues raised by the commenters, (2) resolution of the NRC's specific requests for comment from the proposed rule, and (3) resolution of other issues raised by the commenters.

A. Principal Issues

1. Finality

Comment Summary. The applicant and NEI submitted extensive comments on the scope of issues that were proposed to be accorded finality under 10 CFR 52.63(a)(4), i.e. are not subject to re-review by the NRC or re-litigation in hearings. In summary, both commenters argued that:

- The scope of issues accorded finality is too narrow;
- Changes made in accordance with the change process are not accorded finality;
- Changes approved by the NRC should have protection under 10 CFR 52.63(a)(4);
- The rule does not provide finality in all subsequent proceedings;
- The rule should be clarified regarding finality of SAMDA evaluations;
- A de novo review is not required for design certification renewal;
- Finality for Technical Specifications; and
- Finality for Operational Requirements.

These comments are found in GE Comments dated August 3, 1995, Attachment A, pp. 2–4; NEI Comments dated August 4, 1995, Attachment B, pp. 1–23; NEI Comments dated July 23, 1996, pp. 1–21; and NEI letter dated September 16, 1996.

Response: Scope of issues accorded finality. The applicant and NEI took issue with the proposed rule's language limiting the scope of nuclear safety issues resolved to those issues ''associated with'' the information in the FSER or Design Control Document (DCD). Each argued that there were many other documents which included and/or addressed issues whose status should be regarded as ''resolved in connection with'' this design certification rulemaking. These additional documents include ''secondary references'' (*i.e.*, DCD references to documents and information which are not contained in the DCD, including secondary references containing proprietary and safeguards information), docketed material, and the entire rulemaking record (refer to GE Comments, Attachment A, pp. 2–3; NEI Comments dated August 4, 1995, Attachment B, pp. 6–9).

The Commission has reconsidered its position and decided that the ambit of issues resolved by this rulemaking should be the information that is reviewed and approved in the design certification rulemaking, which includes the rulemaking record for the standard design. This position reflects the Commission's SRM on SECY–90–377, dated February 15, 1991. Also, the Commission concludes that the set of issues resolved should be those that were addressed (or could have been addressed if they were considered significant) as part of the design certification rulemaking process. However, the Commission does not agree that all matters submitted on the docket for design certification should be accorded finality under 10 CFR 52.63(a)(4). Some of this information was neither reviewed nor approved and some was not directly related to the scope of issues resolved by this rulemaking. Therefore, the final rule provides finality for all nuclear safety issues associated with the information in the FSER and Supplement No. 1, the generic DCD, including referenced information that is intended as requirements, and the rulemaking record.

In adopting this final design certification rulemaking, the Commission also finds that the design certification does not require any additional or alternative design criteria, design features, structures, systems, components, testing, analyses, acceptance criteria, or additional justifications in support of these matters. Inherent in the concept of design certification by rulemaking is that all these issues which were addressed, or could have been addressed, in this rulemaking are resolved and therefore, may not be raised in a subsequent NRC proceeding. If this were not the case and one could always argue in a subsequent proceeding that an additional, alternative, or modified system, structure or component of a previously-certified design was needed, or additional justification was necessary, or a modification to the testing and acceptance criteria is necessary, there would be little regulatory certainty and stability associated with a design certification. The underlying benefits of certification of individual designs by rulemaking, e.g., early Commission consideration and resolution of design issues and early Commission consideration and agreement on the methods and criteria for demonstrating completion of detailed design and construction in compliance with the certified design, would be virtually negated. Thus, in accord with the views of the applicant and NEI, the Commission clarifies and makes explicit its previously implicit determination that the scope of issues resolved in connection with the design certification rulemaking includes the lack of need for alternative, additional or modified design criteria, design features, structures, systems, components, or inspections, tests, analyses, acceptance criteria or justifications, and such matters may not be raised in subsequent NRC proceedings.

In the statements of consideration (SOC) for the proposed rule, the Commission proposed that issues associated with ''requirements'' in secondary references, not specifically approved for incorporation by reference by the Office of the Federal Register (OFR) because they contained proprietary or safeguards information, would not be considered resolved in the design certification rulemaking within the meaning of 10 CFR 52.63(a)(4) (*See* 60 FR 17902, 17911). Both GE and NEI took exception to this position, arguing that issues arising from secondary references should be included in the set of issues resolved (*See* GE Comments, Attachment A, pp. 2–3; NEI Comments dated August 4, 1995, Attachment B, pp. 6–9). The Commission has determined that the set of issues resolved by this rulemaking embraces those issues arising from secondary references that are requirements for the certified design, including those containing proprietary and safeguards information. This is consistent with the intent of 10 CFR Part 52 that issues related to the design certification should be considered and resolved in the design certification rulemaking. However, since OFR does not approve of ''incorporation by reference'' of proprietary and safeguards information, even though it was available to potential commenters on this proposed design certification rule (see 60 FR 17902 at 17920–21; April 7, 1995), the Commission has included in VI.E of this appendix, a process for obtaining proprietary and safeguards information at the time that notice of a hearing in connection with issuance of a combined license is published in the **Federal Register**. Such persons will have actual notice of the requirements contained in the proprietary and safeguards information and, therefore, will be subject to the issue finality provisions of Section VI of this appendix.

Changes made in accordance with the ''50.59-like'' change process. The proposed design certification rule included a change process similar to that provided in 10 CFR 50.59. Specifically, proposed Section 8(b)(5) provided ''that such changes open the possibility for challenge in a hearing'' for Tier 2 changes in accordance with the Commission's guidance in its SRM on SECY–90–377, dated February 15, 1991. The NRC also believed that providing an opportunity for a hearing would serve to discourage changes that could erode the benefits of standardization. The applicant and NEI argued that Tier 2 departures under the ''§ 50.59-like'' process should not be subject to any opportunity for hearing but may only be challenged via a 10 CFR 2.206 petition; and, therefore, should be subject to the special backfit restrictions of 10 CFR 52.63(a). For purposes of brevity, this discussion refers to both generic changes and plant-specific departures as ''changes.''

The Commission has reconsidered and revised its position on issue resolution in connection with Tier 2 departures under the ''§ 50.59-like'' process. Section 50.59 was originally adopted by the Commission to afford a Part 50 operating license holder greater flexibility in changing the facility as described in the FSAR while still assuring that safety-significant changes of the facility would be subject to prior NRC review and approval [refer to 27 FR 5491, 5492 (first column); June 9, 1962]. The ''unreviewed safety question'' definition was intended by the Commission to exclude from prior regulatory consideration those licensee-initiated changes from the previously NRC-approved FSAR that could not be viewed as having safety significance sufficient to warrant prior NRC licensing review and approval. To put it another way, any change properly implemented pursuant to § 50.59 should continue to be regarded as within the envelope of the original safety finding by the NRC. Moreover, the departure process for Tier 2 information, as specified in VIII.B of this appendix, includes additional restrictions derived from 10 CFR 52.63(b)(2), *viz.*, the Tier 2 change must not involve a change to Tier 1 information. Thus, the departure process (VIII.B.5), if properly implemented by an applicant or licensee, must logically result in departures which are both ''within the envelope'' of the Commission's safety finding for the design certification rule and for which the Commission has no safety concern. Therefore, it follows that properly implemented departures from Tier 2 should continue to be accorded the same extent of issue resolution as that of the original Tier 2 information from which it was ''derived.'' As a result, Section VI of this appendix has been amended to reflect the Commission's determination on issue resolution for Tier 2 changes made in accordance with the departure process and to provide backfit protection for changes made in accordance with the processes of Section VIII of this appendix.

However, the converse of this reasoning leads the Commission to reject the applicant's and NEI's contention that no part of the applicant's or licensee's implementation of the departure process (VIII.B.5) should be open to challenge in a subsequent licensing proceeding, but instead should be raised as a petition for enforcement action under 10 CFR 2.206. Because § 2.206 applies to holders of licenses and is considered a request for enforcement action (thereby presenting some potential difficulties when attempting to apply this in the context of a combined license applicant), it is unclear why an applicant or licensee who departs from the design certification rule in noncompliance with the process (VIII.B.5) should nonetheless reap the benefits of issue resolution stemming from the design certification rule. An incorrect departure from the requirements of this appendix essentially places the departure outside of the scope of the Commission's safety finding in the design certification rulemaking. It follows that properly-founded contentions alleging such incorrectly-implemented departures cannot be considered ''resolved'' by this rulemaking. The industry also appears to oppose an opportunity for a hearing on the basis that there is no ''remedy'' available to the Commission in a licensing proceeding that would not also constitute a violation of the Tier 2 backfitting restrictions applicable to the Commission and that in a comparable situation with an operating plant the proper remedy is enforcement action. However, for purposes of issue finality the focus should be on the initial licensing proceeding where the result of an improper change evaluation would simply be that the change is not considered resolved and no enforcement action is needed. Neither the applicant nor NEI provided compelling reasons why contentions alleging that applicants or licensees have not properly implemented the departure process (VIII.B.5) should be entirely precluded from consideration in an appropriate licensing proceeding where they are relevant to the subject of the proceeding.

Although the Commission disagrees with the applicant and NEI over the admissibility of contentions alleging incorrect implementation of the departure process, the Commission acknowledges that they have a valid concern regarding whether the scope of the contentions will incorrectly focus on the substance of correctly-performed departures and the possible lengthened time necessary to litigate such matters in a hearing (*See, e.g.*, Transcript of December 4, 1995, Public Meeting, p. 47). Therefore, the Commission has included an expedited review process (VIII.B.5.f), similar to that provided in 10 CFR 2.758, for considering the admissibility of such contentions. Persons who seek a hearing on whether an applicant has departed from Tier 2 information in noncompliance with the applicable requirements must submit a petition, together with information required by 10 CFR 2.714(b)(2), to the presiding officer. If the presiding officer concludes that a prima facie case has been presented, he or she shall certify the petition and the responses to the Commission for final determination as to admissibility.

Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to modify VIII.B.5.f to clarify that a ''50.59-like'' change is not subject to a hearing under § 52.103 or § 50.90 unless the change bears directly on an asserted ITAAC noncompliance or the requested amendment, respectively. The Commission determined that NEI's proposed wording correctly stated its intention regarding the opportunity for a hearing on ''50.59-like'' departures after a license is issued and, therefore, VIII.B.5.f of this appendix has been appropriately modified.

Changes approved by the NRC should have protection under § 52.63. NEI, in its comments dated July 23, 1996, requested the Commission to provide the special backfit protection of § 52.63 to all changes to Tier 1, Tier 2*, and changes to Tier 2 that involve an unreviewed safety question or a change in the technical specifications. The special provision in § 52.63(a)(4) states that ''* * * the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification.'' The Commission stated, in its SRM on

SECY–90–377, that ''* * * the process provides issue finality on all information provided in the application that is reviewed and approved in the design certification rulemaking.'' The Commission also stated that ''* * * changes to the design reviewed and approved by the staff should be minimized * * *.'' Based on this guidance, the Commission decided that the special backfit provision should be extended to generic changes made to the DCD that are approved by rulemaking. Also, for departures that are approved by license amendment or exemption, the Commission decided that the licensee of that plant should receive the special backfit protection. However, any other licensee that references the same DCD should not have finality for that plant-specific departure, unless it was again approved by license amendment or exemption for that licensee.

Finality in all subsequent proceedings. GE and NEI requested that Section 6 of the proposed rule be expanded to include a more detailed statement regarding the findings, issues resolved, and restrictions on the Commission's ability to ''backfit'' this appendix. The Commission agrees that the industry's proposal has some merit, and has revised Section VI of this appendix, beginning with the general subjects embodied in NEI's proposed redraft, but restructured the NEI proposal into three sections to reflect the scope of issues resolved, change process, and rulemaking findings, thereby conforming the language to reflect the conventions of the appendix (e.g., generic changes versus plant-specific departures), and making minor editorial changes for clarity and consistency. However, one area in which the Commission declines to adopt the industry's proposal is the inclusion of a statement that extends issue finality to all subsequent proceedings.

Section 52.63(a)(4) explicitly states that issues resolved in a design certification rulemaking have finality in combined license proceedings, proceedings under § 52.103, and operating license proceedings. There are other NRC proceedings not mentioned in § 52.63(a)(4), *e.g.*, combined license amendment proceedings and enforcement proceedings, in which the design certification should logically be afforded issue resolution and, therefore, are included in Section VI of this appendix. However, NEI listed NRC proceedings such as design certification renewal proceedings, for which issue finality would not be appropriate. Moreover, it should be understood that to say that this design certification rule is accorded ''issue finality'' does not eliminate changes properly made under the change restrictions in Section VIII of this appendix. Therefore, the Commission declines to adopt in its entirety the industry proposal that issue finality should extend to all subsequent NRC proceedings.

In its comments dated July 23, 1996, NEI requested the Commission to modify the last phrase of Section 6(b), of SECY–96–077, to reflect the NRC staff's intent regarding finality in enforcement proceedings. Section 6(b) stated that the DCD has finality in enforcement proceedings ''where these proceedings reference this appendix.'' NEI was concerned that this phrase could be construed as depriving finality to plants that reference the design certification rules in enforcement proceedings that do not explicitly reference the design certification rule. The intent of the phrase was to limit finality of the information in the design certification rule to enforcement proceedings involving a plant referencing the rule. Therefore, the Commission replaced the wording, ''where these proceedings reference this appendix,'' with ''involving plants referencing this appendix'' in Section VI.B of the final rules.

Finality regarding SAMDA evaluations. In its comments dated July 23, 1996, NEI requested the Commission to extend finality for the SAMDA evaluation when an exemption from a site parameter specified in the evaluation has been approved. Section VI.B.7 of this appendix accords finality to severe accident mitigation design alternatives (SAMDAs) for plants referencing the design certification rules ''whose site parameters are within those specified in the Technical Support Document'' (TSD). NEI is concerned that the last phrase could open all SAMDAs to re-review and re-litigation during a subsequent proceeding where the licensee has requested an exemption from a site parameter specified in the DCD, even though the exemption has no impact on the SAMDAs. NEI also stated that a clarification to the SOC was not sufficient and believed that a modification to the rule language was needed.

The NRC staff agrees that it was not the intent to re-litigate SAMDA issues under such circumstances. The intent was that an intervenor in any subsequent proceeding could challenge a SAMDA based on an exemption to a TSD site parameter only after bringing forward evidence demonstrating that the SAMDA analysis was invalidated. However, the NRC staff does not agree that the wording should be changed. NEI's proposed modification would shift the burden of demonstrating the acceptability of the exemption from the licensee. Moreover, it would be difficult to extend the NEPA review to all available sites without any qualification. Therefore, the Commission decided not to change Section VI.B.7 of this appendix but did explain in section III.F of this SOC that requests for litigation must meet § 2.714 requirements.

A *de novo* review is not required for design certification renewal. In its comments dated July 23, 1996, NEI requested the Commission to extend finality to design certification renewal proceedings and to define a review procedure for renewal applications that would limit the scope of review. Subsequently, NEI stated in a letter dated September 23, 1996, that principles for renewal reviews can and should be established in the design certification rules. The extension of finality to a renewal proceeding would produce the illogical result that the NRC's conclusion in the original design certification rulemaking, that the design provided adequate protection and was in compliance with the applicable regulations, would also apply to the renewal review even though the regulations in Part 52 require another review and finding at the renewal stage 15 years later. The effect of this extension would be to extend the design certification for another 15 years (for a total of 30 years) instead of the intended 15 years.

The NRC staff agrees with NEI that the renewal review must be conducted against the Commission's regulations applicable and in effect at the time of the original certification, and that the backfit limitations in § 52.59 must be satisfied in order to require a change to the certified design. However, the NRC staff disagrees with NEI's position that the information to be considered in the renewal review is limited to ''an evaluation of experience between the time of certification and the renewal application,'' as well as NEI's implication that the scope of the design for which new information can be considered is limited to those areas which the design certification applicant concedes there is new information or proposes a modification. The effect of NEI's position would be to preclude the NRC from considering new information which could have altered the Commission's consideration and approval of the design had it been known at the time of the original certification review, and to cede control of the scope of the renewal review to the design certification applicant. Furthermore, the review procedure for a renewal application is *not* dependent on whether the applicant proposed changes to the previously certified design. The underlying philosophy was that new safety requirements and issues that arose during the duration of the design certification rule could *not* be applied to the certified design (unless the adequate protection standard was met). However, these issues could be raised for consideration at the renewal stage and applied to the application for renewal if the backfit standard in § 52.59 was met. Therefore, any portion of the certified design could be reviewed (subject to § 52.59) to ensure that the applicable regulations for the certified design are being met based on consideration of new information (e.g. operating experience, research, or analysis) resulting from the previous 15 years of experience with the design.

The Commission rejects NEI's proposal to apply the finality provision of § 52.63 to the review of renewal applications because this would suggest improperly that NRC, in its renewal review, is bound by previous safety conclusions in the initial certification review. The type of renewal review was resolved by the Commission during the development of 10 CFR Part 52. At that time, the Commission determined that the backfit standard in § 52.59(a) controls the development of new requirements during the review of applications for renewal. Therefore, the Commission disagrees with NEI's proposed revision to Section 6(b), in its letter dated September 23, 1996, and NEI's proposal for a new Section 6(e) is unnecessary because this process is already correctly covered in § 52.59.

The Commission does not plan or expect to be able to conduct a de-novo review of the entire design if a certification renewal application is filed under § 52.59. It expects that the review focus would be on changes to the design that are proposed by the applicant and insights from relevant operating experience with the certified design or other designs, or other material new information arising after the NRC staff's review of the design certification. The Commission will defer consideration of specific design certification renewal procedures until after it has issued this appendix.

Finality for Technical Specifications. In its comments dated August 4, 1995, Attachment B (pp. 124–129), NEI requested that the NRC establish a single set of integrated technical specifications governing the operation of each plant that references this design certification and that the technical specifications be controlled by a single change process. In the proposed rule, the NRC included the technical specifications for the standard designs in the generic DCD in order to maximize the standardization of the technical specifications for plants that reference this design certification. As a result, a plant that references this design certification would have two sets of technical specifications associated with its license: (1) Technical specifications from Chapter 16 of Tier 2 of the generic DCD and applicable to the standardized portion of the plant, and (2) those technical specifications applicable to the site-specific portion for the plant. While each portion of the technical specifications would be subject to a different change process, the substantive aspects of the change processes would be essentially the same.

In the design certification rule that was attached to SECY–96–077, the technical specifications were removed from Tier 2 for two reasons. First, the removal from Tier 2 responded to NEI's comment regarding a single change process. NEI's proposal to include the technical specifications in Tier 2 prior to issuance of a combined license (COL), and then remove them after COL issuance is not acceptable. If the technical specifications are included in Tier 2 by the design certification rulemaking, they would remain there and be controlled by the Tier 2 change process for the life of the facility. Second, the NRC staff wanted the ability to impose future operational requirements and standards (distinct from design matters) on the technical specifications for a plant that referenced the certified design and Section 4(c) of the rule in SECY–96–077 provided that ability. However, Section 4(c) would not be used to backfit design features (i.e. hardware changes) unless the criteria of § 52.63 were met.

In its comments dated July 23, 1996, NEI requested the Commission to extend finality to the technical specifications in Chapter 16 of the DCD. NEI stated that the technical specifications in the DCDs should remain part of the design certification and be accorded finality because they have been reviewed and approved by the NRC. NEI also proposed that, after the license is granted, the technical specifications in the DCD would no longer have any relevance to the license and there would be a single set of technical specifications that will be controlled by the 10 CFR 50.90 license amendment process and subject to the backfit provisions in 10 CFR 50.109.

The Commission does not support extension of the special backfit provisions of § 52.63 to technical specifications and other operational requirements as requested by NEI, rather the Commission supports the proposal to treat the technical specifications in Chapter 16 of the DCD as a special category of information, as described in the NRC staff's comment analyses dated August 13 and October 21, 1996. The purpose of design certification is to review and approve design information. There is no provision in Subpart B of 10 CFR Part 52 for review and approval of purely operational matters. The Commission approves a revised Section VIII.C of this appendix that would apply to the technical specifications, bases for the technical specifications, and other operational requirements in the DCD; that would provide for use of § 52.63 only to the extent the design is changed; and that would use § 2.758 and § 50.109 to the extent an NRC safety conclusion is being modified or changed but no design change is required. In applying § 2.758 and § 50.109, it will be necessary to determine from the certification rulemaking record what safety issues were considered and resolved. This is because § 2.758 will not bar review of a safety matter that was not considered and resolved in the design certification rulemaking. There would be no backfit restriction under § 50.109 because no prior position was taken on this safety matter. After the COL is issued, the set of technical specifications for the COL (the combination of plant-specific and DCD derived) would be subject to the backfit provisions in § 50.109 (assuming no Tier 1 or Tier 2 changes are involved).

Finality for operational requirements. A new provision was included in the design certification rules, set forth in Section 4(c), that were attached to SECY–96–077. The reason for this provision was that the operational requirements in the DCD had not received a complete and comprehensive review. Therefore, the new Section 4(c) was needed to reserve the right of the Commission to impose operational requirements on plants referencing this appendix, such as license conditions for portions of the plant within the scope of this design certification, e.g. start-up and power ascension testing. NEI claimed, in its comments dated July 23, 1996, that the backfit provisions in Section 4(c) contradicted 10 CFR 52.63 and were incompatible with the purpose of 10 CFR Part 52.

NEI's claim that Section 4(c) contradicts 10 CFR 52.63 and enables the NRC to impose changes to the design information in the DCD without regard to the special backfit provisions of § 52.63 is wrong. Section 4(c) clearly referred to ''facility operation'' not ''facility design.'' The purpose of

Section 4(c) was to ensure that any necessary operational requirements could be applied to plants that reference these certified designs because plant operational matters were not finalized in the design certification review. It was also clear that the NRC staff considered resolved design matters to be final. Refer to SECY–96–077 which states: ''Most importantly, a provision has been included in Section 4 to provide that the final rules do not resolve any issues regarding conditions needed for safe operation (as opposed to safe design).'' This is consistent with the goal of design certification, which is to preserve the resolution of design features, which are explicitly discussed or inferred from the DCD. The backfit provisions in Sections VIII.A and VIII.B of this appendix control design changes.

Subsequently, in its comments of September 23, 1996, NEI requested that all DCD requirements, including operational-related and other non-hardware requirements, be accorded finality under § 52.63. The Commission has determined that NEI's proposal to assign finality to operational requirements is unacceptable, because operational matters were not comprehensively reviewed and finalized for design certification (refer to section III.F of this SOC). Although the information in the DCD that is related to operational requirements was necessary to support the NRC's safety review of the standard designs, the review of this information was not sufficient to conclude that the operational requirements are fully resolved and ready to be assigned finality under § 52.63. Therefore, the Commission retained the former Section 4(c), but reworded this provision on operational requirements and placed it in Section VI.C of this appendix with the other provisions on finality (also refer to Section VIII.C of this appendix).

2. Tier 2 Change Process

Comment Summary. NEI submitted many comments on the following aspects of the Tier 2 change process:

• Scope of the change process in VIII.B.5;
• Post-design certification rulemaking changes to Tier 2 information;
• Restrictions on Tier 2* information; and
• Additional aspects of the change process.

Response. The proposed design certification rule provided a change process for Tier 2 information that had the same elements as the Tier 1 change process in order to implement the two-tiered rule structure that was requested by industry. Specifically, the Tier 2 change process in Section 8(b) of the proposed rule provided for generic changes, plant-specific changes, and exemptions similar to the provisions in 10 CFR 52.63, except that some of the standards for plant-specific orders and exemptions are different. Section 8(b) also had a provision similar to 10 CFR 50.59 that allows for departures from Tier 2 information by an applicant or licensee, without prior NRC approval, subject to certain restrictions, in accordance with the Commission's SRM on SECY–90–377, dated February 15, 1991.

Scope of the change process in VIII.B.5. In its comments dated August 4, 1995, Attachment B, pp. 67–82, NEI raised a concern regarding application of the § 50.59-like change process to severe accident information, and stated:

> Instead of applying the § 50.59-like process to all of Chapter 19, we propose (1) that the process be applied only to those sections that identify features that contribute significantly to the mitigation or prevention of severe accidents (i.e., Section 19.8 for the ABWR and Section 19.15 for the System 80+), and (2) that changes in these sections should constitute unreviewed safety questions only if they would result in a substantial increase in the probability or consequences of a severe accident.

The Commission agrees that departures from Tier 2 information that describe the resolution of severe accident issues should use criteria that is different from the criteria in 10 CFR 50.59 for determining if a departure constitutes an unreviewed safety question (USQ). Because of the increased uncertainty in severe accident issue resolutions, the NRC has included ''substantial increase'' criteria in VIII.B.5.c of this appendix for Tier 2 information that is associated with the resolution of severe accident issues. The (§ 50.59-like) criteria in VIII.B.5.b of this appendix, for determining if a departure constitutes a USQ, will apply to the remaining Tier 2 information. If the proposed departure from Tier 2 information involves the resolution of other safety issues in addition to the severe accident issues, then the USQ determination must be based on the criteria in VIII.B.5.b of this appendix.

However, NEI misidentified the sections of the DCD that describe the resolutions of the severe accident issues. Section 19.8 for the U.S. ABWR and Section 19.15 for the System 80+ design identify important features that were derived from various analyses of the design, such as seismic analyses, fire analyses, and the probabilistic risk assessment. This information was used in preparation of the Tier 1 information and, as stated in the proposed rule, it should be used to ensure that departures from Tier 2 information do not impact Tier 1 information. For these reasons, the Commission rejects the contention that the severe accident resolutions are contained in Section 19.8 of the generic DCD.

Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to expand the scope of design information that is controlled by the special change process for severe accident issues to all of the information in Chapter 19 of the DCD. The NRC staff intended that this special change process be limited to severe accident design features, where the intended function of the design feature is relied upon to resolve postulated accidents when the reactor core has melted and exited the reactor vessel and the containment is being challenged (severe accidents). These design features are identified in Section 19.11 of the System 80+ DCD and Section 19E of the ABWR DCD. This special change process was not intended for design features that are discussed in Chapter 19 for other reasons, such as resolution of generic safety issues. However, the NRC staff recognizes that the severe accident design features identified in Section 19E are described in other areas of the DCD, i.e. the Lower Drywell Flooder is described in Section 9.5.12 of the ABWR DCD. Therefore, the location of design information is not important to the application of the special change process for severe accident issues and it is not specified in Section VIII.B.5. The importance of this provision is that it be limited to the severe accident design features. In addition, the Commission is cognizant of certain design features that have intended functions to meet ''design basis'' requirements and to resolve ''severe accidents.'' These design features will be reviewed under either VIII.B.5.b or VIII.B.5.c depending upon the design function being changed. Finally, the Commission rejects NEI's request to expand the scope of design information that is controlled by the special change process for severe accident issues.

Post-design certification rulemaking changes to Tier 2 information. In its comments dated August 4, 1995, Attachment B, pp. 83–89, NEI requested that the NRC add a § 50.59-like provision to the change process that would allow design certification applicants to make generic changes to Tier 2 information prior to the first license application. These applicant-initiated, post-certification Tier 2 changes would be binding upon all referencing applicants and licensees (i.e., referencing applicants and licensees must comply with all such changes) and would continue to enjoy ''issue preclusion'' (i.e., issues with respect to the adequacy of the change could not be raised in a subsequent proceeding as a matter of right). However, the changes would not be subject to public notice and comment. Instead NEI proposed that the changes would be considered resolved and final (not subject to further NRC review) six months after submission, unless the NRC staff informs the design certification applicant that it disagrees with the determination that no unreviewed safety question exists.

The Commission declines to adopt the NEI proposal. The applicant-initiated Tier 2 changes proposed by NEI have the essential attributes of a ''rule,'' and the process of NRC review and ''approval'' (negative consent) would appear to be ''rulemaking,'' as these terms are defined in Section 551 of the APA. Section 553(b) of the APA requires public notice in the **Federal Register** and an opportunity for public comment for all rulemakings, except in certain situations delineated in Section 553(b)(A) and (B) which are not applicable to applicant-initiated changes. The NEI proposal conflicts with the rulemaking requirements of the APA. If the NEI proposal is based upon a desire to permit the applicant to disseminate worthwhile Tier 2 changes, there are three alternatives already afforded by Part 52 and this appendix. The applicant (as any member of the public) may submit a petition for rulemaking pursuant to Subpart H of 10 CFR Part 2, to modify this design certification rule to incorporate the proposed changes to Tier 2. If the Commission grants the petition and adopts a final rule, the change is binding on all referencing applicants and licensees in accordance with VIII.B.2 of this appendix. Also, the applicant could develop acceptable documentation to support a Tier 2 departure in accordance with VIII.B of this appendix. This documentation could be submitted for NRC staff review and approval, similar to the manner in which the NRC staff reviews topical reports. [1] Finally, the applicant could provide its proposed changes to a COL applicant who could seek approval as part of its COL application review. The Commission regards these regulatory approaches to be preferable to the NEI proposal. However, if NEI is requesting that the Commission change its preliminary determination, as set forth in its February 15, 1991 SRM on SECY–90–377, that generic Tier 2 rulemaking changes be subject to the same restrictive standard as generic Tier 1 changes, the Commission declines to do so. The Commission believes that maintaining a high standard for generic changes to both Tier 1 and Tier 2 will ensure that the benefits of standardization are appropriately achieved.

Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to modify this SOC to reflect NRC openness to discuss a post-design certification change process and related issues after the design certification rules are completed. The Commission has determined that vendors who submit a design, which is subsequently certified by rulemaking, may not make changes under a ''50.59-like'' process and that NEI's request is outside the scope of this rulemaking. The Commission believes that vendors should be limited in making changes to rulemaking to amend the certification and that this appendix provides an appropriate process for making generic changes to the DCD (refer to the SRM on SECY–90–377 and the SOC for 10 CFR Part 52, Section II.1.h). This process is available to everyone and the standard for changes is the same for NRC, the applicant, and the public. This restrictive change process is consistent with the NRC's goal of achieving and preserving resolutions of safety issues to provide a stable and predictable licensing process.

Restrictions on Tier 2 information.* In its comments dated August 4, 1995, Attachment B, pp. 119–123, and in subsequent comments dated July 23, 1996, pp. 50–54, NEI requested that the restriction on departures from all Tier 2* information expire at first full power and, in any event, the expiration of the restrictions should be consistent for both the U.S. ABWR and System 80+ designs. The Commission stated in the proposed design certification rule that the restriction on changing Tier 2* information resulted from the development of the Tier 1 information in the generic DCD. During the development of the Tier 1 information, the applicant for design certification requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references this design certification. Also, many codes, standards, and design processes, which were not specified in Tier 1, that are acceptable for meeting ITAAC were specified in Tier 2. The result of these actions is that certain significant information only exists in Tier 2 and the Commission does not want this significant information to be changed without prior NRC approval. This Tier 2* information is identified in the generic DCD with italicized text and brackets.

Although the Tier 2* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC staff reevaluated the duration of the change restriction for Tier 2* information during the preparation of the proposed rule. The NRC staff determined that some of the Tier 2* information could expire when the plant first achieves full (100%) power, after the finding required by 10 CFR 52.103(g), while other Tier 2* information must remain in effect throughout the life of the plant that references this rule. The determining factors were the Tier 1 information that would govern these areas after first full power and the NRC staff's judgement on whether prior approval was required before implementation of the change due to the significance of the information.

As a result of NEI's comments, the NRC again reevaluated the duration of the Tier 2* change restrictions. The NRC agrees with NEI that expiration of Tier 2* information for the two evolutionary designs should be consistent, unless there is a design-specific reason for a different treatment. The NRC decided that the Tier 2* restrictions for equipment seismic qualification methods and piping design acceptance criteria could expire at first full power, because the approved versions of the ASME code provide sufficient control of Tier 2* changes for these two areas. Also, the Tier 2* restriction for the ABWR human factors engineering design and implementation process can expire at first full power because the NRC staff concluded that step 6 of the Tier 1 implementation process requires that any changes made to the Main Control Room and Remote Shutdown System conform with the Human-System Design Implementation Process. However, the fuel design evaluation information and the licensing acceptance criteria for fuel must remain

[1] Topical reports, which are usually submitted by vendors such as GE, Westinghouse, and Combustion Engineering, request NRC staff review and approval of generic information and approaches for addressing one or more of the Commission's requirements. If the topical report is approved by the NRC staff, it issues a safety evaluation setting forth the bases for the staff's approval together with any limitations on referencing by individual applicants and licensees. Applicants and licensees may incorporate by reference topical reports in their applications, in order to facilitate timely review and approval of their applications or responses to requests for information. However, limitations in NRC resources may affect review schedules for these topical reports.

designated as Tier 2* in the U.S. ABWR DCD in order to clarify the acceptance criteria for reviewing changes to the current fuel design. As discussed in Section 4.2 of the U.S. ABWR FSER (NUREG–1503), the criteria were based on previous work with GE Nuclear Energy to define the licensing acceptance criteria for core reload calculations.

Recent industry proposals for currently operating core fuel designs have indicated a desire to modify the fuel burnup limit design parameter. However, operational experience with fuel with extended fuel burnup has indicated that cores should not be allowed to operate beyond the burnup limits specified in the generic DCDs without NRC approval. This experience is summarized in a Commission memorandum from James M. Taylor, ''Reactivity Transients and High Burnup Fuel,'' dated September 13, 1994, including Information Notice (IN) 94–64, ''Reactivity Insertion Transient and Accident Limits for High Burnup Fuel,'' dated August 31, 1994. Experimental data on the performance of high burnup fuel under reactivity insertion conditions became available in mid-1993. The NRC issued IN 94–64 and IN 94–64, Supplement 1, on April 6, 1995, to inform industry of the data. The unexpectedly low energy deposition to initiation of fuel failure in the first test rod (at 62 GWd/MTU) led to a re-evaluation of the licensing basis assumptions in the NRC's standard review plan (SRP). The NRC performed a preliminary safety assessment and concluded that there was no immediate safety issue for currently operating cores because of the low to medium burnup status of the fuel (refer to Commission Memorandum from James M. Taylor, ''Reactivity Transients and Fuel Damage Criteria for High Burnup Fuel,'' dated November 9, 1994, including an NRR safety assessment and the joint NRR/RES action plan). Therefore, the NRC has determined that additional actions by industry are not needed to justify current burnup limits for operating reactor fuel designs. However, the NRC has determined that it needs to carefully consider any proposed changes to the fuel burnup parameter in the generic DCDs for these fuel designs until further experience is gained with extended fuel burnup characteristics. Requests for extension of these burnup limits will be evaluated based on supporting experimental data and analyses, as appropriate, for current and advanced fuel designs. Therefore, the NRC has determined that the Tier 2* designation for the fuel burnup parameters should not expire for the lifetime of a referencing facility.

NEI also stated in its comments dated July 23, 1996, that to the extent the Commission does not adopt its recommendation that all Tier 2* restrictions expire at first full power, the SOC should be modified to reflect the NRC staff's intent that Tier 2* material in the DCD may be superseded by information submitted with a license application or amendment. The Commission decided that, if certain Tier 2* information is changed in a generic rulemaking, the category of the new information (Tier 1, 2*, or 2) would also be determined in the rulemaking and the appropriate process for future changes would apply. If certain Tier 2* information is changed on a plant-specific basis, then the appropriate modification to the change process would apply only to that plant.

Additional aspects of the change process. In its comments dated August 4, 1995, Attachment B, pp. 109–118, NEI raised some additional concerns with the Tier 2 change process. The first concern was with the process for determining if a departure from Tier 2 information constituted an unreviewed safety question. Specifically, NEI identified the following statement in section III.H of the SOC for the proposed rule. ''* * * if the change involves an issue that the NRC staff has not previously approved, then NRC approval is required.'' A clarification of this statement was provided in the May 11, 1995 public meeting on design certification (pp. 12–14 of meeting transcript), when the NRC staff stated that the NRC was not creating a new criterion for determining unreviewed safety questions but was explaining existing criteria. A further discussion of this statement took place between the staff and counsel to GE Nuclear Energy at the December 4, 1995 public meeting on design certification (pp. 53–56 of meeting transcript), in which counsel for GE Nuclear Energy agreed that a departure which creates an issue that was not previously reviewed by the NRC would be evaluated against the existing criteria for determining whether there was an unreviewed safety question. The Commission does not believe there is a need for a change to the language of this appendix. The statement above was not included in section III.H of this SOC.

NEI also requested that Section 8(b) of the proposed rule be revised to state that exemptions are not required for changes to the technical specifications or Tier 2* information that do not involve an unreviewed safety question. The Commission has determined that this is consistent with the Commission's intent that permitted departures from Tier 2* under VIII.B of this appendix should not also require an exemption, unless otherwise required by, or implied by 10 CFR Part 52, Subpart B and, accordingly, has revised paragraph VIII.B.6 of this appendix. As discussed above, the technical specifications in Chapter 16 of the generic DCD are not in Tier 2 and, in its comments dated September 23, 1996, NEI proposed that requested departures from Chapter 16 by an applicant for a COL require an exemption. The Commission agrees with NEI's new position and included this provision in Section VIII.C of this appendix. NEI also raised a concern with the requirement for quarterly reporting of design changes during the construction period. This issue is discussed in section III.J of this SOC.

Finally, NEI raised a concern with the status of 10 CFR 52.63(b)(2) in the two-tiered rule structure that has been implemented in this appendix and claimed that 10 CFR 52.63(b) clearly embodies a two-tier structure. NEI's claim is not correct. The Commission adopted a two-tiered design certification rule structure (Commission SRM on SECY–90–377, dated February 15, 1991) and created a change process for Tier 2 information that has the same elements as the Tier 1 change process. In addition, the Tier 2 change process includes a provision that is similar to 10 CFR 50.59, namely VIII.B.5 of this appendix. Therefore, as stated in section II (Topic 6) of the proposed rule, there is no need for 10 CFR 52.63(b)(2) in the two-tiered change process that has been implemented for this appendix.

Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to modify Section VIII.B.4 of this appendix so that exemption requests are only subject to an opportunity for a hearing. The Commission decided that NEI's proposal was consistent with the intent of this appendix and modified Section VIII.B.4, accordingly. Also, NEI requested the Commission to modify Section VIII.B.6.b of this appendix to restrict the need for a license amendment and an opportunity for a hearing to those Tier 2* changes involving unreviewed safety questions. NEI claimed that a hearing opportunity for Tier 2* changes was unnecessary and should be provided only if the change involves an unreviewed safety question. The Commission disagrees with NEI because of the safety significance of the Tier 2* information. The safety significance of the Tier 2* information was determined at the time that the Tier 1 information was selected.

Any changes to Tier 2* information will require a license amendment with the appropriate hearing opportunity.

3. Need for Additional Applicable Regulations

Comment Summary. NEI and the other industry commenters criticized Section 5(c) of the proposed design certification rule, which designated additional applicable regulations for the purposes of 10 CFR 52.48, 52.54, 52.59, and 52.63 (refer to NEI Comments dated August 4, 1995, Attachment B, pp. 24–57; NEI Comments dated July 23, 1996, pp. 27–34; and NEI letter dated September 16, 1996).

Response. NEI raised many issues in its comments. These comments have been consolidated into the following groups to facilitate documentation of the NRC staff's responses.

NEI stated that there is no requirement in 10 CFR Part 52 that compels the Commission to adopt these new applicable regulations, that the new applicable regulations are not necessary for adequate protection or to improve the safety of the standard designs, and that the applicable regulations are inconsistent with the Commission's SRM, dated September 14, 1993. NEI also stated that the adoption of new applicable regulations is contrary to the purpose of design certification and Commission policy. The NRC staff developed the new applicable regulations in accordance with the goals of 10 CFR Part 52, Commission guidance, and to achieve the purposes of 10 CFR 52.48, 52.54, 52.59, and 52.63 (refer to SECY–96–028, dated February 6, 1996, and the History of Applicable Regulations in Attachment 9 to SECY–96–077, dated April 15, 1996). The Commission chose design-specific rulemaking rather than generic rulemaking for the new technical and severe accident issues. The Commission adopted this approach early in the design certification review process because it was concerned that generic rulemakings would cause significant delay in the design certification reviews and it was thought that the new requirements would be design-specific (refer to SRMs on SECY–91–262 and SECY–93–226). Furthermore, the SOC discussion for Part 52, Section II.1.e, ''Applicability of Existing Standards,'' states that new standards may be required and that these new standards may be developed in a design-specific rulemaking.

NEI stated that the applicable regulations are unnecessary because the NRC staff has applied these technical positions in reviewing and approving the standard designs. In addition, each of these positions has corresponding NRC staff approved provisions in the respective design control documents (DCD) and these provisions already serve the purpose of applicable regulations for all of the situations identified by the NRC staff. In response, the NRC staff stated that NEI's statement that information in the DCD will constitute an applicable regulation confuses the difference between design descriptions approved by rulemaking and the regulations (safety standards) that are used as the basis to approve the design. Furthermore, during a meeting on April 25, 1994, and in a letter from Mr. Dennis Crutchfield (NRC) to Mr. William Rasin (NEI), dated July 25, 1994, the NRC staff stated that design information cannot function as a surrogate for the new (design-specific) applicable regulations because this information describes only one method for meeting the regulation and would not provide a basis for evaluating proposed changes to the previously approved design descriptions.

NEI was also concerned that ''broadly stated'' applicable regulations could be used in the future by the NRC staff to impose backfits on applicants and licensees that could not otherwise be justified on the basis of adequate protection of public health and safety, thereby eroding licensing stability. However, NEI acknowledged in its comments that the NRC staff did not intend to reinterpret the applicable regulations to impose compliance backfits and because implementation of the applicable regulations was approved in the DCD, the NRC staff could not impose a backfit on the approved implementation without meeting the standards in the change process. Also, NEI claimed that the additional applicable regulations were vague and, in some cases, inconsistent with previous Commission directions. In response to NEI's comments, the NRC staff proposed revised wording and a special provision for compliance backfits to the additional applicable regulations (refer to SECY–96–077). However, in subsequent comments, NEI stated that the proposed wording changes and backfit provision did not mitigate its concerns.

NEI commented in 1995 that some of the additional applicable regulations are requirements on an applicant or licensee who references this appendix, and requested in 1996 that these requirements be deleted from the final rule. The NRC staff moved these requirements from Section 5 of the proposed rules to Section 4 of the rules set forth in SECY–96–077, in response to NEI's 1995 comment (refer to pp. 46–47 of Attachment 1 to SECY–96–077). The Commission has removed those requirements from Section IV and has reserved the right to impose these operational requirements on applicants and licensees who reference this appendix (refer to VI.C of this appendix). The additional applicable regulations that are applicable to applicants or licensees who reference this appendix are specified in the generic DCD as COL license information.

NEI stated that the proposed additional applicable regulations were viewed as penalizing advanced plants for incorporating design features that enhance safety and could impact the regulatory threshold for currently operating plants. NEI also stated that applicable regulations are not needed to permit the NRC to deny an exemption request for a design feature that is subject to an applicable regulation. The Commission decided not to codify the additional applicable regulations that were identified in section 5(c) of the proposed rule. Instead, the Commission adopted the following position relative to the proposed additional applicable regulations.

Although it is the Commission's intent in 10 CFR Part 52 to promote standardization and design stability of power reactor designs, standardization and design stability are not exclusive goals. The Commission recognized that there may be special circumstances when it would be appropriate for applicants or licensees to depart from the referenced certified designs. However, there is a desire of the Commission to maintain standardization across a group of reactors of a given design. Nevertheless, Part 52 provides for changes to a certified design in carefully defined circumstances, and one of these circumstances is the option provided to applicants and licensees referencing certified designs to request an exemption from one or more elements of the certified design, e.g., 10 CFR 52.63(b)(1). The final design certification rule references this provision for Tier 1 and includes a similar provision for Tier 2. The criteria for NRC review of requests for an exemption from Tier 1 and Tier 2 in the final rule are the same as those for NRC review of rule exemption requests under 10 CFR Part 50 directed at non-certified designs, except that the final rule requires consideration of an additional factor for Tier 1 exemptions—whether special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. It has been the practice of the Commission to require that there be no significant decrease in the level of safety provided by the regulations when exemptions from the regulations in Part 50 are requested. The Commission believes that a similar practice should be followed when exemptions from one or more elements of a certified design are requested, that is, the granting of an exemption under 10 CFR 50.12 or 52.63(b)(1) should not result in any significant decrease in the level of safety provided by the design (Tier 1 and Tier 2). The exemption standards in sections VIII.A.4 and VIII.B.4 of the final rule have been modified from the proposed rule to codify this practice.

In adopting this policy the Commission recognizes that the ABWR design not only meets the Commission's safety goals for internal events, but also offers a substantial overall enhancement in safety as compared, generally, with the current generation of operating power reactors. *See*, e.g. NUREG–1503 at Section 19.1. The Commission recognizes that the safety enhancement is the result of many elements of the design, and that much but not all of it is reflected in the results of the probabilistic risk assessment (PRA) performed and documented for them. In adopting a rule that the safety enhancement should not be eroded significantly by exemption requests, the Commission recognizes and expects that this will require both careful analysis and sound judgment, especially considering uncertainties in the PRA and the lack of a precise, quantified definition of the enhancement which would be used as the standard. Also, in some cases scientific proof that a safety margin has or has not been eroded may be difficult or even impossible. For this reason, it is appropriate to express the Commission's policy preference regarding the grant of exemptions in the form of a qualitative, risk informed standard, in section VIII of the final rule, and inappropriate to express the policy in a quantitative legal standard as part of the additional applicable regulations.

There are three other circumstances where the enhanced safety associated with the ABWR design could be eroded: by design changes introduced by GE at the certification renewal stage; by operational experience or other new information suggesting that safety margins believed to be achieved are not in fact present; and by applicant or licensee design changes under section VIII.B.5 of the final rule (for changes to Tier 2 only). In the first two cases Part 52 limits NRC's ability to require that the safety enhancement be restored, unless a question of adequate protection or compliance would be presented or, in the case of renewals, unless the restoration offers cost-justified, substantive additional protection. Thus, unlike the case of exemptions where a policy of maintaining enhanced safety can be enforced consistent with the basic structure of Part 52, in the case of renewals and new information, implementation of such a policy over industry objections would require changes to the basic structure of Part 52. The Commission has been and still is unwilling to make fundamental changes to Part 52 because this would introduce great uncertainty and defeat industry's reasonable expectation of a stable regulatory framework. Nevertheless, the Commission on its part also has a reasonable expectation that vendors and utilities will cooperate with the Commission in assuring that the level of enhanced safety believed to be achieved with this design will be reasonably maintained for the period of the certification (including renewal).

This expectation that industry will cooperate with NRC in maintaining the safety level of the certified designs applies to design changes suggested by new information, to renewals, and to changes under section VIII.B.5 of the final rule. If this reasonable expectation is not realized, the Commission would carefully review the underlying reasons and, if the circumstances were sufficiently persuasive, consider the need to reexamine the backfitting and renewal standards in Part 52 and the criteria for Tier 2 changes under section VIII.B.5. At this time there is no reason to believe that cooperation will not be forthcoming and, therefore, no reason to change the regulations. With this belief and stated Commission policy (and the exemption standard discussed above), there is no need for the proposed additional applicable regulations to be embedded in the final rule because the objective of the additional applicable regulations—maintaining the enhanced level of safety—should be achieved without them.

B. Responses to Specific Requests for Comment

Only two commenters addressed the specific requests for comments that were set forth in section IV of the SOC for the proposed rule. These commenters were NEI and the Ohio Citizens for Responsible Energy, Inc. (OCRE). The following discussion provides a summary of the comments and the Commission's response.

1. Should the requirements of 10 CFR 52.63(c) be added to a new 10 CFR 52.79(e)?

Comment Summary. OCRE agreed that the requirements of 10 CFR 52.63(c) should be added to a new 10 CFR 52.79(e) and NEI had no objection, as long as the substantive requirements in § 52.63(c) were not changed.

Response. Because there is no objection to adding the requirements of 10 CFR 52.63(c) to Subpart C of Part 52, as 10 CFR 52.79(e), the Commission will consider this amendment as part of a future review of Part 52. This future review will also consider lessons learned from this rulemaking and will determine if 10 CFR 52.63(c) should be deleted from Subpart B of Part 52.

2. Are there other words or phrases that should be defined in Section 2 of the proposed rule?

Comment Summary. Neither NEI nor OCRE suggested other words or phrases that need to be added to the definition section. However, NEI recommended expanded definitions for specific terms in Section 2 of the proposed rule.

Response. The Commission has revised Section II of this appendix as a result of comments from NEI and DOE. A discussion of these changes is provided in sections II.C.2 and II.C.3 of this SOC.

3. What change process should apply to design-related information developed by a combined license (COL) applicant or holder that references this design certification rule?

Comment Summary. OCRE recommended the change process in Section 8(b)(5)(i) of the proposed rule and stated that it is essential that any design-related COL information including the plant-specific PRA (and changes thereto) developed by the COL applicant or holder not have issue preclusion and be subject to litigation in any COL hearing. NEI recommended that the COL information be controlled by 10 CFR 50.54 and 50.59 but recognized that the COL applicant or holder must also consider impacts on Tier 1 and Tier 2 information. Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to modify the response to this question that was set forth in SECY–96–077. Specifically, NEI stated that plant-specific changes should be implemented under § 50.59 or § 50.90, as appropriate. The Commission did not significantly modify its former response because the change process must consider the effect on information in the DCD, as NEI previously acknowledged.

Response. The Commission will develop a change process for the plant-specific information submitted in a COL application that references this appendix as part of a future review of Part 52. The Commission expects that the change process for the plant-specific portion of the COL application will be similar to VIII.B.5 of this appendix. This approach is generally consistent with the recommendations of OCRE and NEI.

The Commission agrees with OCRE that the plant-specific portion of the COL application will not have issue preclusion in the licensing hearing. A discussion of the information that will have issue preclusion is provided in sections II.A.1 and III.F of this SOC.

4. Are each of the applicable regulations set forth in Section 5(c) of the proposed rule justified?

Comment Summary. OCRE found each of the applicable regulations to be justified and stated that these requirements are responsive to issues arising from operating experience and will greatly reduce the risk of severe accidents for plants using these standard designs. NEI believes that none of the applicable regulations are justified and stated that they are legally and technically unnecessary, could give rise to unwarranted backfits, are destabilizing and, therefore, contrary to the purpose of 10 CFR Part 52.

Response. The Commission has determined that it is not necessary to codify the new applicable regulations, as explained in section II.A.3 of this SOC.

5. Section 8(b)(5)(i) of the proposed rule authorizes an applicant or licensee who references the design certification to depart from Tier 2 information without prior NRC approval if the applicant or licensee makes a determination that the change does not involve a change to Tier 1 or Tier 2* information, as identified in the DCD; the technical specifications; or an unreviewed safety question, as defined in Sections 8(b)(5)(ii) and (iii). Where Section 8(b)(5)(i) states that a change made pursuant to that paragraph will no longer be considered as a matter resolved in connection with the issuance or renewal of a design certification within the meaning of 10 CFR 52.63(a)(4), should this mean that the determination may be challenged as not demonstrating that the change may be made without prior NRC approval or that the change itself may be challenged as not complying with the Commission's requirements?

Comment Summary. OCRE believes that the process for plant-specific departures from Tier 2, as well as the substantive aspect of the change itself, should be open to challenge, although OCRE believes that the second aspect is the more important. By contrast, NEI argued that neither the departure process nor the change should be subject to litigation in any licensing hearing. Rather, NEI argued that any person who wished to challenge the change should raise the matter in a petition for an enforcement action under 10 CFR 2.206.

Response. The Commission has determined that an interested person should be provided the opportunity to challenge, in an appropriate licensing proceeding, whether the applicant or licensee properly complied with the Tier 2 departure process. Therefore, VIII.B.5 of this appendix has been modified to include a provision for challenging Tier 2 departures. The scope of finality for plant-specific departures is discussed in greater detail in section II.A.1 of this SOC.

6. How should the determinations made by an applicant or licensee that changes may be made under Section 8(b)(5)(i) of the proposed rule, without prior NRC approval, be made available to the public in order for those determinations to be challenged or for the changes themselves to be challenged?

Comment Summary. OCRE recommends that the determinations and descriptions of the changes be set forth in the COL application and that they should be submitted to the NRC after COL issuance. Any person wishing to challenge the determinations or changes should file a petition pursuant to 10 CFR 2.206. NEI recommends submitting periodic reports that summarize departures made under Section 8(b)(5) to the NRC pursuant to Section 9(b) of the proposed design certification rules, consistent with the existing process for NRC notifications by licensees under 10 CFR 50.59. These reports will be available in the NRC's Public Document Room.

Response. The Tier 2 departure process in Section 8(b)(5) and the respective reporting requirements in Section 9(b) of the proposed design certification rule (VIII.B.5 and X.B of this appendix) were based on 10 CFR 50.59. It therefore seems reasonable that the information collection and reporting requirements that should be used to control Tier 2 departures made in accordance with VIII.B.5 of this appendix should generally follow the regulatory scheme in 10 CFR 50.59 (except that the requirements should also be applied to COL applicants), absent countervailing considerations unique to the design certification and combined license regulatory scheme in Part 52. OCRE's proposal raises policy considerations which are not unique to this design certification, but are equally applicable to the Part 50 licensing scheme. In fact, OCRE has submitted a petition (see 59 FR 30308; June 13, 1994) which raises the generic matter of public access to licensee-held information. In view of the generic nature of OCRE's concern and the pendency of OCRE's petition, which independently raises this matter, the Commission concludes that this rulemaking should not address this matter.

7. What is the preferred regulatory process (including opportunities for public participation) for NRC review of proposed changes to Tier 2* information and the commenter's basis for recommending a particular process?

Comment Summary. OCRE recommends either an amendment to the license application or an amendment to the license, with the requisite hearing rights. NEI recommends NRC approval by letter with an opportunity for public hearing only for those Tier 2* changes that also involve either a change in Tier 1 or technical specifications, or an unreviewed safety question.

Response. The Commission has developed a change process for Tier 2* information, as described in sections II.A.2 and III.H of this SOC, which essentially treats the proposed departure as a request for a license amendment with an opportunity for hearing. Since Tier 2* departures require NRC review and approval, and involve a licensee departing from the requirements of this appendix, the Commission regards such requests for departures as analogous to license amendments. Accordingly, VIII.B.6 of this appendix specifies that such requests will be treated as requests for license amendments after the license is issued, and that the Tier 2* departure shall not be considered to be matters resolved by this rulemaking prior to a license being issued.

8. Should determinations of whether proposed changes to severe accident issues constitute an unreviewed safety question use different criteria than for other safety issues resolved in the design certification review and, if so, what should those criteria be?

Comment Summary. OCRE supports the concept behind the criteria in the proposed rule for determining if a proposed change to severe accident issues constitutes an unreviewed safety question, but proposes changes to the criteria. NEI agrees with the criteria in the proposed rule but recommends an expansion of the scope of information that would come under the special criteria for determining an unreviewed safety question.

Response. The Commission disagrees with the recommendations of both NEI and OCRE. The Commission has decided to retain the special change process for severe accident information, as described in sections II.A.2 and III.H of this SOC.

9. (a) (1) Should construction permit applicants under 10 CFR Part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR Part 50?

(2) What, if any, issue preclusion exists in a subsequent operating license stage and NRC enforcement, after the Commission authorizes a construction permit applicant to reference a design certification rule?

(3) Should construction permit applicants referencing a design certification rule be either permitted or required to reference the ITAAC? If so, what are the legal consequences, in terms of the scope of NRC review and approval and the scope of admissible contentions, at the subsequent operating license proceeding?

(4) What would distinguish the ''old'' 10 CFR Part 50 2-step process from the 10 CFR Part 52 combined license process if a construction permit applicant is permitted to reference a design certification rule and the final design and ITAAC are given full issue preclusion in the operating license proceeding? To the extent this circumstance approximates a combined license, without being one, is it inconsistent with Section 189(b) of the Atomic Energy Act (added by the Energy Policy Act of 1992) providing specifically for combined licenses?

(b)(1) Should operating license applicants under 10 CFR Part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR Part 50?

(2) What should be the legal consequences, from the standpoints of issue resolution in the operating license proceeding, NRC enforcement, and licensee operation if a design certification rule is referenced by an applicant for an operating license under 10 CFR Part 50?

(c) Is it necessary to resolve these issues as part of this design certification, or may resolution of these issues be deferred without adverse consequence (*e.g.*, without foreclosing alternatives for future resolution).

Comment Summary. OCRE proposed that a construction permit applicant should be allowed to reference design certifications and that the applicant be required to reference ITAAC because they are Tier 1. OCRE indicated that in a construction permit hearing, those issues representing a challenge to the design certification rule would be prohibited pursuant to 10 CFR 2.758. At the operating license stage, only an applicant whose construction permit referenced a design certification rule should be allowed to reference the design certification. In the operating license hearing, issues would be limited to whether the ITAAC have been met. Requiring a construction permit applicant to reference the ITAAC would not be the same as a combined license applicant under 10 CFR Part 52, in OCRE's view, apparently because the specific hearing provisions of 10 CFR 52.103 would not be employed. Finally, OCRE argued that resolution of these issues could be safely deferred because the circumstances with which these issues attend are not likely to be faced.

NEI also argued that a construction permit applicant should be allowed to reference design certifications. However, NEI believed that the applicant should be permitted, but not required, to reference the ITAAC. If the applicant did not reference the ITAAC, then ''construction-related issues'' would be subject to both NRC review and an opportunity for hearing at the operating license stage in the same manner as construction-related issues in current Part 50 operating license proceedings. NEI reiterated its view that design certification issues should be considered resolved in all subsequent NRC proceedings. With respect to deferring a Commission decision on the matter, NEI suggested that these issues be resolved now because the industry wishes to ''reinforce'' the permissibility of using a design certification in a Part 50 proceeding. Further, NEI argues that deletion of all mention of construction permits and operating licenses in the design certification rule could be construed as indicating the Commission's desire to preclude a construction permit or operating license applicant from referencing a design certification.

Response. Although 10 CFR Part 52 provides for referencing of design certification rules in Part 50 applications and licenses, the Commission wishes to reserve for future consideration the manner in which a Part 50 applicant could be permitted to reference this design certification and whether it should be permitted or required to reference the ITAAC. This decision is due to the manner in which ITAAC were developed for this appendix and recognition of the lack of experience with design certifications in combined licenses, in particular the implementation of ITAAC. Therefore, the Commission has decided that it is appropriate for the final rule to have some uncertainty regarding the manner in which this appendix could be referenced in a Part 50 proceeding, as set forth in Section IV.B of this appendix.

C. Other Issues

1. NRC Verification of ITAAC Determinations

Comment Summary. In Attachment B of its comments dated August 4, 1995 (pp. 58–66), NEI raised an industry concern regarding the matters to be considered by the NRC in verifying inspections, tests, analyses, and acceptance criteria (ITAAC) determinations pursuant to 10 CFR 52.99, specifically citing quality assurance and quality control (QA/QC) deficiencies. Although this issue was not specifically addressed in the proposed rule, the following response is provided because of its importance relative to future considerations of the successful performance of ITAAC for a nuclear power facility. Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to delete significant portions of the NRC's response, which was originally set forth in SECY–96–077 (refer to pages 33–36 of Attachment 1).

Response. The Commission decided to delete the responses in SECY–96–077 on licensee documentation of ITAAC verification; NRC inspection; and facility ITAAC verification; because they do not directly relate to the design certification rulemakings. However, the NRC disagrees with NEI's assertion that QA/QC deficiencies have no relevance to the NRC determination of whether ITAAC have been successfully completed. Simply confirming that an ITAAC had been performed in some manner and a result obtained apparently showing that the acceptance criteria had been met would not be sufficient to support a determination that the ITAAC had been successfully completed. The *manner* in which an ITAAC is performed can be relevant and material to the results of the ITAAC. For example, in conducting an ITAAC to verify a pump's flow rate, it is logical, even if not explicitly specified in the ITAAC, that the gauge used to verify the pump flow rate must be calibrated in accordance with relevant QA/QC requirements and that the test configuration is representative of the final as-built plant conditions (i.e. valve or system line-ups, gauge locations, system pressures or temperatures). Otherwise, the acceptance criteria for pump flow rate in the ITAAC could apparently be met while the actual flow rate in the system could be much less than that required by the approved design.

The NRC has determined that a QA/QC deficiency may be considered in determining whether an ITAAC has been successfully completed if: (1) The QA/QC deficiency is directly and materially related to one or more aspects of the relevant ITAAC (or supporting Tier 2 information); and (2) the deficiency (considered by itself, with other deficiencies, or with other information known to the NRC) leads the NRC to question whether there is a reasonable basis for concluding that the relevant aspect of the ITAAC has been successfully completed. This approach is consistent with the NRC's current methods for verifying initial test programs. The NRC recognizes that there may be programmatic QA/QC deficiencies that are not relevant to one or more aspects of a given ITAAC under review and, therefore, should not be relevant to or considered in the NRC's determination as to whether an ITAAC has been successfully completed. Similarly, individual QA/QC deficiencies unrelated to an aspect of the ITAAC in question would not form the basis for an NRC determination that an ITAAC has not been met. Using the ITAAC for pump flow rate example, a specific QA deficiency in the calibration of pump gauges would not preclude an NRC determination of successful ITAAC completion if the licensee could demonstrate that the original deficiency was properly corrected (e.g., analysis, scope of effect, root cause determination, and corrective actions as appropriate), or that the deficiency could not have materially affected the test in question.

Furthermore, although Tier 1 information was developed to focus on the performance of the structures, systems, and components of the design, the information contains implicit quality standards. For example, the design descriptions for reactor and fluid systems describe which systems are ''safety-related;'' important piping systems are classified as ''Seismic Category I'' and identify the ASME Code Class; and important electrical and instrumentation and control systems are classified as ''Class 1E.'' The use of these terms by the evolutionary plant designers was meant to ensure that the systems would be built and maintained to the appropriate standards. Quality assurance deficiencies for these systems would be assessed for their impact on the performance of the ITAAC, based on their safety significance to the system. The QA requirements of 10 CFR Part 50, Appendix B, apply to safety-related activities. Therefore, the Commission anticipates that, because of the special significance of ITAAC related to verification of the facility, the licensee will implement similar QA processes for ITAAC activities that are not safety-related.

During the ITAAC development, the design certification applicants determined that it was impossible (or extremely burdensome) to provide all details relevant to verifying all aspects of ITAAC (e.g., QA/QC) in Tier 1 or Tier 2. Therefore, the NRC staff accepted the applicants' proposal that top-level design information be stated in the ITAAC to ensure that it was verified, with an emphasis on verification of the design and construction details in the ''as-built'' facility. To argue that consideration of underlying information which is relevant and material to determining whether ITAAC have been successfully completed, ignores the history of ITAAC development. In summary, the Commission concludes that information such as QA/QC deficiencies which are relevant and material to ITAAC may be considered by the NRC in determining whether the ITAAC have been successfully completed. Despite this conclusion, the Commission has decided to add a provision to this appendix (IX.B.1), which was requested by NEI. This provision requires the NRC's findings (that the prescribed acceptance criteria have been met) to be based solely on the inspections, tests, and analyses. The Commission has added this provision, which is fully consistent with 10 CFR Part 52, with the understanding that it does not affect the manner in which the NRC intends to implement 10 CFR 52.99 and 52.103(g), as described above.

2. DCD Introduction

Comment Summary. The proposed rule incorporated Tier 1 and Tier 2 information into the DCD but did not include the introduction to the DCD. The SOC for the proposed rule indicated that this was a deliberate decision, stating:

> The introduction to the DCD is neither Tier 1 nor Tier 2 information, and is not part of the information in the DCD that is incorporated by reference into this design certification rule. Rather, the DCD introduction constitutes an explanation of requirements and other provisions of this design certification rule. If there is a conflict between the explanations in the DCD introduction and the explanations of this design certification rule in these statements of consideration (SOC), then this SOC is controlling.

Both the applicant and NEI took strong exception to this statement. They both argued that the language of the DCD introduction was the subject of careful discussion and negotiation between the NRC staff, NRC's Office of the General Counsel, and representatives of the applicant and NEI. They, therefore, suggested that the definition of the DCD in Section 2(a) of the proposed rule be amended to explicitly include the DCD Introduction and that Section 4(a) of the proposed rule be amended to generally require that applicants or licensees comply with the entire DCD. However, in the event that the Commission rejected their suggestion, NEI alternatively argued that the substantive provisions of the DCD Introduction be directly incorporated into the design certification rule's language (refer to NEI Comments dated August 4, 1995, Attachment B, pp. 90–108, and July 23, 1996, pp. 43–49; GE Comments, Attachment A, pp. 10–11).

Response. The DCD Introduction was created to be a convenient explanation of some provisions of the design certification rule and was not intended to become rule language itself. Therefore, the Commission declines the suggestion to incorporate the DCD introduction, but adopted NEI's alternative suggestion of incorporating substantive procedural and administrative requirements into the design certification rule. It is the Commission's view that the procedural and administrative provisions described in the DCD Introduction should be included in, and be an integrated part of, the design certification rule. As a result, Sections II, III, IV, VI, VIII, and X of this appendix have been revised and Section IX was created to adopt appropriate provisions from the DCD Introduction. In some cases, the wording of these provisions has been modified, as appropriate, to achieve clarity or to conform with the final design certification rule language.

3. Duplicate Documentation in Design Certification Rule

Comment Summary. On page 4 of its comments, dated August 7, 1995, the Department of Energy (DOE) recommended that the process for preparing the design certification rule be simplified by eliminating the DCD, which DOE claims is essentially a repetition of the Standard Safety Analysis Report (SSAR). DOE's concern, which was further clarified during a public meeting on December 4, 1995, is that the NRC will require separate copies of the DCD and SSAR to be maintained. During the public meeting, DOE also expressed a concern that § 52.79(b) could be confusing to an applicant for a combined license because it currently states: ''The final safety analysis report and other required information may incorporate by reference the final safety analysis report for a certified standard design.''

Response. The NRC does not require duplicate documentation for this design certification rule. The DCD is the only document that is incorporated by reference into this appendix in order to meet the requirements of Subpart B of Part 52. The SSAR supports the final design approval (FDA) that was issued under Appendix O to 10 CFR Part 52. The DCD was developed to meet the requirements for incorporation by reference and to conform with requests from the industry such as deletion of the quantitative portions of the design-specific probabilistic risk assessment. Because the DCD terminology was not envisioned at the time that Part 52 was developed, the Commission will consider modifying § 52.79(b), as part of its future review of Part 52, in order to clarify the use of the term ''final safety analysis report.'' In the records and reporting requirements in Section X of this appendix, additional terms were used to distinguish between the documents to be maintained by the applicant for this design certification rule and the document to be maintained by an applicant or licensee who references this appendix. These new terms are defined in Section II of this appendix and further described in the section-by-section discussion on records and reporting in section III.J of this SOC. The applicant chose to continue to reference the SSAR as the supporting document for its FDA. As a result, the applicant must maintain the SSAR for the duration of the FDA.

4. In its Comments, Dated August 12, 1995, OCRE Stated

Although the ABWR will use the same type of Main Steam Isolation Valves as are used in operating BWRs, it will not have a MSIV Leakage Control System. Instead, GE is taking credit for fission product retention in the main steam lines and main condenser. However, in a main steam line break outside of containment, a design basis event, such fission product retention will not occur. Given the excessive leakage experience of MSIVs in operating BWRs, it would be prudent to incorporate a MSIVLCS into the ABWR design. OCRE would recommend a positive pressure MSIVLCS, which would pressurize the main steam lines between the inboard and outboard MSIVs after MSIV closure to a pressure above that in the reactor pressure vessel. Thus, any leakage through the inboard MSIV will be into the reactor.

Response. The NRC had concerns with the effectiveness of the main steam isolation valve leakage collection system (MSIVLCS) to perform its intended function under conditions of high MSIV leakage. NRC classified this concern as a generic issue (C–8). An NRC study of Generic Issue C–8 showed that neither the installation or removal of the MSIVLCS could be justified. Operating experience with these systems has shown that the MSIVLCS has required substantial maintenance and resulted in substantial worker radiation exposure. The BWR Owners Group subsequently proposed a resolution that would eliminate the safety-related MSIVLCS and take cognizance of the fact that plate-out and holdup of fission products leaking past the main steam isolation valves will occur in the main steam lines and condenser. For the purpose of giving credit to iodine holdup and plate-out in the main steam lines and condensers, the NRC requires that the main steam piping (including its associated piping to the condenser) and the condenser remain structurally intact following a safe shutdown earthquake (Refer to NRC Commission paper, SECY–93–087, ''Policy, Technical, and Licensing Issues Pertaining to Evolutionary and Advanced Light-Water Reactor (ALWR) Designs,'' dated April 2, 1993). The BWR Owners Group submitted a topical report that proposed to eliminate the MSIVLCS and increase the allowable MSIV leakage rates by taking credit for the holdup and plate-out of fission products. The NRC has already approved plant specific technical specification changes to eliminate the MSIVLCS for the Hatch, Duane Arnold, and Limerick plants.

The U.S. ABWR design was evaluated against a number of design basis accidents and was approved without a MSIVLCS. For the U.S. ABWR, fission product holdup and plate-out in components of the main steam system was justified and, therefore, was assumed in NRC's design basis analyses. However, for the main steam line break, the NRC assumed that one of the four main steam lines ruptured between the outer isolation valve and turbine control valves, and did not take credit for retention of iodine and noble gases in the coolant released through the break. Any leakage through the MSIV after isolation was also assumed to be released directly to the atmosphere. The contribution of this leakage is insignificant when compared to the amount of reactor coolant lost through the break prior to automatic isolation of the MSIV. In summary, the U.S. ABWR represents an improved boiling water reactor design that reduces worker radiation exposure, and meets the requirements of 10 CFR Part 100 without the need for a MSIVLCS. Inclusion of an MSIVLCS would result in substantial occupational exposures with little safety benefit. Therefore, the Commission declines to adopt OCRE's recommendation that a positive-pressure MSIVLCS be incorporated into the U.S. ABWR design.

5. In its Comments, Dated August 12, 1995, OCRE Stated

The ABWR Standby Liquid Control System requires simultaneous parallel, two-pump operation to achieve 100 gpm flow rate, necessary to comply with 10 CFR 50.62(c)(4). However, a single failure rendering one train inoperable would only yield a flow of 50 gpm, which does not comply with the ATWS rule. OCRE recommends increasing the capacity of each SLCS train to 100 gpm, so that the SLCS can perform its ATWS mitigation function even with a single failure.

Response. The ATWS rule (10 CFR 50.62) requires the following with regard to the SLCS for a boiling water reactor: ''Each boiling water reactor must have a standby liquid control system (SLCS) with the capability of injecting into the reactor pressure vessel a borated water solution at such a flow rate, level of boron concentration and boron-10 isotope enrichment, and accounting for reactor pressure vessel volume, that the resulting reactivity control is at least equivalent to that resulting from injection of 86 gallons per minute of 13 weight percent sodium pentaborate decahydrate solution at the natural boron-10 isotope abundance into a 251-inch inside diameter reactor pressure vessel for a given core design.'' For the U.S. ABWR design with a 278 inch inside diameter vessel, the ATWS rule is satisfied with injection of 100 gpm of 13.4 weight percent of natural boron solution.

The Commission has previously concluded, as part of the ATWS rulemaking, that a single-failure need not be assumed in the evaluation of the SLCS. The statements of consideration for the ATWS rule 10 CFR 50.62 (49 FR 26036; June 26, 1984), under the heading ''Considerations Regarding System and Equipment Criteria,'' states: ''In view of the redundancy provided in existing reactor trip systems, the equipment required by this amendment does not have to be redundant within itself.'' OCRE presented no information which would lead the Commission to reconsider and change its previous determination with respect to a single-failure and the Commission declines to adopt OCRE's proposal.

6. In its Comments, Dated August 12, 1995, OCRE Stated

In the ABWR, the drywell to wetwell vacuum breakers consist of a single vacuum breaker valve in each line. In operating BWRs, there are two vacuum breaker valves in series in each line. The ABWR design thus is vulnerable to a single failure, a stuck-open vacuum breaker, which would result in suppression pool bypass, which can overpressurize the containment in both design basis and severe accidents. Having the containment function vulnerable to a single failure is unacceptable. OCRE recommends the addition of a second vacuum breaker valve in series with the one proposed in the design.

Response. The wetwell to drywell vacuum breaker system of operating BWRs varies. Some operating BWRs have a single check valve per line (typically Mark I's), others have two check valves in series (typically Mark II's), and still others have a check valve in series with a motor operated valve (typically Mark III's). The main concern with the number of valves per vacuum breaker line focuses on the suppression pool bypass capability of the containment design. In the evaluation of the suppression pool bypass capability, a number of factors other than the number of valves in each line must be considered to determine the acceptability of the design. These factors are specified in the Standard Review Plan Section 6.2.1.1.C, Appendix A (NUREG–0800) and include the capability of containment sprays, periodic bypass leakage testing and surveillance, and vacuum relief valve position indication. A complete discussion of all these factors is included in the NRC's NUREG–1503, Volume 1, ''Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design,'' Sections 6.2.1.5, 6.2.1.8, 19.1.3.5.3, 19.2.3.3.5, and 20.5.1.

The U.S. ABWR wetwell to drywell vacuum breaker system consists of eight lines, with a single check valve per line. For design basis accidents, a single failure of the vacuum breaker in the stuck-open position is not required to be considered for the U.S. ABWR. The U.S. ABWR vacuum breakers are biased closed due to gravity and have redundant position indication and alarm in the control room. Operating plants have experienced stuck-open vacuum breakers as a result of monthly stroke testing of the vacuum breakers. Most of these failures have been related to the motor-operators installed for the purpose of surveillance testing. The U.S. ABWR vacuum breakers do not have motor operators and are subject to functional testing every 18 months. Therefore, they are not subject to the motor operator failure mode and due to the reduced frequency of surveillance testing and position indication, these check valves are less likely to be stuck open when needed during an accident.

A single failure of the vacuum breaker in the stuck-open position is, however, considered in the evaluation of severe accident mitigation capability. The analysis performed by GE indicates that the various containment spray systems are capable of mitigating the consequences of this scenario. In addition to the normal containment spray system, the containment spray header can be supplied with water from the AC independent water addition system (fire system) to mitigate bypass for severe accidents.

GE performed an evaluation of many potential enhancements, including adding a second vacuum breaker valve in series (Technical Support Document for the ABWR). This evaluation concludes that the potential safety enhancement of a second vacuum breaker valve in series is minimal due to the existing design features. The NRC evaluated GE's analysis of various design alternatives and concurs with GE's conclusion. Although OCRE's suggested design change (the addition of a second vacuum breaker valve in series) could minimally enhance safety, the costs of such a change are not justified in view of the marginal increase in safety (refer to section IV of this SOC). Accordingly, the Commission declines to adopt OCRE's proposal.

7. In its comments, dated August 12, 1995, OCRE referred to additional remarks made in a letter from the Advisory Committee on Reactor Safeguards (ACRS), dated July 18, 1989, on proposed NRC staff actions regarding the fire risk scoping study (NUREG/CR–5088). OCRE believes that the recommendation, from two ACRS members, that the NRC staff require the use of armored electrical cable in advanced light-water reactors is sound advice. OCRE recommended that the NRC require the use of armored cable in the U.S. ABWR and in all future nuclear power plants.

Response. In reviewing the U.S. ABWR design, the NRC staff used the enhanced guidance described in SECY–90–016, ''Evolutionary Light Water Reactor (LWR) Certification Issues and Their Relationships to Current Regulatory Requirements,'' dated January 12, 1990. The Commission approved the NRC staff's position in SECY–90–016. This guidance was used to resolve fire protection issues to minimize fire as a significant contributor to the likelihood of a severe accident. The NRC staff required that the U.S. ABWR design must be able to ensure that safe shutdown can be achieved assuming that all equipment in any one fire area will be rendered inoperable by fire and that reentry into the fire area for repairs and operator actions is not possible. Because of its physical configuration, the control room is excluded from this approach and the U.S. ABWR is provided with an independent alternative shutdown capability that is physically and electrically independent of the control room. In the reactor containment building, the safety divisions are widely separated around containment so that a single fire will not cause the failure of any combination of active components that could prevent safe shutdown. Additionally, the U.S. ABWR containment is inerted with nitrogen during power operation which will prevent propagation of any potential fire inside containment.

Evaluation of fire protection using this guidance assures an acceptable level of safety for the U.S. ABWR. Instead of trying to protect equipment in the fire area, the enhanced guidance requires that equipment needed for safe shutdown be located in separate areas of the plant so that one fire will not damage enough equipment to jeopardize safe shutdown. While the use of armored electrical cable may provide some protection to the electrical cables in the fire area, it does not ensure that the cables will not be affected by the heat generated by the fire. In addition, following a fire or other event that could affect the cables, it would be impossible to inspect the cables to determine if they were damaged by the event. Therefore, the NRC staff does not agree that the ABWR should be required to use armored electrical cables.

III. Section-by-Section Discussion

A. Introduction

The purpose of Section I of Appendix A to 10 CFR Part 52 (''this appendix'') is to identify the standard plant design that is approved by this design certification rule and the applicant for certification of the standard design. Identification of the design certification applicant is necessary to implement this appendix, for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a combined license (COL) contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide this information, then the COL applicant must meet the requirements in 10 CFR 52.63(c). Also, X.A.1 of this appendix imposes a requirement on the design certification applicant to maintain the generic DCD throughout the time period in which this appendix may be referenced.

B. Definitions

The terms Tier 1, Tier 2, Tier 2*, and COL action items (license information) are defined in this appendix because these concepts were not envisioned when 10 CFR Part 52 was developed. The design certification applicants and the NRC staff used these terms in implementing the two-tiered rule structure that was proposed by industry after the issuance of 10 CFR Part 52. In addition, during consideration of the comments received on the proposed rule, the Commission determined that it would be useful to distinguish between the ''plant-specific DCD'' and the ''generic DCD,'' the latter of which is incorporated by reference into this appendix and remains unaffected by plant-specific departures. This distinction is necessary in order to clarify the obligations of applicants and licensees that reference this appendix. Also, the technical specifications that are located in Chapter 16 of the generic DCD were designated as ''generic technical specifications'' to facilitate the special treatment of this information in the final rule (refer to section II.A.1 of this SOC). Therefore, appropriate definitions for these additional terms are included in the final rule.

The Tier 1 portion of the design-related information contained in the DCD is certified by this appendix and, therefore, subject to the special backfit provisions in VIII.A of this appendix. An applicant who references this appendix is required to incorporate by reference and comply with Tier 1, under III.B and IV.A.1 of this appendix. This information consists of an introduction to Tier 1, the design descriptions and corresponding ITAAC for systems and structures of the design, design material applicable to multiple systems of the design, significant interface requirements, and significant site parameters for the design. The design descriptions, interface requirements, and site parameters in Tier 1 were derived entirely from Tier 2, but may be more general than the Tier 2 information. The NRC staff's evaluation of the Tier 1 information, including a description of how this information was developed is provided in Section 14.3 of the FSER. Changes to or departures from the Tier 1 information must comply with VIII.A of this appendix.

The Tier 1 design descriptions serve as design commitments for the lifetime of a facility referencing the design certification. The ITAAC verify that the as-built facility conforms with the approved design and applicable regulations. In accordance with 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for licensees or for renewal of the COL. However, subsequent modifications to the facility must comply with the design descriptions in the plant-specific DCD unless changes are made in accordance with the change process in Section VIII of this appendix. The Tier 1 interface requirements are the most significant of the interface requirements for systems that are wholly or partially outside the scope of the standard design, which were submitted in response to 10 CFR 52.47(a)(1)(vii) and must be met by the site-specific design features of a facility that references the design certification. The Tier 1 site parameters are the most significant site parameters, which were submitted in response to 10 CFR 52.47(a)(1)(iii). An application that references this appendix must demonstrate that the site parameters (both Tier 1 and Tier 2) are met at the proposed site (refer to discussion in III.D of this SOC).

Tier 2 is the portion of the design-related information contained in the DCD that is approved by this appendix but is not certified. Tier 2 information is subject to the backfit provisions in VIII.B of this appendix. Tier 2 includes the information required by 10 CFR 52.47, with the exception of generic technical specifications and conceptual design information, and supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. As with Tier 1, III.B and IV.A.1 of this appendix require an applicant who references this appendix to incorporate Tier 2 by reference and to comply with Tier 2 (except for the COL action items and conceptual design information). The definition of Tier 2 makes clear that Tier 2 information has been determined by the Commission, by virtue of its inclusion in this appendix and its designation as Tier 2 information, to be an approved (''sufficient'') method for meeting Tier 1 requirements. However, there may be other acceptable ways of complying with Tier 1. The appropriate criteria for departing from Tier 2 information are set forth in Section VIII of this appendix. Departures from Tier 2 do not negate the requirement in Section III.B to reference Tier 2. NEI requested the Commission, in its comments dated July 23, 1996, to include several statements on compliance with Tier 2 in the definitions of Tier 1 and Tier 2. The Commission determined that inclusion of those statements in the Tier 2 definition was appropriate, but to also include them in the Tier 1 definition would be unnecessarily redundant.

Certain Tier 2 information has been designated in the generic DCD with brackets and italicized text as ''Tier 2*'' information and, as discussed in greater detail in the section-by-section explanation for Section VIII, a plant-specific departure from Tier 2* information requires prior NRC approval. However, the Tier 2* designation expires for some of this information when the facility first achieves full power after the finding required by 10 CFR 52.103(g). The process for changing Tier 2* information and the time at which its status as Tier 2* expires is set forth in VIII.B.6 of this appendix.

A definition of ''combined license (COL) action items'' (COL license information) has been added to clarify that COL applicants are required to address these matters in their license application, but the COL action items are not the only acceptable set of information. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in its FSAR.

In developing the proposed design certification rule, the Commission contemplated that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs, maintained by each applicant and licensee who references this design certification rule. The generic DCDs (identical to each other) would reflect generic changes to the version of the DCD approved in this design certification rulemaking. The generic changes would occur as the result of generic rulemaking by the Commission (subject to the change criteria in Section VIII of this appendix). In addition, the Commission understood that each applicant and licensee referencing this Appendix would be required to submit and maintain a plant-specific DCD. This plant-specific DCD would contain (not just incorporate by reference) the information in the generic DCD. The plant-specific DCD would be updated as necessary to reflect the generic changes to the DCD that the Commission may adopt through rulemaking, any plant-specific departures from the generic DCD that the Commission imposed on the licensee by order, and any plant-specific departures that the licensee chose to make in accordance with the relevant processes in Section VIII of this appendix. Thus, the plant-specific DCD would function akin to an updated Final Safety Analysis Report, in the since that it would provide the most complete and accurate information on a plant's licensing basis for that part of the plant within the scope of this appendix. However, the proposed rule defined only the concept of the ''master'' DCD. The Commission continues to believe that there should be both a generic DCD and plant-specific DCDs. To clarify this matter, the proposed rule's definition of DCD has been redesignated as the ''generic DCD,'' a new definition of ''plant-specific DCD'' has been added, and conforming changes have been made to the remainder of the rule. Further information on exemptions or departures from information in the DCD is provided in section III.H below. The Final Safety Analysis Report (FSAR) that is required by § 52.79(b) will consist of the plant-specific DCD, the site-specific portion of the FSAR, and the plant-specific technical specifications.

During the resolution of comments on the final rules in SECY–96–077, the Commission decided to treat the technical specifications in Chapter 16 of the DCD as a special category of information and to designate them as generic technical specifications (refer to II.A.1 of SOC). A COL applicant must submit plant-specific technical specifications that consist of the generic technical specifications, which may be modified under Section VIII.C of this appendix, and the remaining plant-specific information needed to complete the technical specifications, including bracketed values.

C. Scope and Contents

The purpose of Section III of this appendix is to describe and define the scope and contents of this design certification and to set forth how documentation discrepancies or inconsistencies are to be resolved. Paragraph A is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic technical specifications into this appendix and paragraph B requires COL applicants and licensees to comply with the requirements of this appendix. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly-issued regulation, has the force and effect of law. Tier 1 and Tier 2 information, as well as the generic technical specifications have been combined into a single document, called the generic design control document (DCD), in order to effectively control this information and facilitate its incorporation by reference into the rule. The generic DCD was prepared to meet the requirements of the OFR for incorporation by reference (1 CFR Part 51). One of the requirements of OFR for incorporation by reference is that the design certification applicant must make the DCD available upon request after the final rule becomes effective. The applicant requested the National Technical Information Service (NTIS) to distribute the generic DCD for them. Therefore, paragraph A states that copies of the DCD can be obtained from NTIS, 5285 Port Royal Road, Springfield, VA 22161. The NTIS order numbers for paper or CD–ROM copies of the ABWR DCD are PB97–147847 or PB97–502090, respectively.

The generic DCD (master copy) for this design certification will be archived at NRC's central file with a matching copy at OFR. Copies of the up-to-date DCD will also be available at the NRC's Public Document Room. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the generic DCD in NRC's central file. If a generic change (rulemaking) is made to the DCD pursuant to the change process in Section VIII of this appendix, then at the completion of the rulemaking the NRC will request approval of the Director, OFR for the changed incorporation by reference and change its copies of the generic DCD and notify the OFR and the design certification applicant to change their copies. The Commission is requiring that the design certification applicant maintain an up-to-date copy under X.A.1 of this appendix because it is likely that most applicants intending to reference the standard design will obtain the generic DCD from the design certification applicant. Plant-specific changes to and departures from the generic DCD will be maintained by the applicant or licensee that references this appendix in a plant-specific DCD, under X.A.2 of this appendix.

In addition to requiring compliance with this appendix, paragraph B clarifies that the conceptual design information and the ''Technical Support Document for the ABWR'' are not considered to be part of this appendix. The conceptual design information is for those portions of the plant that are outside the scope of the standard design and are intermingled throughout Tier 2. As provided by 10 CFR 52.47(a)(1)(ix), these conceptual designs are not part of this appendix and, therefore, are not applicable to an application that references this appendix. Therefore, the applicant does not need to conform with the conceptual design information that was provided by the design certification applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the design certification review. Conceptual design information is neither Tier 1 nor Tier 2. The introduction to Tier 2 identifies the location of the conceptual design information. The Technical Support Document provides GE's evaluation of various design alternatives to prevent and mitigate severe accidents, and does not constitute design requirements. The Commission's assessment of this information is discussed in section IV of this SOC on environmental impacts. Paragraph B also states that the cross references from certain locations in Tier 2 of the DCD to portions of the probabilistic risk assessment (PRA) in the ABWR Standard Safety Analysis Report (SSAR) do not incorporate the PRA into Tier 2. These cross references were included to clarify the format of the DCD. The detailed methodology and quantitative portions of the design-specific probabilistic risk assessment (PRA), as required by 10 CFR 52.47(a)(1)(v), were not included in the DCD, as requested by NEI and the applicant for design certification. The NRC agreed with the request to delete this information because conformance with the deleted portions of the PRA is not necessary. Also, the NRC's position is predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that will require a COL applicant or licensee to have a plant-specific PRA that updates and supersedes the design-specific PRA supporting this rulemaking and maintain it throughout the operational life of the facility. Cross references from Tier 2 to the proprietary and safeguards information in the ABWR SSAR do incorporate that information into Tier 2 (refer to discussion on secondary references).

Paragraphs C and D set forth the manner in which potential conflicts are to be resolved. Paragraph C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and

Tier 2 information in the DCD. Paragraph D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and either the application for certification of the standard design, referred to as the Standard Safety Analysis Report, or the final safety evaluation report for the certified design and its supplement.

Paragraph E makes it clear that design activities that are wholly outside the scope of this design certification may be performed using site-specific design parameters, provided the design activities do not affect Tier 1 or Tier 2, or conflict with the interface requirements in the DCD. This provision applies to site-specific portions of the plant, such as the service water intake structure. NEI requested insertion of this clarification into the final rule (refer to its comments on the Tier 1 definition dated July 23, 1996). Because this statement is not a definition, the Commission decided that the appropriate location is in Section III of the final rule.

D. Additional Requirements and Restrictions

Section IV of this appendix sets forth additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A sets forth the information requirements for these applicants. This appendix distinguishes between information and/or documents which must actually be included in the application or the DCD, versus those which may be incorporated by reference (i.e., referenced in the application as if the information or documents were actually included in the application), thereby reducing the physical bulk of the application. Any incorporation by reference in the application should be clear and should specify the title, date, edition, or version of a document, and the page number(s) and table(s) containing the relevant information to be incorporated by reference.

Paragraph A.1 requires an applicant who references this appendix to incorporate by reference this appendix in its application. The legal effect of such incorporation by reference is that this appendix is legally binding on the applicant or licensee. Paragraph A.2.a is intended to make clear that the initial application must include a plant-specific DCD. This assures, among other things, that the applicant commits to complying with the DCD. This paragraph also requires the plant-specific DCD to use the same format as the generic DCD and to reflect the applicant's proposed departures and exemptions from the generic DCD as of the time of submission of the application. The Commission expects that the plant-specific DCD will become the plant's final safety analysis report (FSAR), by including within its pages, at the appropriate points, information such as site-specific information for the portions of the plant outside the scope of the referenced design, including related ITAAC, and other matters required to be included in an FSAR by 10 CFR 50.34. Integration of the plant-specific DCD and remaining site-specific information into the plant's FSAR, will result in an application that is easier to use and should minimize ''duplicate documentation'' and the attendant possibility for confusion (refer to sections II.C.3 and III.J of this SOC). Paragraph A.2.a is also intended to make clear that the initial application must include the reports on departures and exemptions as of the time of submission of the application.

Paragraph A.2.b requires that the application include the reports required by paragraph X.B of this appendix for exemptions and departures proposed by the applicant as of the date of submission of its application. Paragraph A.2.c requires submission of plant-specific technical specifications for the plant that consists of the generic technical specifications from Chapter 16 of the DCD, with any changes made under Section VIII.C of this appendix, and the technical specifications for the site-specific portions of the plant that are either partially or wholly outside the scope of this design certification, such as the ultimate heat sink. The applicant must also provide the plant-specific information designated in the generic technical specifications, such as bracketed values. Paragraph A.2.d makes it clear that the applicant must provide information demonstrating that the proposed site falls within the site parameters for this appendix and that the plant-specific design complies with the interface requirements, as required by 10 CFR 52.79(b).

If the proposed site has a characteristic that exceeds one or more of the site parameters in the DCD, then the proposed site is unacceptable for this design unless the applicant seeks an exemption under Section VIII of this appendix and justifies why the certified design should be found acceptable on the proposed site. Paragraph A.2.e requires submission of information addressing COL Action Items, which are identified in the generic DCD as COL License Information, in the application. The COL Action Items (COL License Information) identify matters that need to be addressed by an applicant that references this appendix, as required by Subpart C of 10 CFR Part 52. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in its application (FSAR). Paragraph A.2.f requires that the application include the information required by 10 CFR 52.47(a) that is not within the scope of this rule, such as generic issues that must be addressed by an applicant that references this rule. Paragraph A.3 requires the applicant to physically include, not simply reference, the proprietary and safeguards information referenced in the U.S. ABWR DCD, or its equivalent, to assure that the applicant has actual notice of these requirements.

Paragraph IV.B reserves to the Commission the right to determine in what manner this design certification may be referenced by an applicant for a construction permit or operating license under 10 CFR Part 50. This determination may occur in the context of a subsequent rulemaking modifying 10 CFR Part 52 or this design certification rule, or on a case-by-case basis in the context of a specific application for a Part 50 construction permit or operating license. This provision was necessary because the evolutionary design certifications were not implemented in the manner that was originally envisioned at the time that Part 52 was created. The Commission's concern is with the manner in which ITAAC were developed and the lack of experience with design certifications in license proceedings (refer to section II.B.9 of this SOC). Therefore, it is appropriate for the final rule to have some uncertainty regarding the manner in which this appendix could be referenced in a Part 50 licensing proceeding.

E. Applicable Regulations

The purpose of Section V of this appendix is to specify the regulations that were applicable and in effect at the time that this design certification was approved. These regulations consist of the technically relevant regulations identified in paragraph A, except for the regulations in paragraph B that are not applicable to this certified design.

Paragraph A identifies the regulations in 10 CFR Parts 20, 50, 73, and 100 that are applicable to the U.S. ABWR design. After the NRC staff completed its FSER for the U.S. ABWR design (July 1994), the Commission amended several existing regulations and adopted several new regulations in those Parts of Title 10 of the Code of Federal Regulations. The Commission has reviewed these regulations to determine if they are applicable to this design and, if so, to determine if the design meets these regulations. The Commission finds that the U.S. ABWR design either meets the requirements of these regulations or that these regulations are not applicable to the design, as discussed below. The Commission's determination of the applicable regulations was made as of the date specified in paragraph V.A of this appendix. The specified date is the date that this appendix was approved by the Commission and signed by the Secretary of the Commission.

10 CFR Part 73, Protection Against Malevolent Use of Vehicles at Nuclear Power Plants (59 FR 38889; August 1, 1994)

The objective of this regulation is to modify the design basis threat for radiological sabotage to include use of a land vehicle by adversaries for transporting personnel and their hand-carried equipment to the proximity of vital areas and to include a land vehicle bomb. This regulation also requires reactor licensees to install vehicle control measures, including vehicle barrier systems, to protect against the malevolent use of a land vehicle. The Commission has determined that this regulation will be addressed in the COL applicant's site-specific security plan. Therefore, no additional actions are required for this design.

10 CFR 19 and 20, Radiation Protection Requirements: Amended Definitions and Criteria (60 FR 36038; July 13, 1995)

The objective of this regulation is to revise the radiation protection training requirement so that it applies to workers who are likely to receive, in a year, an occupational dose in excess of 100 mrem (1 mSv); revise the definition of the ''Member of the public'' to include anyone who is not a worker receiving an occupational dose; revise the definition of ''Occupational Dose'' to delete reference to location so that the occupational dose limit applies only to workers whose assigned duties involve exposure to radiation and not to members of the public; revise the definition of the ''Public Dose'' to apply to doses received by members of the public from material released by a licensee or from any other source of radiation under control of the licensee; assure that prior dose is determined for anyone subject to the monitoring requirements in 10 CFR Part 20, or in other words, anyone likely to receive, in a year, 10 percent of the annual occupational dose limit; and retain a requirement that known overexposed individuals receive copies of any reports of the exposure that are required to be submitted to the NRC. The Commission has determined that these requirements will be addressed in the COL applicant's operational radiation protection program. Therefore, no additional actions are required for this design.

10 CFR 50, Technical Specifications (60 FR 36953; July 19, 1995)

The objective of this revised regulation is to codify criteria for determining the content of technical specification (TS). The four criteria were first adopted and discussed in detail in the Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (58 FR 39132; July 22, 1993). The Commission has determined that these requirements will be addressed in the COL applicant's technical specifications. Therefore, no additional actions are required for this design.

10 CFR 73, Changes to Nuclear Power Plant Security Requirements Associated With Containment Access Control (60 FR 46497; September 7, 1995)

The objective of this revised regulation is to delete certain security requirements for controlling the access of personnel and materials into reactor containment during periods of high traffic such as refueling and major maintenance. This action relieves nuclear power plant licensees of requirement to separately control access to reactor containments during these periods. The Commission has determined that this regulation will be addressed in the COL applicant's site-specific security plan. Therefore, no additional actions are required for this design.

10 CFR Part 50, Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors (60 FR 49495; September 26, 1995)

The objective of this revised regulation is to provide a performance-based option for leakage-rate testing of containments of light-water-cooled nuclear power plants. This performance-based option, option B to Appendix J, is available for voluntary adoption by licensees in lieu of compliance with the prescriptive requirements contained in the current regulation. Appendix J includes two options, A and B, either of which can be chosen for meeting the requirements of this appendix. The Commission has determined that option B to Appendix J has no impact on the U.S. ABWR design because GE elected to comply with option A.

10 CFR Parts 50, 70, and 72, Physical Security Plan Format (60 FR 53507; October 16, 1995)

The objective of this revised regulation is to eliminate the requirement for applicants for power reactor, Category I fuel cycle, and spent fuel storage licenses to submit physical security plans in two parts. This action is necessary to allow for a quicker and more efficient review of the physical security plans. The Commission has determined that this revised regulation will be addressed in the COL applicant's site-specific security plan. Therefore, no additional action is required for this design.

10 CFR Part 50, Fracture Toughness Requirements for Light Water Reactor Pressure Vessels (60 FR 65456; December 19, 1995)

The objective of this revised regulation is to clarify several items related to fracture toughness requirements for reactor pressure vessels (RPV). This regulation clarifies the pressurized thermal shock (PTS) requirements, makes changes to the fractures toughness requirements and the reactor vessel material surveillance program requirements, and provides new requirements for thermal annealing of a reactor pressure vessel. The Commission has determined that 10 CFR 50.61 only applies to pressurized water reactors for which an operating license has been issued. Likewise, 10 CFR 50.66 applies only to those light-water reactors where neutron radiation has reduced the fracture toughness of the reactor vessel materials. Because the U.S. ABWR design is not a pressurized water reactor and has not been licensed, neither §§ 50.61 nor 50.66 apply to this design or to applicants referencing this appendix.

10 CFR Parts 21, 50, 52, 54, and 100, Reactor Site Criteria Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants (61 FR 65157; December 11, 1996)

The objective of this regulation is to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. Two sections of this regulation apply to applications for design certification. With regard to the revised design basis accident radiation dose acceptance criteria in 10 CFR 50.34, the Commission has determined that the ABWR design meets the new dose criteria, based on the NRC staff's radiological consequence analyses, provided that the site parameters are not revised. With regard to the revised earthquake engineering criteria for nuclear power plants in Appendix S to 10 CFR Part 50, the Commission has determined that the ABWR design meets the new single earthquake design requirements based on the NRC staff's evaluation in NUREG–1503. Therefore, the Commission has determined that the ABWR design meets the applicable requirements of this new regulation.

10 CFR Parts 20 and 35, Criteria for the Release of Individuals Administered Radioactive Material (62 FR 4120; January 29, 1997)

The objective of this revised regulation is to specifically state that the limitation on dose to individual members of the public in 10 CFR Part 20 does not include doses received by individuals exposed to patients who were administered radioactive materials and released under the new criteria in 10 CFR Part 35. This revision to Part 20 is not applicable to the design or operation of nuclear power plants and, therefore, does not affect the safety findings for this design.

In paragraph V.B of this appendix, the Commission identified the regulations that do not apply to the U.S. ABWR design. The Commission has determined that the U.S. ABWR design should be exempt from portions of 10 CFR 50.34(f), as described in the FSER (NUREG–1503) and summarized below:

(1) Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console

10 CFR 50.34(f)(2)(iv) requires that an application provide a plant safety parameter display console that will display to operators a minimum set of parameters defining the safety status of the plant, be capable of displaying a full range of important plant parameters and data trends on demand, and be capable of indicating when process limits are being approached or exceeded.

The purpose of the requirement for a safety parameter display system (SPDS), as stated in NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' Supplement 1, is to ''* * * provide a concise display of critical plant variables to the control room operators to aid them in rapidly and reliably determining the safety status of the plant. * * * and in assessing whether abnormal conditions warrant corrective action by operators to avoid a degraded core.''

GE committed to meet the intent of this requirement. However, the functions of the SPDS will be integrated into the control room design rather than on a separate ''console.'' GE has made the following commitments in the generic DCD:

- Section 18.2(6) states that the functions of the SPDS will be integrated into the design, Section 18.4.2.1(14) states that the SPDS function will be part of the plant summary information which is continuously displayed on the fixed-position displays on the large display panel,
- Section 18.4.2.8 states that the information presented in the fixed-position displays includes the critical plant parameter information, and
- Section 18.4.2.11 describes the SPDS for the ABWR and states that the displays of critical plant variables sufficient to provide information to plant operators about the following critical safety functions are continuously displayed on the large display panel as an integral part of the fixed-position displays:

(a) Reactivity control,
(b) Reactor core cooling and heat removal from the primary system,
(c) Reactor coolant system integrity, d) Radioactivity control, and
(e) Containment conditions.

In view of the above, the Commission has determined that an exemption from the requirement for an SPDS ''console'' is justified based upon (1) the description in the generic DCD of the intent to incorporate the SPDS function as part of the plant status summary information which is continuously displayed on the fixed-position displays on the large display panel; and (2) a separate ''console'' is not necessary to achieve the underlying purpose of the SPDS rule which is to display to operators a minimum set of parameters defining the safety status of the plant. Therefore, the Commission concludes that an exemption from 10 CFR 50.34(f)(2)(iv) is justified by the special circumstances set forth in 10 CFR 50.12(a)(2)(ii).

(2) Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Boron, Chloride, and Dissolved Gases

In SECY–93–087, the NRC staff recommended that the Commission approve its position that for evolutionary and passive ALWRs of boiling water reactor design there would be no need for the post-accident sampling system (PASS) to analyze dissolved gases in accordance with the requirements of 10 CFR 50.34(f)(2)(viii) and Item III.B.3 of NUREG–0737. In its April 2, 1993, SRM, the Commission approved the recommendation to exempt the PASS for the evolutionary and passive ALWRs of boiling water reactor design from analyzing dissolved gases in accordance with the requirements of 10 CFR 50.34(f)(2)(viii) and Item III.B.3 of NUREG–0737. In SECY–93–087, the NRC staff also recommended that the Commission approve the deviation from the requirements of Item II.B.3 of NUREG–0737 with regard to the requirements for sampling reactor coolant for boron concentration and activity measurements using the PASS in evolutionary and passive ALWRs. The modified requirement would require the capability to take boron concentration samples and activity measurements 8 hours and 24 hours, respectively, following the accident. In its April 2, 1993, SRM, the Commission approved the recommendation to require the capability to take boron concentration samples and activities measurements 8 hours and 24 hours, respectively, following the accident.

The U.S. ABWR design will have PASS which meets the requirements of 10 CFR 50.34(f)(2)(viii) and Item II.B.3 of NUREG–0737 with the modifications described in SECY–93–087. The system will have the capability to sample and analyze for activity in the reactor coolant and containment atmosphere 24 hours following the accident. This information is needed for evaluating the conditions of the core and will be provided during the accident management phase by the containment high-range area monitor, the containment hydrogen monitor and the reactor vessel water level indicator. The need for PASS activity measurements will arise only during the accident recovery phase and therefore, 24 hours sampling time is adequate. PASS will also be able to determine boron concentration in the reactor coolant. It will be capable of making this determination within 8 hours following the accident. Knowledge of the concentration of boron is required for providing insights for accident mitigation measures. Immediately after the accident this information will be obtained by the neutron flux monitoring instrumentation which is designed to comply with the criteria of RG 1.97, and which has fully qualified redundant channels capable of monitoring flux over the full power range. Boron concentration measurements therefore will not be required for the first 8 hours after the accident.

For the U.S. ABWR, whenever core uncovering is suspected, the reactor vessel is depressurized to approximately the pressure within the wetwell and the drywell which results in partial release of the dissolved gases. Under these conditions, pressurized samples would not yield meaningful data. Therefore, application of the regulation in this particular circumstance would not serve the underlying purpose of the rule. During accidents when the reactor vessel has not been depressurized (such as when a small amount of cladding damage has occurred), reactor coolant samples can be obtained by the process sampling system.

With regard to the need for chloride analysis, determination of chloride concentrations is of a secondary importance because it is needed only for determining the likelihood of accelerated primary system corrosion which is a slow-occurring phenomenon. Chloride analyses can be performed on the samples taken by the process sampling system. In this case, the intended purpose of the rule can be achieved without the need for the PASS to have chloride sampling capabilities.

Accordingly, the Commission has determined that special circumstances required by 10 CFR 50.12(2)(ii) exist for the U.S. ABWR in that the regulation would not serve the underlying purpose of the rule in one circumstance and is not necessary in the other circumstance because the intent of rule could be met with alternate design requirements proposed by the applicant. On this basis, the Commission concludes that the exemption from analyzing dissolved gases and chlorides in the reactor coolant sample is justified.

(3) Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration

Paragraph (3)(iv) of 10 CFR 50.34(f) requires one or more dedicated containment penetrations, equivalent in size to a single .91 m (3 ft) diameter opening, in order not to preclude future installation of systems to prevent containment failure such as a filtered vented containment system. This requirement is intended to ensure provision of a containment vent design feature with sufficient safety margin well ahead of a need that may be perceived in the future to mitigate the consequences of a severe accident situation. The NRC staff's evaluation of ABWR compliance with the requirement is limited to the effective penetration size for venting provided in the U.S. ABWR primary containment design.

The NRC staff found that the size of the primary containment penetration that could be used during a severe accident for venting the containment was smaller than the specific size identified in the previous paragraph. However, in the generic DCD (Section 19A.2.44), GE states that the containment overpressure protection system (COPS) precludes the need for a dedicated penetration equivalent in size to a single 0.91-m (3-ft) diameter opening. The COPS is part of the atmospheric control system and is discussed in DCD Section 6.2.5.6. The COPS consists of two 200-mm (8-in.) diameter rupture disks mounted in series in a 250-mm (10-in.) line and is sized to allow 35 kg/sec (15.86 lbm/sec) of steam flow at the opening pressure of 6.3 kg/cm^{2}g (90 psig), which corresponds to an energy flow of about 2.4 percent of rated power. The DCD states that the COPS is capable of keeping containment pressures below ASME Service Level C limits for an anticipated transient without scram (ATWS) event with failure of the standby liquid control system (SLCS) and containment heat removal systems.

Although the diameter of the COPS pathway is only 200 mm (8 in.), the NRC staff determined that this exception from the requirement of a 0.91-m (3-ft) diameter opening is acceptable because: (1) The limiting diameter of the COPS pathway is adequate to permit the needed vent relief path, and (2) a need for venting capability beyond that provided by the COPS has not been identified. The Commission has determined that GE's approach adequately addresses the requirements of this TMI item for the ABWR design. Therefore, an exemption in accordance with 10 CFR 50.12(a)(2)(ii) is justified because the COPS provides sufficient venting capability to preclude the need for a 0.91 m (3-ft) diameter equivalent dedicated containment penetration.

Paragraph (b)(3) of 10 CFR 50.49—Environmental Qualification of Post-Accident Monitoring Equipment

In the generic DCD, GE stated that the design of the information systems important to safety will be in conformance with the guidelines of Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident,'' Revision 3. The footnote for § 50.49(b)(3) references Revision 2 of RG 1.97 for selection of the types of post-accident monitoring equipment. As a result, the proposed design certification rule provided an exemption to this requirement. In section C.1 of its comments, dated August 4, 1995, ABB-CE stated that it did not believe that an exemption from paragraph (b)(3) of 10 CFR 50.49 is needed or required. The Commission agrees with ABB-CE's assertion that Revision 2 of RG 1.97 is identified in footnote 4 of 10 CFR 50.49 and should not be viewed as binding in this instance. Therefore, the Commission has determined that there is no need for an exemption from paragraph (b)(3) of 10 CFR 50.49 and has removed it from V.B of this appendix.

F. Issue Resolution

The purpose of Section VI of this appendix is to identify the scope of issues that are resolved by the Commission in this rulemaking and; therefore, are ''matters resolved'' within the meaning and intent of 10 CFR 52.63(a)(4). The section is divided into five parts: (A) The Commission's safety findings in adopting this appendix, (B) the scope and nature of issues which are resolved by this rulemaking, (C) issues which are not resolved by this rulemaking, (D) the backfit restrictions applicable to the Commission with respect to this appendix, and (E) availability of secondary references.

Paragraph A describes in general terms the nature of the Commission's findings, and makes the finding required by 10 CFR 52.54 for the Commission's approval of this final design certification rule. Furthermore, paragraph A explicitly states the Commission's determination that this design provides adequate protection to the public health and safety.

Paragraph B sets forth the scope of issues which may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph B clarifies that issue resolution as described in the remainder of the paragraph extends to the delineated NRC proceedings referencing this appendix. The remaining portion of paragraph B describes the general categories of information for which there is issue resolution.

Specifically, paragraph B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954, as amended, that are associated with the information in the NRC staff's FSER (NUREG–1503) and Supplement No. 1, the Tier 1 and Tier 2 information, and the rulemaking record for this appendix are resolved within the meaning of § 52.63(a)(4). These issues include the information referenced in the DCD that are requirements (i.e., ''secondary references''), as well as all issues arising from proprietary and safeguards information which are intended to be requirements. Paragraph B.2 provides for issue preclusion of proprietary and safeguards information. As discussed in section II.A.1 of this SOC, the inclusion of proprietary and safeguards information within the scope of issues resolved within the meaning of

§ 52.63(a)(4) represents a change from the Commission's intent during the proposed rule. Paragraphs B.3, B.4, B.5, and B.6 clarify that approved changes to and departures from the DCD which are accomplished in compliance with the relevant procedures and criteria in Section VIII of this appendix continue to be matters resolved in connection with this rulemaking (refer to the discussion in section II.A.1 of this SOC). Paragraph B.7 provides that, for those plants located on sites whose site parameters do not exceed those assumed in Revision 1 of the Technical Support Document (December 1994), all issues with respect to severe accident mitigation design alternatives (SAMDAs) arising under the National Environmental Policy Act of 1969 associated with the information in the Environmental Assessment for this design and the information regarding SAMDAs in Revision 1 of the applicant's Technical Support Document (December 1994) are also resolved within the meaning and intent of § 52.63(a)(4). Refer to the discussion in section II.A.1 of this SOC regarding finality of SAMDAs in the event an exemption from a site parameter is granted. The exemption applicant has the initial burden of demonstrating that the original SAMDA analysis still applies to the actual site parameters but, if the exemption is approved, requests for litigation at the COL stage must meet the requirements of § 2.714 and present sufficient information to create a genuine controversy in order to obtain a hearing on the site parameter exemption.

Paragraph C reserves the right of the Commission to impose operational requirements on applicants that reference this appendix. This provision reflects the fact that operational requirements, including technical specifications, were not completely or comprehensively reviewed at the design certification stage. Therefore, the special backfit provisions of § 52.63 do not apply to operational requirements. However, all design changes would be restricted by the appropriate provision in Section VIII of this appendix (refer to section III.H of this SOC). Although the information in the DCD that is related to operational requirements was necessary to support the NRC staff's safety review of this design, the review of this information was not sufficient to conclude that the operational requirements are fully resolved and ready to be assigned finality under § 52.63. As a result, if the NRC wanted to change a temperature limit on the ABWR suppression pool and that operational change required a consequential change to an ABWR design feature, then the temperature limit backfit would be restricted by § 52.63. However, changes to other operational issues, such as in-service testing and in-service inspection programs, post-fuel load verification activities, and shutdown risk that do not require a design change would not be restricted by § 52.63.

Paragraph C allows the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this design certification. Also, license conditions for portions of the plant within the scope of this design certification, e.g. start-up and power ascension testing, are not restricted by § 52.63. The requirement to perform these testing programs is contained in Tier 1 information. However, ITAAC cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation, when the ITAAC are satisfied. Therefore, another regulatory vehicle is necessary to ensure that licensees comply with the matters contained in the license conditions. License conditions for these areas cannot be developed now because this requires the type of detailed design information that will be developed after design certification. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the Commission is reserving the right to impose license conditions by rule for post-fuel load verification activities for portions of the plant within the scope of this design certification.

Paragraph D reiterates the restrictions (contained in 10 CFR 52.63 and Section VIII of this appendix) placed upon the Commission when ordering generic or plant-specific modifications, changes or additions to structures, systems or components, design features, design criteria, and ITAAC (VI.D.3 addresses ITAAC) within the scope of the certified design. Although the Commission does not believe that this language is necessary, the Commission has included this language to provide a concise statement of the scope and finality of this rule in response to comments from NEI.

Paragraph E provides the procedure for an interested member of the public to obtain access to proprietary and safeguards information for the U.S. ABWR design, in order to request and participate in proceedings identified in VI.B of this appendix, viz., proceedings involving licenses and applications which reference this appendix. As set forth in paragraph E, access must first be sought from the design certification applicant. If GE Nuclear Energy refuses to provide the information, the person seeking access shall request access from the Commission or the presiding officer, as applicable. Access to the proprietary and safeguards information may be ordered by the Commission, but must be subject to an appropriate non-disclosure agreement.

G. Duration of this Appendix

The purpose of Section VII of this appendix is in part to specify the time period during which this design certification may be referenced by an applicant for a combined license, pursuant to 10 CFR 52.55. This section also states that the design certification remains valid for an applicant or licensee that references the design certification until the application is withdrawn or the license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification continues in effect until the application is withdrawn or the license issued on that application expires. Also, the design certification continues in effect for the referencing license if the license is renewed. The Commission intends for this appendix to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that changes to or plant-specific departures from information in the plant-specific DCD must be made pursuant to the change processes in Section VIII of this appendix for the life of the plant.

In its comments, dated August 3, 1995, GE noted that the proposed design certification rule for the U.S. ABWR design indicated that the duration was for a period of 15 years from May 8, 1995, which is inconsistent with the provisions of 10 CFR Part 52. The date of May 8, 1995, was inserted into the proposed rule as a result of an administrative error by the Office of the Federal Register. The duration in the final rule is for a period of 15 years from the date of effectiveness of the final rule, which is in accordance with 10 CFR Part 52.

H. Processes for Changes and Departures

The purpose of Section VIII of this appendix is to set forth the processes for generic changes to or plant-specific departures (including exemptions) from the DCD. The Commission adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference this design certification rule. Section VIII is divided into three paragraphs, which correspond to Tier 1, Tier 2, and Operational requirements. The language of Section VIII distinguishes between generic changes to the DCD versus plant-specific departures from the DCD. Generic changes must be accomplished by rulemaking because the intended subject of the change is the design certification rule itself, as is contemplated by 10 CFR 52.63(a)(1). Consistent with 10 CFR 52.63(a)(2), any generic rulemaking changes are applicable to all plants, absent circumstances which render the change (''modification'' in the language of § 52.63(a)(2)) ''technically irrelevant.'' By contrast, plant-specific departures could be either a Commission-issued order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant's or licensee's plant(s), i.e., a § 50.59-like departure or an exemption.

Because these plant-specific departures will result in a DCD that is unique for that plant, Section X of this appendix requires an applicant or licensee to maintain a plant-specific DCD. For purposes of brevity, this discussion refers to both generic changes and plant-specific departures as ''change processes.''

Both Section VIII of this appendix and this SOC refer to an ''exemption'' from one or more requirements of this appendix and the criteria for granting an exemption. The Commission cautions that where the exemption involves an underlying substantive requirement (applicable regulation), then the applicant or licensee requesting the exemption must also show that an exemption from the underlying applicable requirement meets the criteria of 10 CFR 50.12.

Tier 1

The change processes for Tier 1 information are covered in paragraph VIII.A. Generic changes to Tier 1 are accomplished by rulemaking that amends the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind, or impose new requirements by rulemaking except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security. The rulemakings must include an opportunity for hearing with respect to the proposed change, as required by 10 CFR 52.63(a)(1), and the Commission expects such hearings to be conducted in accordance with 10 CFR Part 2, Subpart H. Departures from Tier 1 may occur in two ways: (1) The Commission may order a licensee to depart from Tier 1, as provided in paragraph A.3; or (2) an applicant or licensee may request an exemption from Tier 1, as provided in paragraph A.4. If the Commission seeks to order a licensee to depart from Tier 1, paragraph A.3 requires that the Commission find both that the departure is necessary for adequate protection or for compliance, and that special circumstances are present. Paragraph A.4 provides that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of 10 CFR 52.63(b)(1) and 52.97(b), which provide an opportunity for a hearing. In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design (refer to discussion in II.A.3 of this SOC).

Tier 2

The change processes for the three different categories of Tier 2 information, viz., Tier 2, Tier 2*, and Tier 2* with a time of expiration are set forth in paragraph VIII.B. The change process for Tier 2 has the same elements as the Tier 1 change process, but some of the standards for plant-specific orders and exemptions are different. The Commission also adopted a ''§ 50.59-like'' change process in accordance with its SRMs on SECY–90–377 and SECY–92–287A.

The process for generic Tier 2 changes (including changes to Tier 2* and Tier 2* with a time of expiration) tracks the process for generic Tier 1 changes. As set forth in paragraph B.1, generic Tier 2 changes are accomplished by rulemaking amending the generic DCD, and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind or impose new requirements by rulemaking except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to assure adequate protection of the public health and safety or common defense and security. If a generic change is made to Tier 2* information, then the category and expiration, if necessary, of the new information would also be determined in the rulemaking and the appropriate change process for that new information would apply (refer to II.A.2 of this SOC).

Departures from Tier 2 may occur in five ways: (1) the Commission may order a plant-specific departure, as set forth in paragraph B.3; (2) an applicant or licensee may request an exemption from a Tier 2 requirement as set forth in paragraph B.4; (3) a licensee may make a departure without prior NRC approval in accordance with paragraph B.5 [the ''§ 50.59-like'' process]; (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in paragraph B.5 as provided in paragraph B.5.d; and (5) the licensee may request NRC approval for a departure from Tier 2* information, in accordance with paragraph B.6.

Similar to Commission-ordered Tier 1 departures and generic Tier 2 changes, Commission-ordered Tier 2 departures cannot be imposed except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security, as set forth in paragraph B.3. However, the special circumstances for the Commission-ordered Tier 2 departures do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required by 10 CFR 52.63(a)(3). The Commission determined that it was not necessary to impose an additional limitation similar to that imposed on Tier 1 departures by 10 CFR 52.63(a)(3) and (b)(1). This type of additional limitation for standardization would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2, which by its nature is not as safety significant as Tier 1.

An applicant or licensee may request an exemption from Tier 2 information as set forth in paragraph B.4. The applicant or licensee must demonstrate that the exemption complies with one of the special circumstances in 10 CFR 50.12(a). In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design (refer to discussion in II.A.3 of this SOC). However, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant for a license, the exemption is subject to litigation in the same manner as other issues in the license hearing, consistent with 10 CFR

52.63(b)(1). If the exemption is requested by a licensee, then the exemption is subject to litigation in the same manner as a license amendment.

Paragraph B.5 allows an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if the proposed departure does not involve a change to or departure from Tier 1 or Tier 2* information, technical specifications, or involves an unreviewed safety question (USQ) as defined in B.5.b and B.5.c of this paragraph. The technical specifications referred to in B.5.a and B.5.b of this paragraph are the technical specifications in Chapter 16 of the generic DCD, including bases, for departures made prior to issuance of the COL. After issuance of the COL, the plant-specific technical specifications are controlling under paragraph B.5 (refer to discussion in II.A.1 of this SOC on Finality for Technical Specifications). The bases for the plant-specific technical specifications will be controlled by the bases control procedures for the plant-specific technical specifications (analogous to the bases control provision in the Improved Standard Technical Specifications). The definition of a USQ in paragraph B.5.b is similar to the definition in 10 CFR 50.59 and it applies to all information in Tier 2 except for the information that resolves the severe accident issues. The process for evaluating proposed tests or experiments not described in Tier 2 will be incorporated into the change process for the portion of the design that is outside the scope of this design certification. Although paragraph B.5 does not specifically state, the Commission has determined that departures must also comply with all applicable regulations unless an exemption or other relief is obtained.

The Commission believes that it is important to preserve and maintain the resolution of severe accident issues just like all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the Commission has adopted separate criteria in B.5.c for determining whether a departure from information that resolves severe accident issues constitutes a USQ. For purposes of applying the special criteria in B.5.c, severe accident resolutions are limited to design features when the intended function of the design feature is relied upon to resolve postulated accidents where the reactor core has melted and exited the reactor vessel and the containment is being challenged (refer to discussion in II.A.2 of this SOC). These design features are identified in Section 19.11 of the System 80+ DCD and Section 19E of the ABWR DCD, but may be described in other sections of the DCD. Therefore, the location of design information in the DCD is not important to the application of this special procedure for severe accident issues. However, the special procedure in B.5.c does not apply to design features that resolve so-called beyond design basis accidents or other low probability events. The important aspect of this special procedure is that it is limited solely to severe accident design features, as defined above. Some design features of the evolutionary designs have intended functions to meet both ‘‘design basis’’ requirements and to resolve ‘‘severe accidents.’’ If these design features are reviewed under paragraph VIII.B.5, then the appropriate criteria from either B.5.b or B.5.c are selected depending upon the design function being changed.

An applicant or licensee that plans to depart from Tier 2 information, under VIII.B.5, must prepare a safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications, as explained above. In order to achieve the Commission’s goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, such as generic issue resolutions that are relevant to the proposed departure. The benefits of the early resolution of safety issues would be lost if departures from the DCD were made that violated these resolutions without appropriate review. The evaluation of the relevant matters needs to consider the proposed departure over the full range of power operation from startup to shutdown, as it relates to anticipated operational occurrences, transients, design basis accidents, and severe accidents. The evaluation must also include a review of all relevant secondary references from the DCD because Tier 2 information intended to be treated as requirements is contained in the secondary references. The evaluation should consider the tables in Sections 14.3 and 19.8 of the DCD to ensure that the proposed change does not impact Tier 1. These tables contain various cross-references from the plant safety analyses in Tier 2 to the important parameters that were included in Tier 1. Although many issues and analyses could have been cross-referenced, the listings in these tables were developed only for key plant safety analyses for the design. GE provided more detailed cross-references to Tier 1 for these analyses in a letter dated March 31, 1994.

If a proposed departure from Tier 2 involves a change to or departure from Tier 1 or Tier 2* information, technical specifications, or otherwise constitutes a USQ, then the applicant or licensee must obtain NRC approval through the appropriate process set forth in this appendix before implementing the proposed departure. The NRC does not endorse NSAC–125, ‘‘Guidelines for 10 CFR 50.59 Safety Evaluations,’’ for performing safety evaluations required by VIII.B.5 of this appendix. However, the NRC will work with industry, if it is desired, to develop an appropriate guidance document for processing proposed changes under VIII.B of this appendix.

A party to an adjudicatory proceeding (e.g., for issuance of a combined license) who believes that an applicant or licensee has not complied with VIII.B.5 when departing from Tier 2 information, may petition to admit such a contention into the proceeding. As set forth in B.5.f, the petition must comply with the requirements of § 2.714(b)(2) and show that the departure does not comply with paragraph B.5. Any other party may file a response to the petition. If on the basis of the petition and any responses, the presiding officer in the proceeding determines that the required showing has been made, the matter shall be certified to the Commission for its final determination. In the absence of a proceeding, petitions alleging non-conformance with paragraph B.5 requirements applicable to Tier 2 departures will be treated as petitions for enforcement action under 10 CFR 2.206.

Paragraph B.6 provides a process for departing from Tier 2* information. This provision is bifurcated because of the expiration of some Tier 2* information. The Commission determined that the Tier 2* designation should expire for some Tier 2* information in response to comments from NEI (refer to section II.A.2 of this SOC). Therefore, certain Tier 2* information listed in B.6.c is no longer designated as Tier 2* information after full power operation is first achieved following the Commission finding in 10 CFR 52.103(g). Thereafter, that information is deemed to be Tier 2 information that is subject to the departure requirements in paragraph B.5. By contrast, the Tier 2* information identified in B.6.b retains its Tier 2* designation throughout the duration of the license, including any period of renewal. Any requests for departures from Tier 2* information that affect Tier 1 must also comply with the requirements in VIII.A of this appendix.

If Tier 2* information is changed in a generic rulemaking, the designation of the new information (Tier 1, 2*, or 2) would also be determined in the rulemaking and the appropriate process for future changes would apply. If a plant-specific departure is made from Tier 2* information, then the new designation would apply only to that plant. If an applicant who references this design certification makes a departure from Tier 2* information, the new information is subject to litigation in the same manner as other plant-specific issues in the licensing hearing (refer to B.6.a). If a licensee makes a departure, it will be treated as a license amendment under 10 CFR 50.90 and the finality is in accordance with paragraph VI.B.5 of this appendix.

Operational Requirements

The change process for technical specifications and other operational requirements is set forth in paragraph VIII.C. This change process has elements similar to the Tier 1 and Tier 2 change process in paragraphs VIII.A and VIII.B, but with significantly different change standards (refer to the explanation in II.A.1 of this SOC). The Commission did not support NEI's request to extend the special backfit provisions of 10 CFR 52.63 to technical specifications and other operational requirements (refer to explanation in III.F of this SOC). Rather, the Commission decided to designate a special category of information, consisting of the technical specifications and other operational requirements, with its own change process in paragraph VIII.C. The key to using the change processes in Section VIII is to determine if the proposed change or departure requires a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B applies. However, if a proposed change to the technical specifications or other operational requirements does not require a change to a design feature in the generic DCD, then paragraph VIII.C applies. The language in paragraph VIII.C also distinguishes between generic and plant-specific technical specifications to account for the different treatment and finality accorded technical specifications before and after a license is issued.

The process in C.1 for making generic changes to the generic technical specifications in Chapter 16 of the DCD or other operational requirements in the generic DCD is accomplished by rulemaking and governed by the backfit standards in 10 CFR 50.109. The determination of whether the generic technical specifications and other operational requirements were completely reviewed and approved in the design certification rulemaking is based upon the extent to which an NRC safety conclusion in the FSER or its supplement is being modified or changed. If it cannot be determined that the technical specification or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then there is no backfit restriction under 10 CFR 50.109 because no prior position was taken on this safety matter. Some generic technical specifications contain bracketed values, which clearly indicate that the NRC staff's review was not complete. Generic changes made under VIII.C.1 are applicable to all applicants or licensees, unless the change is irrelevant because of a plant-specific departure (refer to VIII.C.2).

Plant-specific departures may occur by either a Commission order under VIII.C.3 or an applicant's exemption request under VIII.C.4. The basis for determining if the technical specification or operational requirement was completely reviewed and approved is the same as for VIII.C.1 above. If the technical specification or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then the Commission must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there is no restriction on plant-specific changes to the technical specifications or operational requirements, prior to issuance of a license, provided a design change is not required. Although the generic technical specifications were reviewed by the NRC staff to facilitate the design certification review, the Commission intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific technical specifications. The process for petitioning to intervene on a technical specification or operational requirement is similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present (refer to VIII.C.5).

Finally, the generic technical specifications will have no further effect on the plant-specific technical specifications after the issuance of a license that references this appendix (refer to sections II.A.1 and II.B.3 of this SOC). The bases for the generic technical specifications will be controlled by the change process in Section VIII.C of this appendix. After a license is issued, the bases will be controlled by the bases change provision set forth in the administrative controls section of the plant-specific technical specifications.

I. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

The purpose of Section IX of this appendix is to set forth how the ITAAC in Tier 1 of this design certification rule are to be treated in a license proceeding. Paragraph A restates the responsibilities of an applicant or licensee for performing and successfully completing ITAAC, and notifying the NRC of such completion. Paragraph A.1 makes it clear that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC has been successfully completed. Paragraph A.2 requires the licensee to notify the NRC that the required inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met.

Paragraphs B.1 and B.2 essentially reiterate the NRC's responsibilities with respect to ITAAC as set forth in 10 CFR 52.99 and 52.103(g) [refer to explanation in section II.C.1 of this SOC]. Finally, paragraph B.3 states that ITAAC do not, by virtue of their inclusion in the DCD, constitute regulatory requirements after the licensee has received authorization to load fuel or for renewal of the license. However, subsequent modifications must comply with the design descriptions in the DCD unless the applicable requirements in 10 CFR 52.97 and Section VIII of this appendix have been complied with. As discussed in sections II.B.9 and III.D of this SOC, the Commission will defer a determination of the applicability of ITAAC and their effect in terms of issue resolution in 10 CFR Part 50 licensing proceedings to such time that a Part 50 applicant decides to reference this appendix.

J. Records and Reporting

The purpose of Section X of this appendix is to set forth the requirements for maintaining records of changes to and departures from the generic DCD, which are to be reflected in the plant-specific DCD. Section X also sets forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of the appendix is similar to the requirements for records and reports in 10 CFR Part 50, except for minor differences in information collection and reporting requirements, as discussed in section V of this SOC. Paragraph X.A.1 of this appendix requires that a generic DCD and the proprietary and safeguards information referenced in the generic DCD be maintained by the applicant for this rule. The generic DCD was developed, in part, to meet the requirements for incorporation by reference, including availability requirements. Therefore, the proprietary and safeguards information could not be included in the generic DCD because it is not publicly available. However, the proprietary and safeguards information was reviewed by the NRC and, as stated in paragraph VI.B.2 of this appendix, the Commission considers the information to be resolved within the meaning of 10 CFR 52.63(a)(4). Because this information is not in the generic DCD, the proprietary and safeguards information, or its equivalent, is required to be provided by an applicant for a license. Therefore, to ensure that this information will be available, a requirement for the design certification applicant to maintain the proprietary and safeguards information was added to paragraph X.A.1 of this appendix. The acceptable version of the proprietary and safeguards information is identified in the version of the DCD that is incorporated into this rule. The generic DCD and the acceptable version of the proprietary and safeguards information must be maintained for the period of time that this appendix may be referenced.

Paragraphs A.2 and A.3 place record-keeping requirements on the applicant or licensee that references this design certification to maintain its plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix. The term ''plant-specific'' was added to paragraph A.2 and other Sections of this appendix to distinguish between the generic DCD that is incorporated by reference into this appendix, and the plant-specific DCD that the applicant is required to submit under IV.A of this appendix. The requirement to maintain the generic changes to the generic DCD is explicitly stated to ensure that these changes are not only reflected in the generic DCD, which will be maintained by the applicant for design certification, but that the changes are also reflected in the plant-specific DCD. Therefore, records of generic changes to the DCD will be required to be maintained by both entities to ensure that both entities have up-to-date DCDs.

Section X.A of this appendix does not place record-keeping requirements on site-specific information that is outside the scope of this rule. As discussed in section III.D of this SOC, the final safety analysis report required by 10 CFR 52.79 will contain the plant-specific DCD and the site-specific information for a facility that references this rule. The phrase ''site-specific portion of the final safety analysis report'' in paragraph X.B.3.d of this appendix refers to the information that is contained in the final safety analysis report for a facility (required by 10 CFR 52.79) but is not part of the plant-specific DCD (required by IV.A of this appendix). Therefore, this rule does not require that duplicate documentation be maintained by an applicant or licensee that references this rule, because the plant-specific DCD is part of the final safety analysis report for the facility (refer to section II.C.3 of this SOC).

Paragraphs B.1 and B.2 establish reporting requirements for applicants or licensees that reference this rule that are similar to the reporting requirements in 10 CFR Part 50. For currently operating plants, a licensee is required to maintain records of the basis for any design changes to the facility made under 10 CFR 50.59. Section 50.59(b)(2) requires a licensee to provide a summary report of these changes to the NRC annually, or along with updates to the facility final safety analysis report under 10 CFR 50.71(e). Section 50.71(e)(4) requires that these updates be submitted annually, or 6 months after each refueling outage if the interval between successive updates does not exceed 24 months.

The reporting requirements vary according to four different time periods during a facilities' lifetime as specified in paragraph B.3. Paragraph B.3.a requires that if an applicant that references this rule decides to make departures from the generic DCD, then the departures and any updates to the plant-specific DCD must be submitted with the initial application for a license. Under B.3.b, the applicant may submit any subsequent reports and updates along with its amendments to the application provided that the submittals are made at least once per year. Because amendments to an application are typically made more frequently than once a year, this should not be an excessive burden on the applicant.

Paragraph B.3.c requires that the reports be submitted quarterly during the period of facility construction. This increase in frequency of summary reports of departures from the plant-specific DCD is in response to the Commission's guidance on reporting frequency in its SRM on SECY–90–377, dated February 15, 1991. NEI stated in its comments dated August 4, 1995 (Attachment B, p. 116) that * * * ''the requirement for quarterly reporting imposes unnecessary additional burdens on licensees and the NRC.'' NEI recommended that the Commission adopt a ''less onerous'' requirement (e.g., semi-annual reports). The Commission disagrees with the NEI request because it does not provide for sufficiently timely notification of design changes during the critical period of facility construction. Also, the Commission disagrees that the reports are an onerous burden because they are only summary reports, which describe the design changes, rather than detailed evaluations of the changes and determinations. The detailed evaluations remain available for audit on site, consistent with the requirements of 10 CFR Part 50.

Quarterly reporting of design changes during the period of construction is necessary to closely monitor the status and progress of the construction of the plant. To make its finding under 10 CFR 52.99, the NRC must monitor the design changes made in accordance with Section VIII of this appendix. The ITAAC verify that the as-built facility conforms with the approved design and emphasizes design reconciliation and design verification. Quarterly reporting of design changes is particularly important in times where the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant at the start of construction, and during pre-operational testing. The frequency of updates to the plant-specific DCD is not increased during facility construction. After the facility begins operation, the frequency of reporting reverts to the requirement in paragraph X.B.3.d, which is consistent with the requirement for plants licensed under 10 CFR Part 50.

IV. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended (NEPA), and the Commission's regulations in 10 CFR Part 51, Subpart A, that this design certification rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the final environmental assessment, is that this amendment to 10 CFR Part 52 does not authorize the siting, construction, or operation of a facility using the U.S. ABWR design; it only codifies the U.S. ABWR design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate in accordance with NEPA as part of the application(s) for the construction and operation of a facility.

In addition, as part of the final environmental assessment for the U.S. ABWR design, the NRC reviewed GE's evaluation of various design alternatives to prevent and mitigate severe accidents that was submitted in GE's ''Technical Support Document for the ABWR,'' Rev. 1, dated December 1994. The Commission finds that GE's evaluation provides a sufficient basis to conclude that there are no additional severe accident design alternatives beyond those currently incorporated into the U.S. ABWR design which are cost-beneficial, whether considered at the time of the approval of the U.S. ABWR design certification or in connection with the licensing of a future facility referencing the U.S. ABWR design certification, where the plant referencing this appendix is located on a site whose site parameters are within those specified in the Technical Support Document. These issues are considered resolved for the U.S. ABWR design.

The final environmental assessment, upon which the Commission's finding of no significant impact is based, and the Technical Support Document for the U.S. ABWR design are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are also available from Mr. Dino C. Scaletti, Mailstop O–11 H3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–1104.

V. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0151. Should an application be received, the additional public reporting burden for this collection of information, above those contained in Part 52, is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC 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.

VI. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

VII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rulemaking will not have a significant economic impact upon a substantial number of small entities. The rule provides certification for a nuclear power plant design. Neither the design certification applicant nor prospective nuclear power plant licensees who reference this design certification rule fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121. Thus, this rule does not fall within the purview of the act.

VIII. Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not impose requirements on existing 10 CFR Part 50 licensees. Therefore, a backfit analysis was not prepared for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and record keeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 52.

1. The authority citation for 10 CFR Part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.45, 52.47, 52.57, 52.75, 52.77, 52.78, 52.79, Appendix A, and Appendix B.

3. A new Appendix A to 10 CFR Part 52 is added to read as follows:

Appendix A To Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

I. Introduction

Appendix A constitutes the standard design certification for the U.S. Advanced Boiling Water Reactor (ABWR) design, in accordance with 10 CFR Part 52, Subpart B. The applicant for certification of the U.S. ABWR design was GE Nuclear Energy.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic technical specifications and conceptual design information;
2. Information required for a final safety analysis report under 10 CFR 50.34;
3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
4. Combined license (COL) action items (COL license information), which identify certain matters that shall be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in VIII.B.6 of this appendix. This designation expires for some Tier 2* information under VIII.B.6.

G. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the U.S. ABWR Design Control Document, GE Nuclear Energy, Revision 4 dated March 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for examination and copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555. Copies are also available for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20582 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information, as set forth in the generic DCD, and the ''Technical Support Document for the ABWR'' are not part of this appendix. Tier 2 references to the probabilistic risk assessment (PRA) in the ABWR Standard Safety Analysis Report do not incorporate the PRA into Tier 2.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the U.S. ABWR design or NUREG–1503, ''Final Safety Evaluation Report related to the Certification of the Advanced Boiling Water Reactor Design,'' (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site-specific design parameters, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;
2. Include, as part of its application:

a. A plant-specific DCD containing the same information and utilizing the same organization and numbering as the generic DCD for the U.S. ABWR design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary information and safeguards information referenced in the U.S. ABWR DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR Part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the U.S. ABWR design are in 10 CFR Parts 20, 50, 73, and 100, codified as of May 2, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1503) and Supplement No. 1.

B. The U.S. ABWR design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;
2. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Boron, Chloride, and Dissolved Gases; and
3. Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the U.S. ABWR design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(4) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held pursuant to 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the U.S. ABWR design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as

requirements in the generic DCD for the U.S. ABWR design;

3. All generic changes to the DCD pursuant to and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD pursuant to and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that proceeding;

5. All departures from the DCD that are approved by license amendment, but only for that proceeding;

6. Except as provided in VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in VIII.B.5 of this appendix that do not require prior NRC approval;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the U.S. ABWR design and Revision 1 of the Technical Support Document for the U.S. ABWR, dated December 1994, for plants referencing this appendix whose site parameters are within those specified in the Technical Support Document.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(4). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the DCD for the U.S. ABWR design, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from GE Nuclear Energy. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public in the NRC's public document room is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If GE Nuclear Energy declines to provide the information sought, GE Nuclear Energy shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to GE Nuclear Energy), and GE Nuclear Energy's response. The Commission and presiding officer may order GE Nuclear Energy to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from July 11, 1997 except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 information.

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and § 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 information.

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or involves an unreviewed safety question as defined in paragraphs B.5.b and B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, involves an unreviewed safety question if—

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the plant-specific DCD may be increased;

(2) A possibility for an accident or malfunction of a different type than any evaluated previously in the plant-specific DCD may be created; or

(3) The margin of safety as defined in the basis for any technical specification is reduced.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, involves an unreviewed safety question if—

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure involves an unreviewed safety question as defined in paragraph B.5 of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.714(b)(2), the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(4).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Fuel burnup limit (4.2).

(2) Fuel design evaluation (4.2.3).

(3) Fuel licensing acceptance criteria (Appendix 4B).

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler & Pressure Vessel Code, Section III.

(2) ACI 349 and ANSI/AISC N–690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Fuel system and assembly design (4.2), except burnup limit.

(7) Nuclear design (4.3).

(8) Equilibrium cycle and control rod patterns (App. 4A).

(9) Control rod licensing acceptance criteria (App. 4C).

(10) Instrument setpoint methodology.

(11) EMS performance specifications and architecture.

(12) SSLC hardware and software qualification.

(13) Self-test system design testing features and commitments.

(14) Human factors engineering design and implementation process.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational requirements.

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.758(b) are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.714(b)(2) and must demonstrate why special circumstances as defined in 10 CFR 2.758(b) are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been satisfied, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.99 and 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a Section 103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of

10 CFR 52.97 and Section VIII of this appendix.

X. Records and Reporting

A. Records.

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written safety evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting.

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the safety evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

2. An applicant or licensee who references this appendix shall submit updates to its plant-specific DCD, which reflect the generic changes to the generic DCD and the plant-specific departures made pursuant to Section VIII of this appendix. These updates shall be filed in accordance with the filing requirements applicable to final safety analysis report updates in 10 CFR 50.4 and 50.71(e).

3. The reports and updates required by paragraphs B.1 and B.2 of this section must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application shall include the report and any updates to the plant-specific DCD.

b. During the interval from the date of application to the date of issuance of a license, the report and any updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. During the interval from the date of issuance of a license to the date the Commission makes its findings under 10 CFR 52.103(g), the report must be submitted quarterly. Updates to the plant-specific DCD must be submitted annually.

d. After the Commission has made its finding under 10 CFR 52.103(g), reports and updates to the plant-specific DCD may be submitted annually or along with updates to the site-specific portion of the final safety analysis report for the facility at the intervals required by 10 CFR 50.71(e), or at shorter intervals as specified in the license.

Dated at Rockville, Maryland, this 2nd day of May, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–11968 Filed 5–9–97; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 618

RIN 3052–AB61

Organization and Functions; Privacy Act Regulations; Organization; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Definitions; Correction

AGENCY: Farm Credit Administration.

ACTION: Correcting amendments.

SUMMARY: The Farm Credit Administration (FCA) published an interim rule (62 FR 67181, December 20, 1996) that amended the regulations to eliminate unnecessary, outdated, duplicative, or burdensome regulatory requirements, to replace outdated regulatory language with more current terminology, and to clarify the intended meaning of certain regulatory provisions. This document corrects nonsubstantive errors in the interim rule.

EFFECTIVE DATE: March 4, 1997.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, 703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In identifying commenters on the interim rule, the FCA inadvertently failed to note receipt of a comment letter provided by the Farm Credit Council (FCC) during the public comment period.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

Accordingly, 12 CFR parts 614 and 618 are corrected by making the following correcting amendments:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4014a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§ 614.4516 [Corrected]

2.The introductory text of § 614.4516 is amended by adding the words ‘‘in accordance’’ immediately after the word ‘‘accomplished’’.

PART 618—GENERAL PROVISIONS

3. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart G—Releasing Information

§ 618.8320 [Corrected]

4. Paragraph (b)(5) of § 618.8320 is revised to read as follows.

* * * * *

(b) * * *

(5) Impersonal information based solely on transactions or experience with a borrower, such as amounts of loans, terms, and payment records, may be given by a bank or association to any reliable organization for its confidential use in contemplation of the extension of credit or to a consumer reporting agency.

* * * * *

Dated: May 6, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–12347 Filed 5–9–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–96–AD; Amendment 39–10018; AD 97–10–06]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd. Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain IAI Model 1125 Westwind Astra series airplanes, that requires repetitive inspections to detect loose or damaged rivets that fasten a certain support beam to the frame of the fuselage; and modification of the attachment between the support beam and fuselage by installation of additional fasteners, if necessary. This amendment also will require the eventual accomplishment of this modification on all airplanes, which will terminate the repetitive inspections. This amendment is prompted by reports indicating that the attachment between this beam and the fuselage has become loose on several airplanes. Movement of this beam could restrict the movement of the elevator and rudder controls that run through the bellcranks attached to it. The actions specified by this AD are intended to prevent movement of this beam, which could restrict movement of the elevator and rudder controls, and consequently lead to reduced controllability of the airplane.

DATES: Effective June 16, 1997.

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

ADDRESSES: The service information referenced in this AD may be obtained from Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the 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 Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 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 Israel Aircraft Industries (IAI), Ltd. Model 1125 Westwind Astra series airplanes was published in the **Federal Register** on February 19, 1997 (62 FR 7385). That action proposed to require repetitive visual inspections to detect loose or fretted rivets that fasten the support beam to the fuselage frame at station 452.00. Should any loose or fretted rivet be detected, that action proposed to require modification of the attachment between the beam and the fuselage by the installation of additional fasteners. Additionally, that action proposed to require that this modification be installed eventually on all affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 58 IAI Model 1125 Westwind Astra series airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $3,480, or $60 per airplane, per inspection.

It will take approximately 8 work hours per airplane to accomplish the required terminating modification, at an average labor rate of $60 per work hour. The cost of parts is minimal. Based on these figures, the cost impact of the required modification on U.S. operators is estimated to be $27,840, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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:

97–10–06 Israel Aircraft Industries (IAI), Ltd.: Amendment 39–10018. Docket 96–NM–96–AD.

Applicability: Model 1125 Westwind Astra series airplanes, as listed in IAI Service Bulletin SB 1125–53–135, dated April 26, 1995; certificated in any category.

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

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

Compliance: Required as indicated, unless accomplished previously.

To prevent movement of the support beam attached to the fuselage frame at station 452.00, which could restrict movement of the elevator and rudder controls, and consequently lead to reduced controllability of the airplane, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, conduct a visual inspection to detect loose or damaged (''fretted'') rivets that fasten the support beam to the fuselage frame at station 452.000, in accordance with Part A of IAI Service Bulletin SB 1125–53–135, dated April 26, 1995.

(1) If no loose or fretted rivet is detected, repeat this inspection thereafter at intervals not to exceed 250 hours time-in-service until the modification required by paragraph (b) of this AD is accomplished.

(2) If any loose or fretted rivet is detected, prior to further flight, modify the support beam in accordance with Part B of IAI Service Bulletin SB 1125–53–135, dated April 26, 1995. After this modification is accomplished, no further action is required by paragraph (a) or (b) of this AD.

(b) Within 500 hours time-in-service after the effective date of this AD, modify the support beam in accordance with Part B of IAI Service Bulletin SB 1125–53–135, dated April 26, 1995. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

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

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

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

(e) The inspections and modification shall be done in accordance with IAI Service Bulletin SB 1125–53–135, dated April 26, 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 Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. 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.

(f) This amendment becomes effective on June 16, 1997.

Issued in Renton, Washington, on May 2, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12041 Filed 5–9–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–144–AD; Amendment 39–10019; AD 97–10–07]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN–235 series airplanes, that requires disabling the brake control valve of the propeller. This amendment also requires that, prior to restoring propeller brake operation, the propeller brake control unit be replaced with a certain new propeller brake control unit. This amendment is prompted by reports of uncommanded activation of the propeller brake system on in-service airplanes during flight, due to the existing design of the brake control valve. The actions specified by this AD are intended to prevent in-flight uncommanded activation of the propeller brake system, which could result in in-flight shutdown of the engine.

DATES: Effective June 16, 1997.

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

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; fax (425) 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 CASA Model CN–235 series airplanes was published in the **Federal Register** on February 19, 1997 (62 FR 7378). That action proposed to require, first, disabling the brake control valve of the propeller. Then, prior to restoring propeller brake operation, the action proposed to require replacement of certain propeller brake control units with certain new propeller brake control units.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 2 CASA Model CN–235 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 3 work hours per airplane to accomplish the required disabling of the brake control valve, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required action on U.S. operators is estimated to be $360, or $180 per airplane.

It will take approximately 8 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this required action on U.S. operators is estimated to be $960, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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:

97–10–07 Construcciones Aeronauticas, S.A., CASA: Amendment 39–10019. Docket 96–NM–144–AD.

Applicability: All Model CN–235, CN–235–100, and CN–235–200 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight uncommanded activation of the propeller brake system, which could result in in-flight shutdown of the engine, accomplish the following:

(a) Within 10 days after the effective date of this AD, disable the brake control valve of the propeller in accordance with Annex 1 of CASA Communication COM 235–82, Revision 3, dated January 31, 1995.

(b) Prior to restoring propeller brake operation, replace the propeller brake control unit having part number (P/N) HP1410100–5 or HP1410100–7, with a new propeller brake control unit having P/N HP1410100–9, in accordance with CASA Service Bulletin SB–235–61–01, dated October 11, 1994; or CASA Service Bulletin SB–235–61–01M, Revision 2 (for military airplanes), dated January 25, 1996; as applicable. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

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

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

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

(e) Disabling the brake control valve of the propeller shall be done in accordance with Annex 1 of CASA Communication COM 235–82, Revision 3, dated January 31, 1995. The replacement shall be done in accordance with CASA Service Bulletin SB–235–61–01, dated October 11, 1994; or CASA Service Bulletin SB–235–61–01M, Revision 2, dated January 25, 1996; as applicable. CASA Service Bulletin SB–235–61–01M, Revision 2, dated January 25, 1996, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	November 27, 1995.
2	2	January 25, 1996.
3–11	Original	October 11, 1994.

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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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.

(f) This amendment becomes effective on June 16, 1997.

Issued in Renton, Washington, on May 2, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12042 Filed 5–9–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–138–AD; Amendment 39–10020; AD 97–10–08]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN–235 series airplanes, that requires replacement of the guide hooks of the cargo doors with new, improved guide hooks. This amendment is prompted by fatigue cracking found in the guide hooks of the cargo door. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the cargo door and, consequently, lead to rapid decompression of the airplane.

DATES: Effective June 16, 1997.

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

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; fax (425) 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 CASA Model CN–235 series airplanes was published in the **Federal Register** on February 19, 1997 (62 FR 7382). That action proposed to require replacement of the guide hooks of the cargo doors with new, improved guide hooks.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 150 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,100 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $15,100 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the 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:

97–10–08 Construcciones Aeronauticas, S.A., CASA: Amendment 39–10020. Docket 96–NM–138–AD.

Applicability: Model CN–235 series airplanes, as listed in CASA Service Bulletin SB–235–52–23, Revision 2, dated June 9, 1994, and CASA Service Bulletin SB–235–52–23M, dated March 17, 1994; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking in the guide hooks of the cargo door, which could result in reduced structural integrity of the cargo door and, consequently, lead to rapid decompression of the airplane, accomplish the following:

(a) Replace the guide hooks of the cargo doors with new, improved guide hooks, in accordance with CASA Service Bulletin SB–235–52–23, Revision 2, dated June 9, 1994, or CASA Service Bulletin SB–235–52–23M, dated March 17, 1994; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with CASA Service Bulletin SB–235–52–23, dated June 16, 1993, or Revision 1, dated April 13, 1994, are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) For airplanes listed in CASA Service Bulletin SB–235–52–23: Replace prior to the accumulation of 17,000 total landings.

(2) For airplanes listed in CASA Service Bulletin SB–235–52–23M: Replace prior to the accumulation of 15,000 total landings.

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

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

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

(d) The replacement shall be done in accordance with CASA Service Bulletin SB–235–52–23, Revision 2, dated June 9, 1994, or CASA Service Bulletin SB–235–52–23M, dated March 17, 1994. CASA Service Bulletin SB–235–52–23, Revision 2, dated June 1994, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	April 13, 1994.
2	2	June 9, 1994.
3–9	Original	June 16, 1993.

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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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.

(e) This amendment becomes effective on June 16, 1997.

Issued in Renton, Washington, on May 2, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12043 Filed 5–9–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–168–AD; Amendment 39–10021; AD 97–10–09]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires repetitive detailed visual inspections to detect cracks on frame 179 at the attachment bracket for the door restraint cable, and various follow-on actions. This amendment also requires installation of new doublers and stress pads on frame 179, which would terminate the repetitive inspections. This amendment is prompted by reports of cracks in frame 179 of the fuselage at the attachment bracket for the door restraint cable on in-service airplanes due to improper rigging of the door restraint system. The actions specified by this AD are intended to prevent such cracking, which could result in structural failure of the fuselage and consequent rapid decompression of the pressurized section of the fuselage.

DATES: Effective June 16, 1997.

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

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the 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: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2148; fax (425) 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 Jetstream Model 4101 airplanes was published in the **Federal Register** on February 14, 1997 (62 FR 6888). That action proposed to require repetitive detailed visual inspections to detect cracks on frame 179 at the attachment bracket for the door restraint cable, and various follow-on actions. That action also proposed to require installation of new doublers and stress pads on frame 179, which would constitute terminating action for the repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 49 Jetstream Model 4101 airplanes of U.S. registry will be affected by this AD.

The required inspection will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $5,880, or $120 per airplane, per inspection cycle.

The required installation will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $23,520, or $480 per airplane.

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

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:

97–10–09 Jetstream Aircraft Limited: Amendment 39–10021. Docket 96–NM–168–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41086 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 cracking in frame 179 of the fuselage, which could result in structural failure of the fuselage and consequent rapid decompression of the pressurized section of the fuselage, accomplish the following:

(a) Prior to the accumulation of 3,000 total flight cycles, or within 300 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks on frame 179 at the attachment bracket for the door restraint cable, in accordance with Part 1 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41–A53–024, dated April 26, 1996.

(1) If no crack is detected, repeat the visual inspection thereafter at intervals not to exceed 1,000 flight cycles. After each inspection, perform the actions specified in paragraph (c) of this AD.

(2) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After repair, perform the actions specified in paragraph (c) of this AD.

(b) Within 24 months after the effective date of this AD, perform the visual inspection specified in paragraph (a) of this AD in accordance with Part 2 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41–A53–024, dated April 26, 1996; and accomplish the applicable follow-on actions specified in paragraph (b)(1) or (b)(2) of this AD.

(1) If no crack is detected, prior to further flight, install new doublers and stress pads on frame 179 in accordance with the alert service bulletin. Immediately after installation, perform the actions specified in paragraph (c) of this AD. Accomplishment of these actions constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1) of this AD.

(2) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113. Prior to further flight following accomplishment of the repair, install new doublers and stress pads on frame 179 in accordance with the alert service bulletin; and then perform the actions specified in paragraph (c) of this AD. Accomplishment of these actions constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1) of this AD.

(c) Prior to further flight following accomplishment of the actions as specified in paragraph (a)(1), (a)(2), (b)(1), or (b)(2) of this AD, perform a test to verify proper adjustment of the restraint cable, in accordance with Jetstream Alert Service Bulletin J41–A53–024, dated April 26, 1996. If the restraint cable has been improperly adjusted, prior to further flight, correct the discrepancy in accordance with the alert service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. 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) Certain actions shall be done in accordance with Jetstream Alert Service Bulletin J41–A53–024, dated April 26, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 16, 1997.

Issued in Renton, Washington, on May 2, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12044 Filed 5–9–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–90–AD; Amendment 39–10023; AD 97–10–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 777 series airplanes. This action requires repetitive testing of the engine fire shutoff switch (EFSS) to determine that the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. This action also requires, for certain airplanes, installation of a collar on a specific circuit breaker of the standby power management panel, and installation of placards to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. This amendment is prompted by a report indicating that a solenoid and an override mechanism of the EFSS were not operational due to overheating of the solenoid. The actions specified in this AD are intended to prevent damage to the EFSS solenoid and to the override mechanism, and consequent failure of the EFSS due to overheating of the solenoid; such failure of the EFSS could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire.

DATES: Effective May 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1997.

Comments for inclusion in the Rules Docket must be received on or before July 11, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that a solenoid and an override mechanism of the engine fire shutoff switch (EFSS) were not operational. Investigation revealed that an overheating condition in the solenoid damaged the solenoid and the override mechanism of the EFSS. Further investigation revealed that the overheating condition of the solenoid may be caused when power is applied to the EFSS solenoid for long periods of time, such as when the airplane is on the ground with the power on and the engine fuel control switch is in the ''Cutoff'' position. Damage to the EFSS solenoid and to the override mechanism due to overheating of the solenoid could result in failure of the EFSS. Such failure, if not corrected, could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–26A0012, dated May 1, 1997, which describes procedures for repetitive testing of the EFSS of both the left- and right-hand engines to determine if the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. For any airplanes on which a collar on circuit breaker C26612 of panel P310 of the standby power management panel has not been installed, the alert service bulletin also describes procedures to perform that installation, and to install placards near the EFSS of both engines and near the auxiliary power unit (APU) EFSS to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. Installation of the collar on circuit breaker C26612 of panel P310, which is the circuit breaker that supplies power to the EFSS solenoids, will prevent damage to the EFSS due to overheating of the solenoid.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 777 series airplanes of the same type design, this AD is being issued to prevent damage to the EFSS solenoid and to the override mechanism and consequent failure of the EFSS due to overheating of the solenoid; such failure could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire. This AD requires repetitive testing of the EFSS of both the left- and right-hand engines to determine if the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. For certain airplanes, this AD requires installation of a collar on circuit breaker C26612 of panel P310 of the standby power management panel, and installation of placards near the EFSS of both engines and near the APU EPSS to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–90–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–10–11 Boeing: Amendment 39–10023. Docket 97–NM–90–AD.

Applicability: All Model 777 series airplanes, certificated in any category.

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

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the engine fire shutoff switch (EFSS) solenoid and to the override mechanism, and consequent failure of the EFSS, which could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire, accomplish the following:

(a) For all airplanes: Within 14 days after the effective date of this AD, perform a test of the EFSS of both the left-and right-hand engines to determine if the override mechanism and the switch handle are operational, in accordance with Boeing Alert Service Bulletin 777–26A0012, dated May 1, 1997.

(1) If the override mechanism and the switch handle of the EFSS are operational, prior to further flight, accomplish the requirements of paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable, in accordance with the alert service bulletin.

(i) For Group 1 airplanes identified in the alert service bulletin: Install a collar on circuit breaker C26612 of panel P310 of the standby power management panel. Following accomplishment of this installation, prior to further flight, install placards near the EFSS of both engines and near the auxiliary power unit (APU) EFSS to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch.

(ii) For Group 2 airplanes identified in the alert service bulletin: Ensure that a collar is installed on circuit breaker C26612 of panel P310 of the standby power management panel. If a collar is not installed, prior to further flight, install a collar on circuit breaker C26612 of panel P310 of the standby power management panel.

(2) If the override mechanism or the switch handle of the EFSS is not operational, prior to further flight, replace the EFSS with a new or serviceable EFSS, in accordance with the alert service bulletin.

(b) For all airplanes: Repeat the requirements of paragraph (a) of this AD thereafter at intervals not to exceed 500 flight hours.

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

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

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

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–26A0012, dated May 1, 1997. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

(f) This amendment becomes effective on May 27, 1997.

Issued in Renton, Washington, on May 5, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12249 Filed 5–9–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–283–AD; Amendment 39–10024; AD 97–10–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires a one-time inspection to detect riding, chafing, or damage of the wire bundles adjacent to the disconnect panel bracket of the observer's station. This amendment also requires repair or replacement of damaged wires with new or serviceable wires; installation of anti-chafing sleeving on the wire bundles, if necessary; and installation of grommet along the entire upper aft edge of the disconnect panel bracket. This amendment is prompted by a report indicating that the circuit breakers tripped on a Model MD–11 series airplane due to inflight arcing behind the avionics circuit breaker panel as a result of chafing of the wire bundles adjacent to the disconnect panel bracket assembly. The actions specified by this AD are intended to detect and correct such chafing, which could result in a fire in the wire bundles and smoke in the cockpit.

DATES: Effective June 16, 1997.

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

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). 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 FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

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 McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on February 18, 1997 (62 FR 7182). That action proposed to require a one-time inspection to detect riding, chafing, or damage of the wire bundles adjacent to the disconnect panel bracket of the observer's station. That action also proposed to require repair or replacement of damaged wires with new or serviceable wires; installation of anti-chafing sleeving on the wire bundles, if necessary; and installation of grommet along the entire upper aft edge of the disconnect panel bracket.

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

Both commenters support the proposal.

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

There are approximately 86 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, 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 $8,100, or $180 per airplane.

The cost impact figure discussed above is 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:

97–10–12 McDonnell Douglas: Amendment 39–10024. Docket 96–NM–283–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Service Bulletin MD11–24–111, dated December 3, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing of the wire bundles adjacent to the disconnect panel bracket assembly and consequent inflight arcing behind the avionics circuit breaker, which could result in a fire in the wire bundles and smoke in the cockpit, accomplish the following:

(a) Within 6 months after the effective date of this AD: Perform a one-time inspection to detect riding, chafing, or damage of the wire bundles adjacent to the disconnect panel bracket of the observer’s station, in accordance with McDonnell Douglas Service Bulletin MD11–24–111, dated December 3, 1996.

(1) Condition 1. If any riding or chafing is found, and if any damage is found: Prior to further flight, repair or replace any damaged wires with new or serviceable wires; install anti-chafing sleeving on the wire bundles; and install a grommet along the entire upper aft edge of the disconnect panel bracket; in accordance with the service bulletin.

(2) Condition 2. If any riding or chafing is found, but no damage is found: Prior to further flight, install anti-chafing sleeving on the wire bundles, and install a grommet along the entire upper aft edge of the disconnect panel bracket, in accordance with the service bulletin.

(3) Condition 3. If no riding, chafing, or damage is found: Prior to further flight, install a protective grommet along the entire upper aft edge of the disconnect panel bracket in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

(d) The actions shall be done in accordance with McDonnell Douglas Service Bulletin MD11–24–111, dated December 3, 1996. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 16, 1997.

Issued in Renton, Washington, on May 5, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12250 Filed 5–9–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 310 and 374

RIN 2105–AC64

Inspection and Copying of Department of Transportation Opinions, Orders, and Records and Implementation of the Consumer Credit Protection Act With Respect to Air Carriers and Foreign Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule removes regulations on the inspection and copying of DOT opinions, orders, and records in 14 CFR Part 310 and amends regulations on the implementation of

the Consumer Credit Protection Act with respect to air carriers and foreign air carriers in 14 CFR Part 374. The Department is revoking 14 CFR Part 310 because the provisions of the regulation are outdated and already encompassed in 49 CFR Part 7 which adequately provides for the inspection and copying of all relevant DOT opinions, orders, and records. With regard to 14 CFR Part 374, the Department is revising the regulation to update both the agency references and statutory citations. These actions are taken in response to the President's Regulatory Reinvention Initiative.

DATES: This rule is effective on June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Office of Aviation Enforcement and Proceedings (C–70), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9342.

SUPPLEMENTARY INFORMATION:

I. Inspection and Copying of DOT Opinions, Orders, and Records

In an effort to eliminate duplication of its regulations in the Code of Federal Regulations (CFR) and to eliminate outdated information, the Department is removing 14 CFR Part 310. Part 310 provides for the inspection and copying of certain DOT opinions, orders, and records. An outdated list of certain materials once made available by the Civil Aeronautics Board is contained in the rule. However, materials are already made available to the general public under the DOT Public Availability of Information provisions (49 CFR Part 7), the Freedom of Information Act (5 U.S.C. 552), and through the DOT Docket Section. Continuing to have two regulations that perform the same function is not necessary and 14 CFR Part 310 is therefore being removed.

II. Implementation of the Consumer Credit Protection Act With Respect to Air Carriers and Foreign Air Carriers

The Department is amending 14 CFR Part 374 to update both the language of the regulation and the references to the statutory provisions that it implements. Since the regulation was first adopted, the Department of Transportation has replaced the Civil Aeronautics Board (CAB) as the agency with enforcement responsibility under the regulation. Thus, the regulation is being amended to reflect this change. In addition, some of the statutory citations in the regulation are outdated and are being revised in this final rule. Overall, the amended regulation will accurately reflect both the current role of the Department and the correct statutory provisions being implemented by the rule. The changes are editorial and not substantive.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are dispensing with the usual notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553 good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule because the changes are purely editorial and administrative in nature.

IV. Regulatory Statements

Executive Order 12866

This final rule is considered nonsignificant under DOT's Policies and Procedures. The rule would have no economic impact and no further regulatory evaluation was prepared. The rule merely eliminates the duplicative and outdated provisions of 14 CFR Part 310 and amends the provisions of 14 CFR Part 374 to reflect current agency responsibilities and statutory authority. The elimination of 14 CFR Part 310 will have no affect on the general public since there are other readily available methods of obtaining DOT records, and a regulation governing those methods. Likewise, this rule's revision to 14 CFR Part 374 will have no substantive impact on its provisions. It was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

This rulemaking will have no impact on small entities for the reasons stated above. Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612), I certify 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 required for this rulemaking.

Paperwork Reduction Act

This final rule imposes no new reporting or record-keeping requirements necessitating clearance by OMB.

List of Subjects

14 CFR Part 310

Administrative practice and procedure, Freedom of information, Records.

14 CFR Part 374

Administrative practice and procedure, Air carriers, Consumer protection, Enforcement.

Accordingly, the Department of Transportation removes 14 CFR Part 310 and amends 14 CFR Part 374 as set forth below:

CHAPTER II—OFFICE OF THE SECRETARY, DEPARTMENT OF TRANSPORTATION (AVIATION PROCEEDINGS)

PART 310—INSPECTION AND COPYING OF DOT OPINIONS, ORDERS, AND RECORDS [REMOVED]

1. Under the Authority of 49 U.S.C. 40113, Part 310 is removed.

PART 374—IMPLEMENTATION OF THE CONSUMER CREDIT PROTECTION ACT WITH RESPECT TO AIR CARRIERS AND FOREIGN AIR CARRIERS [AMENDED]

B. Part 374 is amended as set forth below:

1. The authority citation for Part 374 is revised to read as follows:

Authority: 15 U.S.C. 1601–1693r; 49 U.S.C. Subtitle VII; and 12 CFR parts 202 and 226.

2. Section 374.1 is revised to read as follows:

§ 374.1 Purpose.

The purpose of this part is to state the Department of Transportation's responsibility to enforce air carrier and foreign air carrier compliance with Subchapters I, III, IV, V and VI of the Consumer Credit Protection Act and Regulations B and Z of the Board of Governors of the Federal Reserve System.

3. Section 374.3 revised to read as follows:

§ 374.3 Compliance with the Consumer Credit Protection Act and regulations.

(a) Each air carrier and foreign air carrier shall comply with the requirements of the Consumer Credit Protection Act, 15 U.S.C. 1601–1693r. Any violation of the following requirements of that Act will be a violation of 49 U.S.C. Subtitle VII, enforceable by the Department of Transportation:

(1) The Truth in Lending Act, as supplemented by the Fair Credit Billing Act, 15 U.S.C. 1601–1667, requiring disclosure of credit terms to the consumer and prohibiting inaccurate or

unfair credit billing and credit card practices.

(2) The Fair Credit Reporting Act, 15 U.S.C. 1681–1681 setting forth requirements to be met by consumer credit reporting agencies and persons who use consumer credit reports.

(b) Each air carrier and foreign air carrier shall comply with the requirements of Regulation B, 12 CFR part 202, and Regulation Z, 12 CFR part 226, of the Board of Governors of the Federal Reserve Board. Any violation of the requirements of those regulations will be a violation of 49 U.S.C. Subtitle VII, enforceable by the Department of Transportation.

4. Section 374.4 is revised to read as follows:

§ 374.4 Enforcement procedure.

The statutes and regulations referred to in § 374.3 may be enforced by an enforcement procedure as set forth in part 302 of this chapter or by the assessment of civil penalties under 49 U.S.C. 46301.

Issued in Washington, DC on March 24, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–9783 Filed 5–9–97; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM96–1–005, RP97–276–000; Order No. 587–E]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued May 6, 1997.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order denying rehearing and request for waiver.

SUMMARY: The Federal Energy Regulatory Commission is denying requests for rehearing of Order No. 587–B (62 FR 5521, Feb. 6, 1997). Order No. 587–B incorporated by reference standards promulgated by the Gas Industry Standards Board requiring interstate pipelines to exchange data necessary to conduct certain business transactions across the Internet according to protocols established in the standards. The format for the data was adopted by the Commission in Order No. 587. 61 FR 39053 (Jul. 26, 1996). The order clarifies pipelines' obligations in implementing the standards.

DATES: Pipeline implementation of the Internet requirements runs from April 1, 1997 to June 1, 1997, according to a staggered schedule established in Order No. 587.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 (202) 208–0507.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, NE, Washington D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. CIPS user assistance is available at 202–208–2474.

CIPS is also available on the Internet through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: http://www.fedworld.gov and select the ''Go to the FedWorld Telnet Site'' button. When your Telnet software connects you, log on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line and type: /go FERC. FedWorld may also be accessed by Telnet at the address fedworld.gov.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

ORDER DENYING REHEARING AND REQUEST FOR WAIVER

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On March 3, 1997, Natural Gas Clearinghouse (NGC) and Ozark Gas Transmission System (Ozark) filed requests for rehearing of Order No. 587–B,[1] and, in the case of Ozark, an alternative request for a waiver. For the reasons discussed below, the requests for rehearing and waiver are denied.

Background

In Order No. 587,[2] the Commission incorporated by reference consensus standards developed by the Gas Industry Standards Board (GISB) covering certain industry business practices—Nominations, Flowing Gas, Invoicing, and Capacity Release—as well as datasets that detailed the data requirements needed to conduct business transactions in these areas. In Order No. 587–B, the Commission incorporated by reference GISB standards establishing the protocols and procedures for exchanging these files over the Internet, with implementation to follow a staggered schedule beginning April 1, 1997.

At the same time that GISB passed the standards for transacting business transactions over the Internet, it passed two standards, 4.3.5 and 4.3.6, requiring pipelines to provide additional information on an Internet World Wide Web homepage (homepage).[3] GISB recommended an August 1, 1997 implementation date for the two World Wide Web standards. GISB also approved revisions and additions to its business practices standards, with a recommendation for tariff filings beginning May 1997 and implementation in November 1997.

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997).

[2] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), *reh'g denied*, Order No. 587–A, 61 FR 55208 (Oct. 25, 1996), 77 FERC ¶ 61,061 (Oct. 21, 1996).

[3] This information includes notices (critical notices, operation notices, system-wide notices); Order No. 566 affiliated marketer information (affiliate allocation log, discount postings); operationally available and unsubscribed capacity; Index of Customers; and the pipeline's tariff.

The Commission did not adopt the two World Wide Web standards (or the supplemental business practices standards) in Order No. 587–B, because the proposed implementation schedule for these standards was not as imminent as for the standards to be implemented on April 1, 1997. The Commission stated the World Wide Web and the supplemental business practices standards would be addressed in a later order. On March 4, 1997, the Commission issued Order No. 587–C [4] addressing the World Wide Web standards and the revised and new business practices standards.

NGC maintains the Commission erred by not adopting the World Wide Web standards in Order No. 587–B (Standards 4.3.5 and 4.3.6). NGC and Ozark claim error in the Commission's requirement that pipelines maintain their Electronic Bulletin Boards (EBBs) in addition to the Internet requirements of Order No. 587–B. In the event the Commission does not grant its rehearing request, Ozark requests a waiver of any requirements to maintain an EBB.

Public Notice, Interventions, and Protests

Public notice of Ozark's request for waiver was issued on March 13, 1997, with notices and motions to intervene or protests due by March 20, 1997. No motions to intervene or protests were filed.

Discussion

A. Adoption of World Wide Web Standards

NGC's request that the Commission adopt the standards requiring pipelines to provide information on World Wide Web homepages (Standards 4.3.5 and 4.3.6) is moot. The Commission adopted Standard 4.3.6 in Order No. 587–C. The Commission did not adopt Standard 4.3.5 in Order No. 587–C, only because GISB had not completed the work needed to implement the standard. Standard 4.3.5 provides that documents maintained on a pipeline's homepage will be downloadable in a specified electronic structure, and GISB has not yet promulgated the electronic structure. The Commission, however, stated, in Order No. 587–C, that the ability to download information is critical for customers who do not want to read the information on-line or who want the information in computer-readable form, and urged GISB to adopt the required electronic structure quickly. The Commission intends to incorporate Standard 4.3.5 when GISB develops the required download formats.

B. Requirements That Pipelines Continue to Maintain EBBs

NGC and Ozark seek rehearing of the Commission's statements in Order No. 587–B that the Commission would not eliminate its requirement for pipelines to provide certain information on EBBs, while the Internet standards are being implemented.[5] NGC and Ozark contend that the Commission is requiring pipelines to provide three methods of communication: an EBB, a file download capability through Electronic Data Interchange (EDI) using Valued Added Networks (VANs) (citing 18 CFR 284.8(b)(5)), and the new Internet communications. They maintain that maintaining three systems is unnecessarily costly and wasteful.

If its request for rehearing is denied, Ozark requests a waiver of the requirement to maintain an EBB and the requirement to support EDI-based transmission of data through a VAN. It states that all of its current EBB functions will be available on a Web-based system.[6]

1. Downloads to VANs

With the implementation of the GISB standards for Internet communication, the Commission regulations no longer require pipelines to provide file downloads to a VAN. Thus, NGC and Ozark already have received the relief they request.

In Order No. 563,[7] the Commission added section 284.8(b)(5) to its regulations, which required pipelines to adhere to standards providing for downloads of information about capacity release transactions, available capacity, and system-wide notices in standardized EDI file formats.[8] At that time, the Commission standards required that the information be made available to any party, including a VAN.[9]

In Order No. 587, the Commission removed section 284.8(b)(5) from its regulations. In its place, the Commission substituted the Capacity Release Standards promulgated by GISB, which revised and updated the formats previously required by the section 284.8(b)(5) standards. The standards adopted in Order No. 587–B also require pipelines to provide these files through Internet communications. Thus, once pipelines implement the GISB Internet standards, they will no longer be required to support other methods of transmitting these files, such as to a VAN.

2. Continuation of the EBB Requirement

NGC and Ozark also contend that the Commission should not be continuing to require pipelines to maintain EBBs. They argue that maintenance of two systems—EBBs and Internet communications—is wasteful and unnecessary and at odds with GISB's goal of moving away from proprietary EBBs to standardized Internet communications.

NGC's and Ozark's rehearing requests evidence confusion about the Commission's EBB requirements that require clarification. The rehearing requests raise two issues that need to be considered separately. The first is whether a waiver is necessary for pipelines to replace their current dial-up EBBs with Internet communications. The second is whether the Commission should remove its requirement for pipelines to maintain EBBs and substitute the standardized communication methods developed by GISB. A subsidiary issue is whether, and under what circumstances, pipelines are permitted to eliminate their EBBs and replace them with standardized communication methods.

On the first question, pipelines can now replace their dial-up EBBs with Internet communications, without the need for a waiver. The term EBB, as used in the Commission's regulations, does not refer to any specific technological method of communication.[10] An EBB refers to a continuous computer connection between a pipeline's computer and a user's computer in which the information from the pipeline's computer is displayed visually on the user's computer and the user can enter

[4] Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997).

[5] 62 FR, at 5524; III FERC Stats. & Regs. Regulations Preambles, at 30,169–70.

[6] It states that it will still support the use of facsimile transmission for nominations and capacity release offers or bids.

[7] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563-B, 68 FERC ¶ 61,002 (1994).

[8] In contrast to an EBB, where the user at a keyboard interacts with the pipeline's computer, a file download provides for the transfer in computerized format of a file from the pipeline's computer to the user's computer. The user can use its own internal computer programs to manipulate the data.

[9] A VAN is a communications or information system providing an aggregation, routing, and delivery service. In effect, a VAN provides a user with an electronic mailbox for receiving information.

[10] *See* Section 284.10(a).

data to the pipeline's computer.[11] When the EBB requirement was first imposed in Order No. 636, the technology was to use direct telephone modem connections to dial-up a pipeline EBB. The dial-up system was non-standardized, with each pipeline requiring the use of different software packages and log-on procedures to access the pipelines' computers. As technology has changed, however, pipelines can now provide the same interactive service using more current and standardized technological methods that are consistent with the GISB standards, such as an Internet or Web-based system. Using an Internet-based system removes many of the idiosyncracies in log-on procedures that plagued the dial-up systems, since each user can access each pipeline's World Wide Web site using the same Internet connection and Web browser. Thus, pipelines are not prohibited by Commission regulations from using a Web-based EBB in place of a dial-up EBB.

However, even moving pipeline EBBs to the Internet may not necessarily create the open and standardized communication system that is required. For instance, standards may need to delineate the minimum Web browser and encryption levels that are needed to access pipeline Web sites, the basic organization of the Web site, and the format in which data will be presented. Moreover, as happened with the standardization of business transactions, communication efficiency may require that standards be developed to specify specific file formats for the exchange of business information.

GISB too has recognized that there is further need to standardize all EBB functions and information within a reasonable amount of time.[12] But, at the present time, the standardization effort is not complete. Standards still have not been developed to cover all the information the Commission requires to be posted on EBBs.[13] Although GISB has standardized much of these data, a few still remain. For instance, the GISB standards do not provide standards for submitting offers to release capacity and bids via the Internet, nor do they provide standards for downloading the Index of Customers in the specified format. Nor have standards been developed to cover the myriad other information and business transactions (not covered by the Commission regulations) that many pipelines provide using EBBs.[14] As GISB has recognized, until the standardization effort is complete, pipelines should not be forced to discontinue their proprietary EBB systems.[15]

Maintenance of existing systems during the transition to standardized communications should not result in significant added costs or burden. Pipelines, however, should not expend significant resources to expand or enhance the functionality of proprietary systems. These resources and efforts would be better spent on completing the process of developing standardized systems as quickly as possible.

Given the importance of developing standardized communications, the Commission expects GISB and the industry to move forward rapidly to complete the standardization process so that the Commission can substitute standardized communication modalities for the requirement for pipelines to maintain EBBs. The Commission requests a report by GISB, and by others who may wish to comment, by September 1, 1997 on the extent of their progress and the contemplated completion date.

In the meantime, as discussed above, the Commission regulations do not require pipelines to use EBBs to conduct the business transactions standardized in Order No. 587. Thus, pipelines can file tariff revisions under section 4 of the Natural Gas Act when they are ready to discontinue using EBBs to provide these services and, instead, rely upon the standardized methodologies.

In its waiver request, Ozark did not make clear whether it is intending to substitute GISB's Internet server model for its EBB to conduct the relevant business transactions or whether every one of the business transactions and communication now provided using its EBB will be provided using the Internet communications. As discussed above, the Commission's regulations do not require such transactions to be provided on an EBB, so no waiver of the regulations is needed. However, if Ozark previously provided such services on an EBB, it cannot dispense with those services through a filing to comply with Order No. 587, but will need to make a section 4 filing.

The Commission orders:

(A) The requests for rehearing are denied.

(B) Ozark's request for waiver is denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12398 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–P

[11] *See* Standards For Electronic Bulletin Boards Required Under Part 284 Of The Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994) FERC Stats. & Regs. Regulation Preambles [Jan. 1991–June 1996], ¶ 30,988, at 31,001 n.10 (Dec. 23, 1993).

[12] Electronic Delivery Mechanism Standard 4.3.6.

[13] Commission regulations require the use of EBBs only for limited purposes: to provide equal and timely access to information relevant to the availability of transportation service, including the provision of a capacity release system involving a posting and bidding mechanism to facilitate capacity reallocations (Sections 284.8(b)(3) and 284.9(b)(3); Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. ¶ 30,939, at 30,415 (1992)); information about pipeline affiliate transactions (sections 161.3(h) and 250.16(c)); and an index of customers (section 284.106). Section 284.10 of the Commission's regulations establishes certain features that pipeline EBBs, whether required by the regulations or the pipeline's tariff, must support.

[14] This process was begun in Order Nos. 587, 587–B, and 587–C, in which the Commission approved GISB standards requiring pipelines to transact some of these business transactions (nominations, flowing gas, invoicing, and capacity release) using standardized file formats that would be exchanged according to the Internet protocols established by GISB. However, these standards do not cover all of the information and transactions currently performed on pipeline EBBs.

[15] Electronic Delivery Mechanism Standard 4.3.6.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 417, 473

[BPD–453–FC]

RIN 0938–AG18

Medicare Program; Medicare Appeals of Individual Claims

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: Under section 1869 of the Social Security Act, Medicare beneficiaries and, under certain circumstances, providers or suppliers of health care services may appeal adverse determinations regarding claims for benefits under Medicare Part A or Part B. This rule expands our regulations to recognize the right of Part B appellants to a hearing before an administrative law judge (ALJ) for claims if at least $500 remains in dispute and the right to judicial review of an adverse ALJ decision if at least $1,000 remains in controversy. Also, this rule codifies in regulations: Limitations on the review by ALJs and the courts of certain national coverage determinations, and the statutory authority for an expedited appeals process under Part A and Part B.

DATES: *Effective Date:* This final rule is effective June 11, 1997.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 11, 1997.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–453–FC, P.O. Box 26676, Baltimore, MD 21207–0476.

If you prefer, you may deliver your written comments (an original and 3 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.

Comments may also be submitted electronically to the following e-mail address: BPD453FC@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.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–453–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).

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FOR FURTHER INFORMATION CONTACT: Morton Marcus, (410) 786–4477.

SUPPLEMENTARY INFORMATION:

I. Background

A. Appeals under Part A and Part B

The Social Security Administration (SSA) makes determinations concerning basic entitlement to Medicare Part A and Part B. Other determinations concerning Medicare payment of individual claims are made initially by Medicare contractors. Fiscal intermediaries make most Part A and some Part B determinations; carriers make most Part B determinations. (For purposes of this preamble discussion and regulations set forth at 42 CFR part 405, subpart H, the term ''carrier'' also refers to intermediaries authorized to make determinations with respect to Part B benefits.)

Section 1869 of the Social Security Act (the Act) grants Medicare beneficiaries who are dissatisfied with certain Medicare determinations the right to a hearing before an administrative law judge (ALJ) and the right to judicial review under certain circumstances. In general, a hearing before an ALJ is available to resolve disputes concerning: (1) An individual's basic entitlement to benefits under Part A or Part B of Medicare, and (2) the amount of benefits due. Since the inception of the Medicare program, hearings on all Part A or Part B entitlement questions and Medicare Part A claims that have reached the ALJ hearing level have been conducted by ALJs employed by the SSA's Office of Hearings and Appeals (OHA). Our regulations generally address appeals of claims arising under Part A at 42 CFR part 405, subpart G and appeals of claims under Part B at 42 CFR part 405, subpart H.

Peer review organizations (PROs) also make certain types of Part A and Part B determinations. Section 1155 of the Act establishes beneficiary rights to ALJ hearings and judicial review of certain Medicare issues (mostly inpatient hospital service denials) adjudicated initially by PROs. In order for a PRO appellant to qualify for an ALJ hearing and judicial review, the amount in controversy must be at least $200 and $2,000, respectively. (However, appeals on PRO determinations involving limitation of liability follow the appeals provisions in subparts G and H of part 405, requiring an amount in controversy at the ALJ level of $100 for Part A claims and $500 for Part B claims, and an amount in controversy of $1,000 for judicial review.) Our regulations address this subject at 42 CFR part 473, subpart B.

For enrollees of health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs), the HMO/CMP/HCPP is responsible for making the organization determination, which is the equivalent of the initial determination made by the carriers and intermediaries. Section 1876(c)(5)(B) of the Act establishes beneficiary rights to ALJ hearings and judicial review of certain Part A and Part B claims submitted by or on behalf of enrollees of HMOs/CMPs/HCPPs. Limited appeal rights also exist for an HMO/CMP/HCPP. If the beneficiary requests, and is granted an ALJ hearing, the HMO/CMP/HCPP must be made a party to the hearing and the HMO/CMP/HCPP then has the same appeals rights as the beneficiary to further administrative or judicial review. In order for an HMO/CMP/HCPP appellant to qualify for an ALJ hearing and judicial review, the amount in controversy must be at least $100 and $1,000, respectively. Our regulations address this subject at 42 CFR 417.600 through 417.638.

For the following discussion, the term ''provider'' has the meaning given in sections 1861(u) and 1866(e) of the Act and in 42 CFR 400.202. That is, a provider is a hospital, rural primary care hospital, skilled nursing facility, home health agency, comprehensive outpatient rehabilitation facility, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement, but only to furnish outpatient physical therapy or speech pathology services.

The term ''supplier'' is defined in § 400.202 and means a physician or other practitioner, or an entity other than a ''provider,'' that furnishes health care services under Medicare. Although ''supplier'' encompasses physicians, our usual phraseology is ''physician or supplier.''

Under section 1879(d) of the Act, a provider, or a physician or supplier that accepts assignment has, under certain limited circumstances, the same appeal rights as that of an individual beneficiary when the issue in dispute involves a service that is excluded from coverage under section 1862(a)(1) of the Act, custodial care, home health denials involving the failure to meet homebound or intermittent skilled nursing care requirements, or certain supplier refunds required under section 1879(h) of the Act. Moreover, by regulation, we have always provided that a physician or supplier that has taken assignment of a Medicare claim under Part B has the same appeal rights as the beneficiary has on that claim. Additionally, we have been providing appeal rights for providers in cases decided under section 1879(e) of the Act.

Under section 1842(l) of the Act, a physician who does not accept assignment must refund to the beneficiary any amounts collected for services found to be not reasonable and necessary under section 1862(a)(1). A refund is not required if the physician did not know, and could not reasonably have been expected to know, that Medicare would not pay for the services or if the beneficiary was appropriately informed in advance that Medicare would not pay for the services and agreed in writing to pay for them. Our regulation at 42 CFR 411.408 provides that if payment is denied for unassigned claims because the services are found to be not reasonable and necessary, the physician who does not accept assignment has the same appeal rights as the physician who submits claims on an assignment-related basis, as described in subpart H of part 405 and subpart B of part 473.

Before the enactment of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86, Pub. L. 99–509) on October 21, 1986, section 1869 of the Act provided for ALJ hearings and judicial review of claims for entitlement to Medicare Parts A and B and of disputes over claims for benefits under Part A. There was no provision for ALJ hearings or judicial review for disputes over the amount of Part B benefits, except under section 1876 of the Act pertaining to HMO/CMP/HCPP denials, and except for certain PRO matters as authorized by section 1155 of the Act. Instead, as specified in section 1842(b)(3)(C) of the Act and our regulations at part 405, subpart H, Medicare carriers processed claims for Part B benefits and made an initial determination, either approving or denying the claim, in whole or in part. A beneficiary, or a physician, or a supplier that accepted assignment and, that disagreed with an initial determination, could obtain a review by the carrier that denied the claim. (Under certain circumstances, a provider could also obtain a Part B review or fair hearing with the same limited appeal rights for Part B initial determinations as they have for Part A.) Following the review determination, if the amount remaining in controversy was $100 or more, the final appeal under Part B was a hearing before a hearing officer appointed by the carrier.

B. Appeals Provisions of the Omnibus Budget Reconciliation Act of 1986

Section 9341(a)(1) of OBRA '86 amended section 1869 of the Act to permit hearings before ALJs and judicial review of claims for benefits under Part B. The law provided that, for a Part B ALJ hearing, the amount in controversy must be at least $500, and for judicial review of a Part B dispute, the amount in controversy must be at least $1,000.

Section 9341(a)(2) of OBRA '86 amended section 1842(b)(3)(C) of the Act to provide for a hearing before a carrier hearing officer if the amount in controversy is at least $100, but not more than $500. (Prior to OBRA '86, a claimant qualified for a hearing before a carrier hearing officer by having at least $100 in controversy.)

A portion of section 9341(a)(1)(C) of OBRA '86 amended section 1869(b)(2) of the Act to provide for the aggregation of claims under certain specific circumstances to reach the threshold minimum amount in controversy needed for an ALJ hearing. This aggregation provision was implemented by regulations (including 42 CFR 405.815) published in the **Federal Register** on March 16, 1994 (59 FR 12172).

Section 9341(a)(1)(D) of OBRA '86 added section 1869(b)(3) to the Act placing several limitations on the review of national coverage determinations made under section 1862(a)(1) of the Act concerning whether a particular type or class of items or services is covered. Although the legislation uses the phrase ''national coverage determinations,'' Medicare national coverage determinations are referred to as ''national coverage decisions'' in our manuals and regulations. Consequently, in discussions below, we use the latter phrase. The first limitation is that an ALJ has no authority to review such a decision, except to determine whether the national coverage decision applies to a specific claim for benefits. The ALJ may also determine whether the national coverage decision has been applied correctly to the claim at issue. For example, when a national coverage decision permits coverage if certain criteria are met, the ALJ may reach a different factual conclusion (from lower level adjudicators) regarding whether those criteria were met for the claim at issue. Second, a national coverage decision may not be held unlawful or set aside solely on the grounds that the decision was not published in accordance with the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) or section 1871(b) of the Act. Third, in any case in which a court determines that the record is incomplete or otherwise lacks adequate information to support the validity of a national coverage decision, it must remand the matter to the Secretary for additional proceedings to supplement the record. The court may not determine that an item or service is covered except upon review of the supplemented record.

Section 9341(a)(1)(D) of OBRA '86 also added section 1869(b)(4) to the Act. This provision prohibits judicial review of regulations or instructions issued prior to January 1, 1981, that relate to a method for determining the amount of payment under Part B.

The appeals amendments contained in section 9341 of OBRA '86 apply to items and services furnished on or after January 1, 1987.

Section 9313(a)(1) of OBRA '86 amended section 1869(b)(1) of the Act to permit representation of beneficiaries in Medicare appeals by the individuals who have furnished items or services to those beneficiaries. (This statutory provision effectively invalidated certain HCFA manual instructions in effect at the time that barred providers from representing beneficiaries in Medicare Part A appeals.) Section 1869(b)(1) also limits representation under the limitation on liability provisions under section 1879 of the Act, which applies when the appeal involves: A service that is excluded from coverage under section 1862(a)(1) of the Act; custodial care; home health denials, if the individual is determined to be not homebound or does not or did not need skilled nursing care on an intermittent basis; certain supplier refunds required under section 1879(h) of the Act; or cases decided under section 1879(e) of the Act. In any of the above situations, the provider, physician, or supplier cannot represent the beneficiary in an appeal unless the provider or other supplier of services waives in writing any rights for payment from the beneficiary with respect to those items or services, including the right to any deductible or coinsurance in connection with the service(s) at issue. The requirement that a provider or supplier representative must waive his or her right to payment is intended to ensure against a potential conflict of interest between the beneficiary and the person who furnished the items or services to the beneficiary. Further, a provider, physician, or supplier representative is not entitled to charge the beneficiary a fee for services furnished in connection with representation. The representation rules contained in section 9313(a)(1) of OBRA '86 were effective on October 21, 1986, and only affect appeals arising under section 1869 of the Act. They are the subject of a separate regulation document under development.

C. Appeals Provisions of the Omnibus Budget Reconciliation Act of 1987

Section 4082(b) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87, Pub. L. 100–203) enacted on December 22, 1987, added subparagraph (b)(5) to section 1869 of the Act to provide for the expedited review of a case by an ALJ when the appellant alleges that there are no material issues of fact in dispute. The provision is intended to bring disputes that are beyond the authority of the ALJ (and which thus need court intervention) to a quicker settlement. The provision was effective with requests for ALJ hearings filed as of February 20, 1988.

Section 4085(i)(5) of OBRA '87 amended section 1842(b)(3)(C) of the Act by substituting the phrase ''less than $500'' for ''not more than $500,'' thereby clarifying the amount in controversy requirement for a carrier hearing. This provision is discussed further in section II.B. of this preamble.

D. Implementation of OBRA Appeals Amendments Prior to the Promulgation of Regulations

With the additional review rights granted by OBRA '86 and OBRA '87, appellants under Part B have essentially the same appeal rights as appellants under Part A. To implement the appeals provisions prior to the publication of regulations, HCFA and SSA (the agency responsible for conducting ALJ hearings) published a joint notice on June 1, 1988, at 52 FR 20023, stating that ALJ hearings (and Appeals Council review) under Part B would be governed to the extent possible by existing SSA regulations at 20 CFR part 404, subparts J and R, and existing Part A regulations at 42 CFR part 405, subpart G. The notice provided that, prior to having an ALJ hearing under Part B, an appellant must complete the carrier administrative review process set forth in 42 CFR part 405, subpart H. This process calls for a carrier review and a carrier hearing officer hearing. The notice also stated that ALJ hearings will be held for Medicare Part B claims that meet the amount in controversy requirement established by section 9341 of OBRA '86.

To date, Part B appeals are being processed under the provisions of the June 1, 1988, general notice and the implementing instructions we issued to Medicare contractors (Medicare Carriers Manual (HCFA Pub. 14–3), section 12000ff and Medicare Intermediary Manual (HCFA Pub. 13–3), section 3700ff).

II. Revisions to the Rules

A. Overview

It is our intention to develop a rule establishing in title 42 all Medicare hearings and appeals procedures, including the relevant procedures currently found in SSA's regulations in title 20. As an interim measure to ensure uniform application of the Part A and Part B appeals regulations, this rule, for the most part, amends subparts G and H of part 405 to incorporate the various appeals provisions found in section 9341(a) of OBRA '86 and section 4082(b) of OBRA '87. (As noted earlier, we do not address section 9313(a)(1) of OBRA' 86 regarding representation of beneficiaries or the portion of section 9341(a) that deals with the aggregation of claims to establish amount in controversy requirements for ALJ hearings.) We also make clarifying changes to subparts G and H of part 405 and to parts 417 and 473.

B. Specific Revisions

Carrier Fair Hearing—Prior to OBRA '86, an individual could request a carrier fair hearing (hereinafter, carrier hearing) following the carrier's review determination if there was at least $100 in controversy. The hearing provided by the carrier represented the final level of appeal of a Part B determination. In 1982, the U.S. Supreme Court, in the case of *Schweiker* v. *McClure,* 456 U.S. 188 (1982), upheld the constitutionality of the carrier hearing process.

Section 9341(a)(2) of OBRA '86 amended section 1842(b)(3)(C) of the Act to provide an individual with the opportunity for a carrier hearing when the amount in controversy was ''at least $100, but not more than $500.'' In 1987, we amended our Medicare Carriers Manual (§ 12005) to require that a carrier hearing precede an ALJ hearing regardless of the amount in controversy. HCFA and SSA restated this requirement in their 1988 joint notice, referenced above.

The Secretary's authority to require that appellants whose claims exceed $500 complete the carrier hearing process before obtaining an ALJ hearing was affirmed by a decision of the U.S. Court of Appeals for the Second Circuit in *Isaacs* v. *Bowen,* 865 F.2d 468 (2d Cir. 1989). The Court noted that following our 1987 revision to the Medicare Carriers Manual, Congress held hearings concerning the Medicare appeals process, in which it heard testimony concerning our decision to require carrier hearings in all circumstances. Congress subsequently enacted OBRA '87, which addressed the carrier hearing procedures in two respects. First, the language of section 1842(b)(3)(C) describing the monetary amount for a carrier hearing was changed by substituting the phrase ''less than $500'' for the phrase ''not more than $500.'' Second, Congress authorized the General Accounting Office (GAO) to conduct a cost-effectiveness study of the Secretary's requirement for carrier hearings prior to an ALJ hearing. In light of these provisions, the U.S. Court of Appeals in the Second Circuit found that Congress by its actions had ratified the Secretary's decision to require carrier hearings in cases exceeding $500.

Accordingly, we are specifying, in § 405.801(a), that a carrier hearing always precede an ALJ hearing, including cases in which the amount in controversy at the carrier hearing level exceeds $500. We believe that the continuation of the current carrier hearing process serves a valuable function by assembling evidence, defining issues, and identifying cases of carrier error or determinations that should be changed due to the presentation of new evidence, or for other reasons. Therefore, those cases that reach the ALJ hearing level will involve actual disputes of fact or law and the issues before the ALJ are clearly defined. By ensuring the development of a complete record, the carrier hearing reduces the need for time-consuming and costly development at the ALJ level. Retention of the carrier hearing process results in a substantial reduction in the number of cases that would otherwise have been appealed to the ALJ level, and more expeditious processing of cases at the ALJ level. Beneficiaries, providers, and suppliers, and the Federal government all benefit from this process. Finally, we would like to note that in its Report dated July 16, 1990 (HRD–90–57), GAO stated that:

The congressional intent in establishing a $500 threshold for ALJ appeals is unclear. Court opinions initially differed on whether the Congress intended such claims to bypass carrier fair hearings. However, a recent federal district court appeal decision (*Isaacs* v. *Bowen*) concluded that HCFA's instructions requiring claimants with disputed amounts of at least $500 to go through a carrier fair hearing before proceeding to the ALJ were valid.

National Coverage Decisions—The term ''national coverage decision'' (NCD) refers to a statement regarding the coverage status of specific medical services or items that HCFA makes and issues as national policy as provided for in section 1871(a)(2) of the Act. We publish national coverage decisions in the Medicare Coverage Issues Manual (HCFA Pub. 6) and may also publish them in other HCFA program manuals, including the Medicare Intermediary Manual and Medicare Carriers Manual, or in the **Federal Register** as a regulation, notice, or HCFA Ruling. All national coverage decisions are binding upon Medicare carriers, fiscal intermediaries, PROs, HMOs, CMPs, and HCPPs. Prior to OBRA '86, however, national coverage decisions, except those published as HCFA Rulings, were not binding upon ALJs. (ALJs are bound by the provisions of the Medicare law, Departmental regulations and SSA regulations incorporated by Departmental regulations, and other issuances as provided for by law or regulation (such as HCFA Rulings described in 42 CFR 401.108(c), SSA Rulings in 20 CFR 422.406(b)(1), and national coverage decisions based on section 1862(a)(1) of the Act)).

On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) listing those current national coverage decisions that had been issued in the Medicare Coverage Issues Manual. In that notice, we explained that unless another statutory basis applies, national coverage decisions are made under the authority of section 1862(a)(1) of the Act which, among other things, prohibits payment under the Medicare program for expenses incurred for services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. If a determination to exclude or limit a service is made under another statutory authority—for example, the dental exclusion under section 1862(a)(12) or the cosmetic surgery exclusion under section 1862(a)(10)—that statutory authority for exclusion or limitation constitutes the sole basis for that determination, unless otherwise specified. An exclusion under section 1862(a)(1) of the Act is applicable only if no other statutory basis for exclusion exists.

Section 9341(a)(1)(D) of OBRA '86 added section 1869(b)(3) to the Act to provide that ALJs may not review a national coverage decision (NCD) made under section 1862(a)(1) of the Act concerning whether a particular type or class of items or services is covered under Medicare. This provision was effective for services furnished beginning January 1, 1987.

All national coverage decisions made under section 1862(a)(1) of the Act are subject to the review limitations of section 1869(b)(3). Thus, an ALJ may not disregard, set aside, or otherwise review any national coverage decision (that grants or limits coverage, or excludes an item or service from coverage) made under section 1862(a)(1). Section 1869(b)(3), however, does not apply to cases involving national coverage decisions made under a statutory authority other than 1862(a)(1), such as the exclusion of an item of durable medical equipment because it does not meet the requirements of section 1861(n) of the Act. However, an ALJ will be bound by a national coverage decision made under such other statutory authority when contained in a regulation or in a HCFA Ruling. Moreover, while an ALJ may not disregard, set aside, or otherwise review a national coverage decision based upon section 1862(a)(1), an ALJ remains free to review the facts of a particular case to determine whether the national coverage decision applies to a specific claim for benefits and, if so, to determine whether the national coverage decision has been applied correctly to the claim at issue.

In OBRA '86, Congress also limited judicial review of national coverage decisions in two significant ways. First, in section 1869(b)(3)(B), Congress provided that a court may not hold unlawful or set aside a national coverage decision on the ground that it was not issued in accordance with the notice and comment procedures of the Administrative Procedure Act or section 1871(b) of the Social Security Act. Second, Congress expressly prescribed the extent to which a Federal court may review a challenge to a national coverage decision. Under section 1869(b)(3)(C) of the Act, if, upon a court's initial review of a national coverage decision, the court determines that ''the record is incomplete or otherwise lacks adequate information to support the validity'' of the decision, then the court must remand the matter to the Secretary for additional proceedings to supplement the record and the court may not determine that an item or service is covered except upon review of the supplemented record. If a court remands a national coverage decision to the Secretary because the record is incomplete or inadequate, the Secretary will remand the case to HCFA for further development. On remand from the Secretary, we have the opportunity to supplement the record to include new, updated evidence, and issue a revised decision, if necessary. We then are able to defend the initial national coverage decision or a revised decision based on state-of-the-art technology and evidence. Because ALJs have no role in making agency policy, remand to an ALJ is not appropriate for additional proceedings to supplement the record that was used by us to promulgate the national coverage decision NCD). When on remand, we decide not to revise the NCD, the supplemented record is returned to the court that issued the remand order. When on remand, we decide to revise the NCD, an ALJ will issue a new decision applying the revised NCD to the facts of the claim(s) under consideration. The ALJ's decision will then be subject to a Departmental Appeals Board (DAB) review and, ultimately, judicial review. When an individual case is on court remand, the proceedings must be conducted on an expedited basis.

This final rule amends subpart G, by adding a new § 405.732, and Subpart H, by adding a new § 405.860, to incorporate the review limitations on national coverage decisions described above.

Review of Payment Methodologies—Section 9341(a)(1)(D) of OBRA '86 also added section 1869(b)(4) to the Act to prohibit the Federal courts from reviewing certain payment methodologies established by the Secretary. Specifically, a court is not permitted to review a regulation or instruction that relates to a method for determining the amount of payment under Part B if the regulation was promulgated, or the instruction issued, prior to January 1, 1981. We are adding § 405.857(b) to codify the statutory amendment barring judicial review of pre-1981 Part B payment methodologies.

Departmental Appeals Board—The level of administrative review between the ALJ hearing and judicial review is now known as Departmental Appeals Board (DAB) review. The review of ALJ decisions in Medicare cases had been performed by the SSA Appeals Council, along with the review of all other SSA cases. However with the establishment of an independent SSA, it was decided that the Medicare functions of the Appeals Council should be exercised within the Department of Health and Human Services (DHHS). That appellate function was assigned to the DAB, which has experience in conducting hearings and appeals for DHHS. We are specifying that the regulations currently in place regarding SSA Appeals Council review, beginning at 20 CFR 404.967, apply to Medicare appeals handled by the DAB. In appealing Part A claims under subpart G of the regulations, appellants must request the DAB to review an ALJ's decision before the case can be taken to court (§ 405.724). Although DAB review is not specifically referred to in the OBRA '86 expansion of the Part B appeals process, we believe this level of review should also apply to the appeal of Part B claims. Therefore, we are adding a new § 405.856 to provide DAB review as the intermediate level of appeal between the ALJ hearing and judicial review for the appeal of Part B claims. If dissatisfied with the ALJ hearing decision or dismissal, an appellant may request that the DAB review that action or the DAB may initiate a review at its discretion. The DAB may deny, dismiss, or grant the appellant's request for review. If the DAB grants the request for review, or elects to review the ALJ decision at its own discretion, it may affirm, reverse, or modify a decision or dismissal made by an ALJ, and/or remand the case to an ALJ for further action. The DAB's authority includes, but is not limited to, the authority to take any action that the ALJ could have taken.

Expedited Review—Section 4082(b) of OBRA '87 added section 1869(b)(5) to the Act to provide for the expedited review of cases by ALJs when an appellant alleges that there are no material issues of fact in dispute. The ALJ must make an expedited determination as to whether such facts are in dispute and, if not, must then determine the case expeditiously so that the appellant is given an expedited opportunity to seek judicial review on the issue of law raised. The House Report accompanying OBRA '87 described the purpose of section 4082(b) as follows:

> ALJs may resolve factual disputes and resolve cases by applying the pertinent statutory and regulatory (standards). However, they do not have authority to declare statutes or regulations invalid. That is the responsibility of the Federal courts. If a claimant wishes to challenge the legality of a regulation or the constitutionality of a statute, and there are no factual issues in contention, the claimant should not have to expend the resources and endure the delay entailed in completing an ALJ review that will not resolve the case and will not contribute to its resolution. In that situation, the claimant should be able to present its case expeditiously to a Federal court. In order not to waste the time of the Federal court, however, there needs to be some assurance that there are no questions of fact in contention, since the resolution of the factual dispute might either resolve the case entirely or have an important influence on the proper framing of the legal issues. The Committee bill establishes a procedure for expediting judicial review in appropriate cases. It permits a claimant to allege that there are no factual disputes before the ALJ, and to request the ALJ to make an expedited determination to that effect. If the ALJ made such a determination, he would close the case quickly and permit the claimant to go immediately to Federal court.

H.R. Report No. 391, 100th Cong., 1st Sess. 429 (October 26, 1987).

In light of the above legislative history, we believe that the Congress intended section 1869(b)(5) to provide an expedited review process for all cases in which the ALJ has no authority to grant the relief requested by the appellant, that is, when the only material issue is the constitutionality of a statute or the validity of a regulation, HCFA Ruling, or national coverage decision based on section 1862(a)(1) of the Act that the ALJ is bound to apply to the case. However, the expedited review process would not apply to a challenge to a manual instruction or a policy statement. (ALJs are, among other things, required to apply the Department's regulations, HCFA Rulings, and national coverage decisions based on section 1862(a)(1) of the Act, but are not bound by HCFA manuals or other operating guidelines—see 20 CFR 422.406(b)(1)).

We are amending subparts G and H of part 405 of the regulations to include expedited review of cases in which the appellant challenges the constitutionality of a statute or the validity of a regulation, HCFA Ruling, or national coverage decision based on section 1862(a)(1) of the Act, and there are no material issues of fact in dispute. An expedited appeals process is already in place for part A appellants under § 405.718. That provision was issued in November 1975 in response to the U.S. Supreme Court's decision in *Weinberger* v. *Salfi,* 422 U.S. 749 (1975), which indicated that the Secretary had the authority to determine in particular cases that full exhaustion of administrative remedies was not necessary for a decision to be ''final'' within the meaning of the Act. The Court's decision left it to the Secretary to determine when and how the expedited review might be initiated. Although the § 405.718 review procedures are a reasonable exercise of the Secretary's authority, they are inconsistent in some respects with the expedited review process that the Secretary is required to provide under section 1869(b)(5) of the Act. The current regulation (§ 405.718) allows a Part A appellant to request expedited review after a reconsideration determination has been issued, but does not specifically require that the appellant must first file a request for an ALJ hearing. This is inconsistent with section 1869(b)(5) of the Act, which clearly contemplates that the expedited review process will be initiated as part of the ALJ hearing process and that, for cases pending at the ALJ level, the ALJ will make the expedited determination as to whether there are any material issues of fact in dispute. Accordingly, subpart G and subpart H need to be revised. We are revising the regulations to conform to section 1869(b)(5) of the Act and to specify that, in order for an appellant to qualify for expedited review, a request for an ALJ hearing must be filed and the amount in controversy for court review must be met. Thus, in cases in which a reconsideration determination or a carrier hearing decision has been made, an expedited appeals process may be used in lieu of an ALJ hearing and DAB review (expedited review may also be initiated at the DAB level) if the appellant asserts, and the ALJ or DAB, as appropriate, agrees that the only issue in controversy in the matter is the constitutionality of a statutory provision or the validity of a regulatory provision, HCFA Ruling, or a national coverage decision based on section 1862(a)(1) of the Act. The ALJ's or DAB's determination to this effect exhausts the appellant's administrative remedies. The appellant may then file a civil action in a Federal district court.

Clarifying Revisions—We are making other clarifying changes to part 405, subparts G and H; part 417, subpart Q, and part 473, as identified below:

- We define ''after receipt of the notice'', to mean that an appellant is presumed to have received a notice from the carrier, the ALJ, or the DAB 5 days after the date on the notice, unless it is shown that the notice was received earlier or later (§ 405.802). The purpose of this addition is to provide a definition that is consistent with the terminology used in subpart G.

• We add the word ''carrier'' to various provisions in subpart H to clearly distinguish between carrier hearings and ALJ hearings.

• For consistency with the Part A appeals provisions in subpart G (§ 405.701(c)), § 405.801(c) is revised to indicate that subparts J and R of 20 CFR part 404 are also applicable to ALJ, DAB, and judicial review conducted under subpart H, except to the extent that specific provisions are contained in subpart H.

• One concern arising from a decision of the Supreme Court in *Darby* v. *Cisneros,* 113 S.Ct. 2539 (1993), is that where regulations deem agency action to be ''final,'' a court could find that action to be immediately reviewable even if the agency action is an initial determination or an intermediate appeal step. Therefore, because the term ''final'' decision has been construed to mean that an administrative decision may be subject to immediate judicial review, we have removed in subparts G and H of part 405, subpart Q of part 417, and part 473 all references to ''final'' decisions (except for those decisions made at the DAB level, which are final and immediately reviewable by the courts). The regulations state that non-final administrative decisions (for example, initial determinations, review/ reconsideration determinations and carrier hearing decisions) are ''binding'' on the appellants, unless appealed in a timely fashion.

• We replace the terms ''Social Security Administration'' and ''Health Care Financing Administration'' with ''SSA'' or ''HCFA'', as appropriate.

We also make a number of technical revisions for consistency and clarification, as included in the following summary.

III. Summary of Revisions

Current regulations concerning appeals of Part A claims determinations are at 42 CFR part 405, subpart G, ''Reconsiderations and Appeals Under Medicare Part A.'' Regulations concerning appeals of Part B claims determinations are at 42 CFR part 405, subpart H, ''Appeals under the Medicare Part B Program.'' We revised these two subparts to incorporate the OBRA '86 and OBRA '87 appeals provisions and to make additional clarifying changes. Corresponding clarifying changes are made to regulations at 42 CFR part 417, subpart Q, ''Beneficiary Appeals'' (for enrollees of HMOs/CMPs/HCPPs) and 42 CFR part 473, subpart B, ''Utilization and Quality Control Peer Review Organizations (PRO) Reconsiderations and Appeals.''

We redesignated and revised §§ 405.718 and 405.718a through 405.718e to modify the procedures for using an expedited review process in accordance with section 1869(b)(5) of the Act, and to improve readability.

We revised § 405.724 to specify that the SSA regulations governing Appeals Council review, apply to Medicare appeals handled by the DAB, the level of appeal between the ALJ hearing and judicial review.

We revised § 405.730 to update a statutory reference and to make minor editorial changes.

We added a new § 405.732 to implement the OBRA '86 provision regarding the limitations imposed on ALJs and courts in their review of national coverage decisions issued by HCFA under section 1862(a)(1) of the Act.

We revised § 405.801(a) to reference the statutory provisions allowing Part B claimants to seek an ALJ hearing if the amount remaining in controversy after the carrier hearing is at least $500 and to seek judicial review if the amount remaining in controversy after the ALJ hearing is at least $1,000. This revision conforms the regulations to current carrier manual instructions that require an appellant to complete the carrier fair hearing process before proceeding to an ALJ hearing.

In § 405.801(b), we moved the definition of ''with reasonable promptness'' to the section on definitions at § 405.802 and replaced it with a section stating our longstanding policy on appeal rights for physicians and suppliers who accept assignment and the appeal rights for non-participating physicians who meet the refund provisions under section 1842(l)(1)(A) of the Act.

We revised § 405.801(c) to improve readability and to indicate that subparts J and R of 20 CFR part 404 are applicable to ALJ, DAB, and judicial review conducted under subpart H, except to the extent that specific provisions are contained in subpart H.

We revised § 405.802 to define ''after receipt of the notice'' as being 5 days after the date on the notice, unless it is shown that the notice was received earlier or later. Also, we moved the definition of ''with reasonable promptness'' from § 405.801(b) to this section.

We revised § 405.803 to update the cross-references, and to reorganize the material in list form to improve readability.

In § 405.806 we removed the reference to a ''final'' decision and made minor editorial changes to improve readability.

In § 405.821, we removed an incorrect cross-reference.

In § 405.831, we revised the heading by adding the words ''at carrier hearing''.

In § 405.832, we revised paragraph (c)(1) to correct a statutory reference.

We revised § 405.833 to make minor editorial changes.

We amended § 405.834 by reorganizing the material in list form and, in accordance with the requirements of section 1869(b)(2)(B) of the Act, we added a requirement that the carrier hearing officer's decision includes notification to the parties of their right to an ALJ hearing if at least $500 remains in controversy following the carrier hearing.

We revised § 405.835 to state that a carrier hearing officer's decision is not binding if a request for an ALJ hearing is made.

In § 405.841 we amended paragraph (b) to correct a regulatory cross reference.

We redesignated § 405.860 as § 405.836. We made minor editorial changes to the section.

We added a new § 405.853 titled ''Expedited review'' to explain the procedure under which a case may go to court using the expedited appeals process, in accordance with section 1869(b)(5) of the Act.

We added a new § 405.855 titled ''ALJ hearing'' to incorporate the provisions of section 9341 of OBRA '86 that amended section 1869(b) of the Act to provide Part B appellants with the right to an ALJ hearing. This section specifies the procedures for requesting an ALJ hearing.

We added a new § 405.856 to specify that the SSA regulations governing Appeals Council review, apply to Medicare appeals handled by the DAB, the level of appeal between the ALJ hearing and judicial review. (Corresponding changes are also made in §§ 417.634 and 473.46).

We added a new § 405.857 titled ''Court review'' that: (1) Specifies the general requirements for requesting judicial review; and (2) codifies section 1869(b)(4) of the Act prohibiting judicial review of regulations or instructions issued prior to January 1, 1981, that relate to a method for determining the amount of payment under Part B.

In a new § 405.860, we specify the provisions of section 1869(b)(3) of the Act limiting review by ALJs and the courts of national coverage decisions issued by us under section 1862(a)(1) of the Act.

We revised several sections in subparts G and H of part 405, and in parts 417 and 473 of the regulations to remove the references to ''final'' decisions. This change removes any implication that a lower administrative decision is immediately appealable to a court. The affected sections are: 405.708 (a) and (b), 405.717, 405.750, 405.806, 405.812, 405.832(a), 405.835, 405.842(b), 417.612, 417.626, 473.38, and 473.48.

Additionally, we made several technical changes throughout the subpart and substituted ''SSA'' or ''HCFA'' where the words ''Social Security Administration'' or ''Health Care Financing Administration'' appeared in the affected sections. In a few sections, we inserted ''he or she'' instead of ''he'' to make those particular sections gender neutral. Other technical changes made reflect current nomenclature and conform with our style requirements.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and either the terms and substances of the proposed rule or a description of the subjects and issues involved. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

Since this rule merely codifies provisions of the Social Security Act and existing agency practices that have been upheld by the U.S. Court of Appeals for the Second Circuit and makes various clarifying changes to existing regulations, we believe that it is unnecessary to publish a proposed rule.

Specifically, this rule codifies the various appeal provisions found in section 9341(a) of the Omnibus Reconciliation Act of 1986 and section 4082(b) of the Omnibus Reconciliation Act of 1987. These two provisions contain limitations on the review by ALJs and the courts of national coverage decisions and the statutory authority for an expedited appeals process under Part A and Part B. This rule also expands our regulations to require that appellants whose claims exceed $500 complete the carrier hearing process before obtaining an ALJ hearing, a long-standing agency practice upheld by the U.S. Court of Appeals for the Second Circuit in *Issacs* v. *Bowen,* 865 F.2d 468 (2d Cir. 1989). The rule also makes clarifying changes to subparts G and H of part 405 and to parts 417 and 473. In addition, these changes to the regulations have no impact on program costs. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule with comment period.

We will consider comments we receive by the date and time specified in the DATES section of this preamble from anyone who believes that in making these changes we have deviated from the provisions of the statute or the existing agency practices referenced above. Although we cannot respond to comments individually, if we change these rules as a result of comments, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule 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 603 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 of a Metropolitan Statistical Area and has fewer than 50 beds.

The provisions of this rule codify statutory requirements regarding appeals rights for Part A and Part B appellants and limitations on the review of national coverage decisions by ALJs and the courts.

Because the appeals provisions of this final rule with comment period have been implemented through the 1988 **Federal Register** notice and manual instructions issued to the Medicare carriers, we do not believe that the publication of this rule will have any significant effect on the appeals process.

The provision in § 405.801(a) requiring a carrier hearing prior to an ALJ hearing regardless of the amount in controversy is not statutory, but a long-standing practice that has been affirmed by the U.S. Court of Appeals for the Second Circuit in *Issacs* v. *Bowen,* 865 F. 2d 468 (2d Cir. 1989). The carrier hearing has proven beneficial to appellants and the government by reducing the number of time-consuming and costly cases forwarded to the ALJs. Additionally, in order to provide Part B appellants with the same rights as Part A appellants, we propose to include DAB review as an additional level of review for Part B claims.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PRO), Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, is amended as set forth below:

Subpart G—Reconsiderations and Appeals Under Medicare Part A

1. The authority citation for subpart G continues to read as follows:

Authority: Secs. 1102, 1151, 1154, 1155, 1869(b), 1871, 1872 and 1879 of the Social Security Act (42 U.S.C. 1302, 1320, 1320c, 1320c-3, 1320c-4, 1395ff(b), 1395hh, 1395ii and 1395pp).

2. Section 405.717 is revised to read as follows:

§ 405.717 Effect of a reconsidered determination.

The reconsidered determination is binding upon all parties unless—

(a) A request for a hearing is filed with SSA or HCFA within 60 days after the date of receipt of notice of the reconsidered determination by the parties (for purposes of this section, the date of receipt of notice of the reconsidered determination is presumed to be 5 days after the date of the notice, unless it is shown that the notice was received earlier or later); or

(b) The reconsidered determination is revised in accordance with § 405.750; or

(c) The expedited appeals process is used in accordance with § 405.718.

§§ 405.718a through 405.718e [Removed]

3. Sections 405.718a through 405.718e are removed and § 405.718 is revised to read as follows:

§ 405.718 Expedited appeals process.

(a) *Conditions for use of expedited appeals process (EAP).* A party may use the EAP to request court review in place of an administrative law judge (ALJ) hearing or Departmental Appeals Board (DAB) review if the following conditions are met:

(1) HCFA has made a reconsideration determination; an ALJ has made a hearing decision; or DAB review has been requested, but a final decision has not been issued.

(2) The filing entity is a party referred to in § 405.718(d).

(3) The party has filed a request for an ALJ hearing in accordance with § 405.722, or DAB review in accordance with 20 CFR 404.968.

(4) The amount remaining in controversy is $1,000 or more.

(5) If there is more than one party to the reconsideration determination or hearing decision, each party concurs, in writing, with the request for the EAP.

(b) *Content of the request for EAP.* The request for the EAP:

(1) Alleges that there are no material issues of fact in dispute; and

(2) Asserts that the only factor precluding a decision favorable to the party is a statutory provision that is unconstitutional or a regulation, national coverage decision under section 1862(a)(1) of the Act, or HCFA Ruling that is invalid.

(c) *Place and time for requesting an EAP.*—(1) *Place for filing request.* The person must file a written request—

(i) At an office of SSA or HCFA; or

(ii) If the person is in the Philippines, at the Veterans Administration Regional Office or with an ALJ; or

(iii) If the person is a qualified railroad retirement beneficiary, at an office of the Railroad Retirement Board.

(2) *Time of filing request.* The party may file a request for the EAP—

(i) If the party has requested a hearing, at any time prior to receipt of the notice of the ALJ's decision;

(ii) Within 60 days after the date of receipt of notice of the ALJ's decision or dismissal, unless the time is extended in accordance with the standards set out in 20 CFR 404.925(c). For purposes of this section, the date of receipt of the notice is presumed to be 5 days after the date on the notice, unless it is shown that the notice was received later; or

(iii) If the party has requested DAB review, at any time prior to receipt of notice of the Board's decision.

(d) *Parties to the EAP.* The parties to the EAP are the persons who were parties to the reconsideration determination and, if appropriate, to the hearing.

(e) *Determination on request for EAP.* (1) For EAP requests initiated at the ALJ level, an ALJ determines whether all conditions of paragraphs (a) and (b) of this section are met.

(2) If a hearing decision has been issued, the DAB determines whether all conditions of paragraphs (a) and (b) of this section are met.

(f) *ALJ or DAB certification for the EAP.* If the party meets the requirements for the EAP, the ALJ or the DAB, as appropriate, certifies the case in writing stating that:

(1) The facts involved in the claim are not in dispute;

(2) Except as indicated in paragraph (f)(3) of this section, HCFA's interpretation of the law is not in dispute;

(3) The sole issue(s) in dispute is the constitutionality of a statutory provision or the validity of a regulation, HCFA Ruling, or national coverage decision based on section 1862(a)(1) of the Act.

(4) Except for the provision challenged, the right(s) of the party is established; and

(5) The determination or decision made by the ALJ or DAB is final for purposes of seeking judicial review.

(g) *Effect of ALJ or DAB certification.* (1) Following the issuance of the certification described in paragraph (f) of this section, the party waives completion of the remaining steps of the administrative appeals process.

(2) The 60-day period for filing a civil suit in a Federal district court begins on the date of receipt of the ALJ or DAB certification.

(h) *Effect of a request for EAP that does not result in certification.* If a request for the EAP does not meet all the conditions for use of the process, the ALJ or DAB so advises the party and treats the request as a request for hearing or DAB review, as appropriate.

4. Section 405.724 is revised to read as follows:

§ 405.724 Departmental Appeals Board (DAB) Review.

Regulations beginning at 20 CFR 404.967 regarding SSA Appeals Council Review are also applicable to DAB review of matters addressed by this subpart.

5. Section 405.730 is revised to read as follows:

§ 405.730 Court review.

(a) To the extent authorized by sections 1869, 1876(c)(5)(B), and 1879(d) of the Act, a party to a Departmental Appeals Board (DAB) decision or an ALJ decision if the DAB does not review the ALJ decision, may obtain a court review if the amount remaining in controversy is $1,000 or more. A party may obtain court review by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act. The filing procedure is set forth at 20 CFR 422.210.

(b) A party to a reconsidered determination or an ALJ hearing decision may obtain a court review if the amount in controversy is $1,000 or more, and he or she requests and meets the conditions for the expedited appeals process set forth in § 405.718.

6. Section 405.732 is added to read as follows:

§ 405.732 Review of national coverage decisions (NCDs).

(a) *General.* (1) HCFA makes NCDs either granting, limiting, or excluding Medicare coverage for a specific medical service, procedure or device. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, PROs, HMOs, CMPs, and HCPPs when published in HCFA program manuals or the **Federal Register**.

(2) Under section 1869(b)(3) of the Act, only NCDs made under section 1862(a)(1) of the Act are subject to the conditions of paragraphs (b) through (d) of this section.

(b) *Review by ALJ.* (1) An ALJ may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

(c) *Review by Court.* (1) A court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemented record.

(2) A Federal court may not hold unlawful or set aside an NCD because it was not issued in accordance with the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) or section 1871(b) of the Act.

(d) *Remands*—(1) *Secretary's action.* When a court remands an NCD matter to the Secretary because the record in support of the NCD is incomplete or otherwise lacks adequate information, the Secretary remands the case to HCFA in order to supplement the record.

(2) *Remand to HCFA.* HCFA supplements the record with new or updated evidence, including additional information from other sources, and may issue a revised NCD.

(3) *Final Actions.* (i) The proceedings to supplement the record are expedited.

(ii) When HCFA does not issue a revised NCD, it returns the supplemented record to the court for review.

(iii) When HCFA issues a revised NCD, it forwards the case to an ALJ who issues a new decision applying the revised NCD to the facts of the claim(s) under consideration. The ALJ's decision is subject to DAB review and, ultimately, judicial review.

7. In § 405.750, the heading and paragraph(b) introductory text are revised to read as follows:

§ 405.750 Time period for reopening initial, revised, or reconsidered determinations and decisions or revised decisions of an ALJ or the Departmental Appeals Board (DAB); binding effect of determination and decisions.

* * * * *

(b) *Reopenings concerning a request for payment.* An initial, revised, or reconsidered determination of HCFA, or a decision or revised decision of an ALJ or of the DAB, with respect to an individual's right concerning a request for payment under Medicare Part A, which is otherwise binding under 20 CFR 404.955 or 404.981 and §§ 405.708 or 405.717 of this subpart may be reopened:

* * * * *

Subpart H—Appeals Under the Medicare Part B Program

8. The authority citation for subpart H continues to read as follows:

Authority: Secs. 1102, 1842(b)(3)(C), and 1869(b) of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), 1395ff(b)).

9. Section 405.801 is revised to read as follows:

§ 405.801 Part B appeals—general description.

(a) The Medicare carrier makes an initial determination when a request for payment for Part B benefits is submitted. If an individual beneficiary is dissatisfied with the initial determination, he or she may request, and the carrier will perform, a review of the claim. Following the carrier's review determination, the beneficiary may obtain a carrier hearing if the amount remaining in controversy is at least $100. The beneficiary is also entitled to a carrier hearing without the benefit of a review determination when the initial request for payment is not being acted upon with reasonable promptness (as defined in § 405.802). Following the carrier hearing, the beneficiary may obtain a hearing before an ALJ if the amount remaining in controversy is at least $500. If the beneficiary is dissatisfied with the decision of the ALJ, he or she may request the Departmental Appeals Board (DAB) to review the case. Following the action of the DAB, the beneficiary may file suit in Federal district court if the amount remaining in controversy is at least $1,000.

(b) The rights of a beneficiary under paragraph (a) of this section to appeal the carrier's initial determination are granted also to—

(1) A physician or supplier that furnishes services to a beneficiary and that accepts an assignment from the beneficiary, or

(2) A physician who meets the conditions of section 1842(l)(1)(A) of the Act pertaining to refund requirements for nonparticipating physicians who have not taken assignment on the claim(s) at issue.

(c) Procedures governing the determinations by SSA as to whether an individual has met basic Part B entitlement requirements are covered in subpart G of this part and 20 CFR part 404, subpart J. Subparts J and R of 20 CFR part 404 are also applicable to ALJ, DAB, and judicial review conducted under subpart H, except to the extent that specific provisions are contained in this subpart.

10. In § 405.802, the undesignated introductory text is republished and two new definitions are added, in alphabetical order, to read as follows:

§ 405.802 Definitions.

As used in subpart H of this part, the term—

After receipt of the notice means 5 days after the date on the notice, unless it is shown that the notice was received earlier or later.

* * * * *

With reasonable promptness means within a period of 60 consecutive days after the receipt by the carrier of a request for payment.

11. Section 405.803 is revised to read as follows:

§ 405.803 Initial determination.

(a) Carriers make initial determinations regarding claims for benefits under Medicare Part B.

(b) An initial determination for purposes of this subpart includes determinations such as the following:

(1) Whether services furnished are covered.

(2) Whether the deductible has been met.

(3) Whether the receipted bill or other evidence of payment is acceptable.

(4) Whether the charges for services furnished are reasonable.

(5) If the services furnished to a beneficiary by a physician or a supplier pursuant to an assignment under § 424.55 of this chapter are not covered because they are determined to be not reasonable and necessary under § 411.15(k) of this chapter, whether the beneficiary, physician or supplier, or a physician who meets the requirements of § 411.408, knew or could reasonably have been expected to know at the time the services were furnished that the services were not covered.

(c) The following are not initial determinations for purposes of this subpart:

(1) Any issue or factor for which SSA or HCFA has sole responsibility, for example, whether an independent laboratory meets the conditions for coverage of services; whether a Medicare overpayment claim should be compromised, or collection action terminated or suspended.

(2) Any issue or factor which relates to hospital insurance benefits under Medicare Part A.

12. Section 405.806 is revised to read as follows:

§ 405.806 Effect of Initial Determination.

The initial determination is binding upon all parties to the claim for benefits unless the determination is—

(a) Reviewed in accordance with §§ 405.810 through 405.812; or

(b) Revised as a result of a reopening in accordance with § 405.841.

13. Section 405.833 is revised to read as follows:

§ 405.833 Record of carrier hearing.

A complete record of the proceedings at the carrier hearing is made. The testimony is transcribed and copies of other documentary evidence are reproduced in any case when directed by the hearing officer, the carrier, or HCFA. The record will also be transcribed and reproduced at the request of any party to the hearing provided the requesting party bears the cost.

14. Section 405.834 is revised to read as follows:

§ 405.834 Carrier hearing officer's decision.

(a) As soon as practicable after the close of a carrier hearing, the carrier hearing officer issues a decision in the case based upon the evidence presented at the hearing or otherwise included in the hearing record. The decision is issued as a written notice to the parties and contains—

(1) Findings of fact,

(2) A statement of reasons, and

(3) Notification to the parties of their right to an ALJ hearing when the amount remaining in controversy is at least $500.

(b) A copy of the decision is mailed to the parties to the hearing at their last known addresses.

15. Section 405.835 is revised to read as follows:

§ 405.835 Effect of carrier hearing officer's decision.

The carrier hearing officer's decision is binding upon all parties to the hearing unless—

(a) A request for an ALJ hearing is filed in accordance with § 405.855, or

(b) The decision is revised in accordance with § 405.841.

16. Section 405.860 is redesignated as § 405.836 and revised to read as follows:

§ 405.836 Authority of the carrier hearing officer.

The carrier hearing officer, in adjudicating Medicare Part B claims, complies with all of the provisions of, and regulations issued under, title XVIII of the Act, as well as with HCFA Rulings, national coverage decisions, and other policy statements, instructions, and guides issued by HCFA.

17. Section 405.853 is added to read as follows:

§ 405.853 Expedited appeals process.

(a) *Conditions for use of expedited appeals process (EAP).* A party may use the EAP set forth in § 405.718 of this chapter to request court review in place of the ALJ hearing or Departmental Appeals Board (DAB) review if the following conditions are met:

(1) The carrier hearing officer has made a decision; an ALJ has made a hearing decision; or DAB review has been requested, but a final decision has not been issued.

(2) The filing entity is a party referred to in § 405.718(d) of this chapter.

(3) The party has filed a request for an ALJ hearing in accordance with § 405.855, or DAB review in accordance with 20 CFR 404.968.

(4) The amount remaining in controversy is $1,000 or more.

(5) If there is more than one party to the hearing decision, each party concurs, in writing, with the request for an EAP.

(b) *Content of the request for EAP.* The request for an EAP:

(1) Alleges that there are no material issues of fact in dispute; and

(2) Asserts that the only factor precluding a decision favorable to the party is a statutory provision that is unconstitutional or a regulation, national coverage decision under section 1862(a)(1) of the Act, or HCFA Ruling that is invalid.

18. Section 405.855 is added to read as follows:

§ 405.855 ALJ hearing.

(a) *Right to hearing.* A party to the carrier hearing has a right to a hearing before an ALJ if—

(1) The party files a written request for an ALJ hearing within 60 days after receipt of the notice of the carrier hearing decision; and

(2) The amount remaining in controversy is $500 or more.

(b) *Place of filing hearing request.* The request for an ALJ hearing must be made in writing and filed with the carrier that issued the decision, a Social Security office, or, in the case of a qualified railroad retirement beneficiary, an office of the Railroad Retirement Board.

(c) *Effect of ALJ hearing decision.* (1) An ALJ's decision is binding on all parties to the hearing unless—

(i) The DAB reviews the ALJ decision;

(ii) The DAB does not review the ALJ decision, and the party requests judicial review;

(iii) The decision is revised by the DAB or an ALJ in accordance with the provisions of § 405.750 of this chapter; or

(iv) The expedited appeals process is used.

19. Section 405.856 is added to read as follows:

§ 405.856 Departmental Appeals Board (DAB) review.

Regulations beginning at 20 CFR 404.967 regarding SSA Appeals Council Review are applicable to DAB review of matters addressed by this subpart.

20. Section 405.857 is added to read as follows:

§ 405.857 Court review.

(a) *General rule.* To the extent authorized by sections 1869, 1876(c)(5)(B), and 1879(d) of the Act, a party to a DAB decision, or an ALJ decision if the DAB does not review the ALJ's decision, may obtain a court review if the amount remaining in controversy is $1,000 or more. A party may obtain court review by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act. The filing procedure is set forth in 20 CFR 422.210.

(b) *Prohibition against court review of certain Part B regulations or instructions.* Under section 1869(b)(4) of the Act, a court may not review a regulation or instruction that relates to a method of payment under Part B if the regulation was promulgated, or the instruction issued, before January 1, 1981.

21. Section 405.860 is added to read as follows:

§ 405.860 Review of national coverage decisions (NCDs).

(a) *General.* (1) HCFA makes NCDs either granting, limiting, or excluding Medicare coverage for a specific medical service, procedure or device. NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act. An NCD is binding on all Medicare carriers, fiscal intermediaries, PROs, HMOs, CMPs, and HCPPs when published in HCFA program manuals or the **Federal Register**.

(2) Under section 1869(b)(3) of the Act, only NCDs made under section 1862(a)(1) of the Act are subject to the conditions of paragraphs (b) through (d) of this section.

(b) *Review by ALJ.* (1) An ALJ may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD has been applied correctly to the claim.

(c) *Review by Court.* (1) A court's review of an NCD is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record regarding the NCD. The court may not invalidate an NCD except upon review of the supplemented record.

(2) A Federal court may not hold unlawful or set aside an NCD because it was not issued in accordance with the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) or section 1871(b) of the Act.

(d) *Remands*—(1) *Secretary's action.* When a court remands an NCD matter to the Secretary because the record in support of the NCD is incomplete or otherwise lacks adequate information, the Secretary remands the case to HCFA in order to supplement the record.

(2) *Remand to HCFA.* HCFA supplements the record with new or updated evidence, including additional information from other sources, and may issue a revised NCD.

(3) *Final Actions.* (i) The proceedings to supplement the record, are expedited.

(ii) When HCFA does not issue a revised NCD, it returns the supplemented record to the court for review.

(iii) When HCFA issues a revised NCD, it forwards the case to an ALJ who issues a new decision applying the revised NCD to the facts of the claim(s) under consideration. The ALJ's decision is subject to DAB review and, ultimately, judicial review.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

B. Part 417 is amended as set forth below:

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

2. Section 417.634 is revised to read as follows:

§ 417.634 Departmental Appeals Board (DAB) review.

Any party to the hearing, including the HMO or CMP, who is dissatisfied with the hearing decision, may request the DAB to review the ALJ's decision or dismissal. Regulations beginning at 20 CFR 404.967 regarding SSA Appeals Council Review are applicable to DAB review for matters addressed by this subpart.

PART 473—RECONSIDERATIONS AND APPEALS

C. Part 473 is amended as set forth below:

1. The authority citation for part 473 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 473.46, paragraph (a) is revised to read as follows:

§ 473.46 Departmental Appeals Board (DAB) and judicial review.

(a) The circumstances under which the DAB will review an ALJ hearing decision or dismissal are the same as those set forth at 20 CFR 404.970, (''Cases the Appeals Council will review'').

* * * * *

D. Technical Amendments.

§§ 405.711, 405.712, 405.714, 405.715, 405.716, 405.720, 405.722, 405.750, 405.807, 405.841, 405.871 [Amended]

1. In §§ 405.711, 405.712, 405.714, 405.715, 405.716, 405.720, 405.722, 405.750(a), 405.807(b), and 405.871, the following changes are made:

a. The words ''Social Security Administration'' are removed wherever they appear, and ''SSA'' is added in their place.

b. The words ''Health Care Financing Administration'' are removed wherever they appear, and ''HCFA'' is added in their place.

§ 405.708, 405.812, 405.832, 405.842, 417.612, 417.626 [Amended]

2. In §§ 405.708(a) and (b), 405.812, 405.832(a), 405.842(b), 417.612(a) and 417.626 the word ''final'' or the words ''final and'' are removed wherever they appear.

§§ 405.722, 405.747, 417.632 [Amended]

3. Sections 405.722, 405.747, and 417.632(b) are amended by removing the term ''presiding officer'' wherever it appears and adding, in its place, ''ALJ''.

§ 405.821 [Amended]

4. In § 405.821, paragraph (c), is amended by removing the parenthetical phrase ''(see § 405.801)''.

§ 405.831 [Amended]

5. In § 405.831, the heading is amended by adding the words ''at carrier hearing'' before the word ''and''.

§ 405.832 [Amended]

6. In § 405.832, paragraph (c)(1) is amended by removing the reference to ''section 1842(b)(3)(c)'' and adding in its place, ''section 1842(b)(3)(C)''.

§ 405.841 [Amended]

7. In § 405.841, paragraph (b) is amended by removing the parenthetical reference ''(see 20 CFR 404.958)'' and adding in its place the parenthetical reference ''(see 20 CFR 404.988(b) and 404.989)''.

§ 473.38 [Amended]

8. In § 473.38 the following changes are made:

(a) The heading is amended by removing the word ''Finality'' and adding in its place ''Effect''.

(b) In paragraph (a), the words ''final and'' are removed.

§ 473.48 [Amended]

9. a. In § 473.48, in paragraphs (a)(1) and (a)(2), the word ''final'' is removed and ''binding'' is added in its place.

b. In paragraph (b), the word ''final'' is removed.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 7, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 97–12263 Filed 5–9–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Centers for Disease Control and Prevention

42 CFR Part 493

[HSQ–237–FC]

RIN 0938–AH84

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Requirements—Extension of Certain Effective Dates for Clinical Laboratory Requirements Under CLIA

AGENCY: Centers for Disease Control and Prevention (CDC) and Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule extends certain effective dates for clinical laboratory requirements in regulations published on February 28, 1992, and subsequently revised December 6, 1994, that implemented provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This rule extends the phase-in date of the quality control requirements applicable to moderate and high complexity tests and extends the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing.

These effective dates are extended to allow the Department additional time to issue revised quality control requirements and to ensure laboratory directors are able to complete certification requirements. These effective date extensions do not reduce

the current requirements for quality test performance.

DATES: These regulations are effective on May 12, 1997.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 11, 1997.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Disease Control and Prevention, Department of Health and Human Services, Attention: HSQ–237–FC, 4770 Buford Hwy., NE., MS F11, Atlanta, Georgia 30341–3724.

If you prefer, you may deliver your written comments (1 original and 3 copies) to the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HSQ237FC@hcfa.gov. E-mail comments must include the full name and address of the sender. 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.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ–237–FC. Written 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 5:00 p.m. (phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Rhonda S. Whalen (CDC), (770) 488–7655.

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 1992, we published final regulations with an opportunity for public comment in the **Federal Register**, at 57 FR 7002, setting forth the requirements for laboratories that are subject to the Clinical Laboratory Improvement Amendments of 1988 (CLIA). These regulations established uniform requirements for all laboratories regardless of location, size, or type. In developing the regulations, we included requirements that would ensure the quality of laboratory services and be in the best interest of the public health. We recognized that a rule of this scope required time for laboratories to understand and to implement the new requirements. Therefore, certain requirements were phased-in and given prospective effective dates. We also planned to address the comments we received on the February 28, 1992 rule and make modifications, if necessary, in a subsequent final rule.

On December 6, 1994, we published a final rule with opportunity for comment in the **Federal Register** at 59 FR 62606. This revision to the February 28, 1992 final rule included provisions that extended the phase-in of the quality control requirements applicable to moderate and high complexity tests and the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing. These changes were made due to the resource constraints that had prevented the Department of Health and Human Services from establishing the process to review manufacturers' test system quality control instructions for CLIA compliance and the inability of many laboratory directors to complete certification requirements within the time period originally specified.

II. Revisions to the Regulations

The date extensions provided by the December 6, 1994 rule have proven to be inadequate for the reasons set forth below. In addition, based on our evaluation of comments submitted in response to the December 6, 1994 rule and on advice from the Clinical Laboratory Improvement Advisory Committee (CLIAC) concerning the quality control requirements appropriate to ensure quality testing and the qualification requirements for laboratory directors, we have found it necessary to make the following revisions to our regulations:

- We are extending from September 1, 1996 to July 31, 1998 the current phase-in quality control requirements for moderate and high complexity tests. The phase-in quality control requirements for unmodified, moderate complexity tests cleared by the Food and Drug Administration (FDA) (through 510(k) or premarket approval processes, unrelated to CLIA), are less stringent than the requirements applicable to high complexity and other moderate complexity tests.
- We are extending from September 1, 1996 to July 31, 1998 the date for laboratories to meet certain CLIA quality control requirements by following manufacturers' FDA CLIA-cleared test system instructions.
- We are extending from September 1, 1996 to July 31, 1998 the date by which individuals with doctoral degrees must obtain board certification to qualify as director of a laboratory that performs high complexity tests.

These revisions are discussed in more detail below.

A. Quality Control Requirements

42 CFR § 493.1202 contains the quality control requirements applicable to moderate and high complexity tests and allows a laboratory that performs tests of moderate complexity, using test systems cleared by the FDA through the section 510(k) or premarket approval processes, until September 1, 1996 to comply with the quality control provisions of part 493 subpart K by meeting less stringent quality control requirements, as long as the laboratory has not modified the instrument, kit, or test system's procedure.

Section 493.1203, effective beginning September 1, 1996, establishes a mechanism for laboratories using commercial, unmodified tests to fulfill certain quality control requirements by following manufacturers' test system instructions that have been reviewed and determined by the FDA to meet applicable CLIA quality control requirements. Implementation of this review process, however, depended upon the availability of sufficient additional resources necessary to meet the projected workload.

Comments received on the February 1992 final rule expressed opposition to the quality control phase-in provision. Following the publication of the December 1994 final rule, we received additional comments indicating continued concerns about the quality control phase-in. A final rule addressing quality control issues raised by commenters on the February 1992 and December 6, 1994 rules is still under development. Therefore, we are extending the September 1, 1996 sunset date for quality control standards in § 493.1202 to July 31, 1998 and extending the effective date for § 493.1203 from September 1, 1996 to July 31, 1998 to allow laboratories to continue to meet current regulations until we make further determinations regarding these requirements. To assist us in determining the types of quality control requirements necessary to monitor laboratory test performance, we have solicited advice from the CLIAC and, in addition, we held a two-day public meeting in September 1996 for manufacturers and others to make presentations on quality control.

We recognize that these revisions may have substantive implications for those laboratories performing only unmodified, moderate complexity testing previously cleared through the FDA's section 510(k) or premarket approval processes. We are, therefore, maintaining the provisions for these tests, as listed in § 493.1202(c), until July 31, 1998. We expect to revise the existing quality control regulations by this date.

B. Laboratory Director Qualifications

Section 493.1443(b)(3) provides that a director of a laboratory performing high complexity testing, who has an earned doctoral degree in chemical, physical, biological, or clinical laboratory science from an accredited institution, must be certified by a board recognized by the Department as of September 1, 1996. The phase-in, revised from 2 to 4 years, was designed to allow the Department adequate time to review requests for approval of certification programs and to ensure that a laboratory director with a doctoral degree had sufficient time to successfully complete the requirements for board certification.

In 1992, we expected that an adequate number of certification boards would apply and be approved. On that basis, we required board certification by September 1, 1994. This date was extended to September 1, 1996 due to much slower progress than anticipated. While the Department has announced the approval of two additional certification boards in a **Federal Register** notice published July 8, 1996, at 61 FR 35762, additional requests for board approval are currently under review. We believe a further extension of the September 1, 1996 date is in order.

As stated previously in the preamble to the December 1994 final rule, a number of commenters on the February 1992 final rule suggested that board certification not be a mandatory requirement for currently employed individuals. In addition, CLIAC has suggested, and we are still considering, the development of alternative provisions to qualify currently employed individuals with a doctoral degree on the basis of laboratory training or experience, in lieu of requiring board certification.

We are extending the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing to July 31, 1998. This extension will allow time for the approval of additional boards, and to remove the inadvertent disqualification of doctoral-degreed individuals with laboratory training and experience as high complexity laboratory directors. Between the present time and the July 1998 date, we will review the qualifications required for laboratory directors to ensure that they are appropriate and determine whether modifications should be made for inclusion in the final rule being developed to address other CLIA issues raised by commenters on the February 1992 final rule.

In summary, we are extending the phase-in period in § 493.1443(b)(3) from September 1, 1996 to July 31, 1998.

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

These revisions are essential, because if these dates for quality control requirements are not extended, many laboratories performing moderate complexity testing will be faced unnecessarily with meeting more stringent and burdensome quality control requirements at a time when we are considering revisions to these same quality control requirements. Since we plan to publish revised quality control requirements in future rulemaking, to impose more stringent requirements when these regulations are currently under review is unreasonable. With respect to the personnel standards addressed in this rule, if the date for board certification of individuals with doctoral degrees is not extended, those individuals qualified as laboratory directors through their doctoral degree and certification by a board currently under review by us could be disenfranchised until they have an opportunity to be certified by an approved board. Although these directors have shown competency through certification by a professional board, we have not yet completed our review of all boards that have applied. Extending the date under these regulations governing laboratory director requirements will provide the opportunity for completion of these reviews without forcing the removal of individuals who have already shown their ability to fulfill the tasks we ask of laboratory directors. Accordingly, we believe that it is impracticable, unnecessary, and not in the public interest to engage in proposed rulemaking and believe there is good cause for doing so and to issue this final rule with a 60-day comment period. Also, because the September 1, 1996 date has caused these regulations to expire, additional urgency has been placed on the implementation of this rule. We, therefore, believe there is good cause to waive a delay in the effective date of these rules. To do otherwise would create unnecessary confusion among laboratories in understanding the requirements they must meet with respect to quality control and laboratory director qualifications. It could also impose unnecessary burdens on laboratories and hardships on individuals affected by these requirements.

IV. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories are considered to be small entities. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. That 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 of a Metropolitan Statistical Area and has fewer than 50 beds.

Extending the phase-in periods will continue the quality control requirements in effect prior to September 1, 1996, allow additional time to make further determinations regarding revision to the quality control requirements, and not change costs, savings, burden, or opportunities to manufacturers, laboratories, individuals administering tests, or patients receiving the tests.

For these reasons, we have determined, and the Secretary certifies, that this regulation does not result in a significant impact on a substantial number of small entities and does not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. However, we will consider all comments we receive on the date extensions described in this rule by the date and time specified in the ADDRESSES section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 493

Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 is revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), and the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), and the sentence following 1395x(s)(11) through 1395x(s)(16)).

§ 493.1202 [Amended]

2. In § 493.1202, in the section heading, remove ''September 1, 1996.'' and add in its place ''July 31, 1998.''.

§ 493.1203 [Amended]

3. In § 493.1203, in the section heading, remove ''September 1, 1996.'' and add in its place ''July 31, 1998.''.

§ 493.1443 [Amended]

4. Section 493.1443 is amended as set forth below:

a. In § 493.1443(b)(3)(ii) introductory text, remove ''September 1, 1996,'' and add in its place ''July 31, 1998,''.

b. In § 493.1443(b)(3)(ii)(C), remove ''September 1, 1996,'' and add in its place ''July 31, 1998,''.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 17, 1996.

David Satcher,

Director, Centers for Disease Control and Prevention.

Dated: December 20, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 28, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–12271 Filed 5–9–97; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
ARIZONA	
Apache County (Unincorporated Areas) (FEMA Docket No. 7198)	
Nutrioso Creek:	
At Nelson Reservoir	*7,416
At confluence of Milk Creek (limit of detailed study)	*7,777
Colter Creek:	
At County Road 2112	*7,595
Approximately 10,800 feet upstream of County Road 2112	*7,772
Maps are available for inspection at 75 West Cleveland, St. Johns, Arizona.	
Pima County (Unincorporated Areas) (FEMA Docket No. 7181)	
Santa Cruz River:	
Just upstream of Pima Mine Road	*2,668
4,650 feet upstream of Pima Mine Road	*2,673
3,850 feet downstream of Sahura Rita Road	*2,698
Just upstream of Sahura Rita Road	*2,711
1,870 feet upstream of Sahura Rita Road	*2,716
3,350 feet downstream of U.S. Highway 89	*2,741
Just upstream of U.S. Highway 89	*2,751
1,770 feet upstream of U.S. Highway 89	*2,758
11,270 feet upstream of U.S. Highway 89	*2,790
5,010 feet downstream of Continental Road	*2,829
370 feet upstream of Continental Road	*2,850
7,340 feet upstream of Continental Road	*2,869
12,410 feet upstream of Continental Road	*2,888
21,540 feet upstream of Continental Road	*2,924
19,800 feet downstream of Pima County-Santa Cruz County corporate limits	*2,960
7,128 feet downstream of Pima County-Santa Cruz County corporate limits	*3,004
500 feet downstream of Pima County-Santa Cruz County corporate limits	*3,029
Just downstream of Pima County-Santa Cruz County corporate limits	*3,030
Maps are available for inspection at the Pima County Department of Transportation and Flood Control District, Public Works Building, 201 North Stone Avenue, Tucson, Arizona.	
Santa Cruz County (Unincorporated Areas) (FEMA Docket No. 7188)	
Santa Cruz River:	
At Santa Cruz-Pima County limits	*3,029
At confluence with Sopori Wash	*3,035
Approximately 600 feet upstream of confluence with Sopori Wash	*3,037
Approximately 800 feet downstream of convergence with flow east of Southern Pacific Railroad	*3,040
At convergence with flow east of Southern Pacific Railroad	*3,042
Sopori Wash:	
At confluence with Santa Cruz River	*3,036
Approximately 250 feet upstream of Santa Cruz River	*3,036
Approximately 530 feet upstream of Santa Cruz River	*3,036
Maps are available for inspection at the Santa Cruz County Flood Control District and Flood Plain Administration, 2150 North Congress Drive, Nogales, Arizona.	
Tucson (City), Pima County (FEMA Docket No. 7198)	
Anklam Wash:	
Approximately 2,750 feet upstream of confluence with Silvercroft Wash	*2,345
At Greasewood Road	*2,398
"A" Wash:	
Approximately 750 feet upstream of confluence with Anklam Wash	*2,357
Approximately 2,000 feet upstream of confluence with Anklam Wash	*2,379
Maps are available for inspection at the Tucson City Engineer's Office, County-City Public Works Building, 201 North Stone Avenue, Third Floor, Tucson, Arizona.	
CALIFORNIA	
Alameda County (Unincorporated Areas) (FEMA Docket No. 7188)	
Arroyo Mocho:	
At corporate limit with City of Pleasanton (500 feet upstream of confluence of Arroyo Las Positas)	*351
Just upstream of El Charro Road	*357
Arroyo Las Positas:	
At confluence with Arroyo Mocho	*345

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Just downstream of El Charro Road	*355
Collier Canyon Creek:	
At confluence of Collier Canyon Tributary at Las Positas College Road	*443
Approximately 5,000 feet upstream of Las Positas College Road	*490
Collier Canyon Tributary:	
Approximately 1,000 feet upstream of confluence with Collier Canyon Creek	*455
Approximately 500 feet south of bend in Hartman Road	*534
Maps are available for inspection at the Alameda County Public Works Agency, 399 Elmhurst Street, Hayward, California.	
Dublin (City), Alameda County (FEMA Docket No. 7188)	
Dublin Creek:	
Just west of I–580 and I–680 Interchange	*332
Just upstream of Donlon Way	*380
Approximately 1,000 feet upstream of Donlon Way	*382
Line J–1:	
At confluence with Alamo Canal	*328
Approximately 300 feet upstream of Bellina Street	*405
Line J–3:	
At confluence with Line J–1 (just north of Amador Valley Boulevard)	*339
Just upstream of Silvergate Drive	*420
Line J–4:	
At confluence with Line J–3	*359
At Silvergate Drive (extended)	*362
Line J–5:	
Just west of Ramon Road	*386
Maps are available for inspection at the City of Dublin Building Department, City Hall, 100 Civic Plaza, Dublin, California.	
Livermore (City), Alameda County (FEMA Docket No. 7188)	
Collier Canyon Creek:	
Just north of Interstate 580 frontage road	*412
Just downstream of Collier Canyon Road	*437
At confluence of Collier Canyon Tributary	*443
Maps are available for inspection at the City of Livermore Planning Department, 1052 South Livermore Avenue, Livermore, California.	
Madera County (Unincorporated Areas) (FEMA Docket No. 7206)	
Fresno River:	
Just upstream of State Highway 41	*2,253
Approximately 1,100 feet upstream of Road 426	*2,262
China Creek:	
Approximately 500 feet upstream of confluence with Fresno River	*2,256
Approximately 4,160 feet upstream of Road 425–B	*2,363
Oak Creek:	
At confluence with Fresno River	*2,262
Just upstream of Road 428	*2,342
Oak Creek Tributary:	
Approximately 500 feet upstream of confluence with Oak Creek	*2,310
Approximately 1,100 feet upstream of confluence with Oak Creek	*2,315
Maps are available for inspection at the Madera County Department of Engineering and General Service, 135 West Yosemite Avenue, Madera, California.	
Modoc County (Unincorporated Areas) (FEMA Docket No. 7206)	
Bidwell Creek:	
Approximately 2,300 feet downstream of Fee Street	*4,497
Approximately 1,800 feet upstream of North Street	*4,595
Maps are available for inspection at the Modoc County Planning Department, 202 West Fourth Street, Alturas, California.	
Santa Paula (City) and Ventura County (Unincorporated Areas) (FEMA Docket No. 7206)	
Santa Paula Creek:	
At Southern Pacific Railroad (SPRR)	*319
Approximately 4,500 feet upstream of SPRR	*400
Approximately 3,500 feet downstream of Rafferty Road	*536
Profile Base Line No. 1:	
Approximately 550 feet downstream of Say Road	None
Approximately 2,450 feet upstream of Hawthorne Street	None
Profile Base Line No. 2:	
At Outer Drive	*240
Approximately 150 feet downstream of Seventh Street	*248
Just downstream of 12th Street	*267
At Garcia Street	#3
Profile Base Line No. 3:	
Approximately 400 feet downstream of Orchard Street	None
Approximately 200 feet upstream of Gatewood Lane	None
Maps for the City of Santa Paula are available for inspection at 200 South Tenth, Santa Paula, California, and for the unincorporated areas of Ventura County at 800 South Victoria Avenue, Ventura, California.	
Simi Valley (City), Ventura County (FEMA Docket No. 7194)	
Arroyo Simi:	
Approximately 2,800 feet downstream of Madera Road	*680
Approximately 4,450 feet upstream of Rockingham Drive	*1,118
At intersection of Tierra Rejada and Madera Roads	#2
At intersection of Moreland and Madera Roads	#3
At intersection of Los Angeles Avenue and Sinaloa Road	#1
At intersection of Royal Avenue and Fourth Street	#2
Bus Canyon:.	
Approximately 350 feet downstream of Los Angeles Avenue	*746
Approximately 225 feet upstream of Bennet Street	*836
Bus Canyon Tributary:	
At Village Court	*781
Approximately 2,000 feet upstream of Dakin Avenue	*809
At Fourth Street	#2
Dry Canyon:	
At confluence with Arroyo Simi	*832
Approximately 1,150 feet upstream of Alamo Street	*1,012
Erringer Creek:	
At Erringer Road	*821
Approximately 1,600 feet upstream of Fitzgerald Road	*862
Las Llajas Canyon:	
At confluence with Arroyo Simi	*966
Approximately 11,100 feet upstream of Alamo Street	*1,141
North Simi Drain:	
At confluence with Arroyo Simi	*743
Approximately 300 feet upstream of Simi Valley Freeway	*902
Tapo Canyon:	
At confluence with Arroyo Simi	*860
Approximately 700 feet upstream of Simi Valley Freeway	*995

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
White Oak Creek:	
At Simi Valley Freeway	*1,081
Approximately 960 feet upstream of Simi Valley Freeway	*1,103
Arroyo Simi Overflow North of SPRR:	
At confluence with Las Llajas Canyon	*978
Approximately 2,300 feet upstream of confluence with Las Llajas Canyon	*986
Maps are available for inspection at the City of Simi Valley Public Works Department, 2929 Tapo Canyon Road, Simi Valley, California.	
KANSAS	
Finney County (Unincorporated Areas) (FEMA Docket No. 7206)	
Arkansas River:	
Approximately 11,100 feet downstream of confluence of Ditch No. 1	*2799
Approximately 5,000 feet upstream of Main Street	*2,890
Maps are available for inspection at the Finney County Courthouse, 425 North Eighth Street, Garden City, Kansas.	
Garden City (City), Finney County (FEMA Docket No. 7206)	
Arkansas River:	
Approximately 3,700 feet downstream of U.S. Highway 83	*2,829
Approximately 6,000 feet upstream of U.S. Highway 83	*2,841
Maps are available for inspection at the City of Garden City Administration Center, 301 North Eighth Street, Garden City, Kansas.	
Holcomb (City), Finney County (FEMA Docket No. 7206)	
Arkansas River:	
At downstream corporate limit (adjacent to Nunn Drive)	*2,873
At upstream corporate limit	*2,885
Maps are available for inspection at the City of Holcomb City Hall, 200 North Lynch, Holcomb, Kansas.	
Rice County (Unincorporated Areas) (FEMA Docket No. 7206)	
Arkansas River:	
Approximately 7,500 feet downstream of State Highway 96	*1,627
Approximately 14,000 feet upstream of State Highway 96	*1,648
Surprise Creek:	
Approximately 600 feet downstream of American Road	*1,662
Just downstream of Taylor Street	*1,672
Salt Creek:	
Approximately 3,000 feet downstream of American Road	*1,655
Just downstream of American Road	*1,666
Maps are available for inspection at the Rice County Courthouse, 101 West Commercial, Lyons, Kansas.	
Sterling (City), Rice County (FEMA Docket No. 7206)	
Arkansas River:	
At Highway 96	*1,637
Approximately 7,000 feet upstream of Highway 96	*1,642
Maps are available for inspection at the City of Sterling City Hall, 114 North Broadway, Sterling, Kansas.	
LOUISIANA	
Alexandria (City), Rapides Parish (FEMA Docket No. 7166)	
Bayou Rapides:	
At Bolton Avenue (Route 1)	*80
Approximately 3,100 feet downstream of Plantation Road	*81
Irish Ditch No. 2:	
At Airbase Road	*82
At confluence of Big Bayou	*83
Big Bayou:	
Approximately 5,200 feet upstream of confluence with Irish Ditch No. 2	*83
Bayou Rapides Diversion Channel:	
At Dixie Lane extended	*71
Just downstream of Bayou Rapides Road	*74
Maps are available for inspection at the City of Alexandria Utility Building, 1546 Jackson Street, Second Floor, Alexandria, Louisiana.	
Rapides Parish (Unincorporated Areas) (FEMA Docket No. 7166)	
Chatlin Lake Canal:	
At Chaneyville-Echo Road	*58
Just upstream of State Highway 457	*63
Approximately 2,200 feet downstream of State Highway 3170	*67
Approximately 250 feet downstream of Sugar House Road	*72
Bayou Boeuf:	
At Interstate Highway 49	*71
Approximately 1,000 feet downstream of State Highway 488	*74
Approximately 1,600 feet downstream of Massina Road	*80
Bayou Rapides Diversion Channel:	
At confluence with Bayou Boeuf	*71
At State Highway 488	*72
Approximately 7,000 feet downstream of State Highway 28	*73
Bayou Rapides:	
At U.S. Highway 1 (Bolton Avenue)	*80
At confluence of Irish Ditch No. 2	*81
Approximately 2,500 feet downstream of Robinson Road	*82
Approximately 5,000 feet downstream of Cooper Road	*83
Irish Ditch No. 2:	
At State Highway 498	*81
Approximately 500 feet downstream of Chapel Road	*82
Approximately 250 feet downstream of Harold Miles Park Road	*83
Big Bayou:	
Approximately 2,500 feet downstream of Jimmy Brown Road	*83
At confluence of Saline Bayou and Bayou Bertrand	*83
Flagon Bayou:	
Just downstream of Kansas City Southern Railroad	*141
Approximately 740 feet upstream of Hooper Road	*146
Approximately 4,200 feet upstream of Hooper Road at Grant-Rapides Parish line	*151
Big Creek:	
At State Highway 115	*62
Cainey Creek:	
At State Highway 1206	*62
Maps are available for inspection at the Rapides Parish Planning Commission, 5610 East Coliseum Boulevard, Alexandria, Louisiana.	
NEBRASKA	
Bayard (City), Morrill County (FEMA Docket No. 7206)	
Wildhorse Drain:	
Just upstream of Main Street	*3,755
Just downstream of Eighth Street	*3,762

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Maps are available for inspection at the City of Bayard City Hall, 445 Main Street, Bayard, Nebraska.	
NEW MEXICO	
Chama (Village), Rio Arriba County (FEMA Docket No. 7198)	
Rio Chama:	
Approximately 5,000 feet downstream of State Highway 17	*7,717
Approximately 700 feet upstream of Cumbers Toltec Railroad	*7,883
Rio Chamita:	
Approximately 2,200 feet downstream of State Highway 64	*7,764
Approximately 2,100 feet upstream of Escondido Road	*7,864
Maps are available for inspection at the Village of Chama Village Hall, 299 Fourth Street, Chama, New Mexico.	
Rio Arriba County (Unincorporated Areas) (FEMA Docket No. 7198)	
Rio Chama:	
Approximately 3,000 feet downstream of County Road 343	*7,640
Approximately 5,300 feet upstream of State Highway 17	*7,925
Rio Chamita:	
At confluence with Rio Chama	*7,678
Approximately 8,800 feet upstream of Escondido Road	*7,912
Maps are available for inspection at 810 North Riverside Drive, Espanola, New Mexico.	
TEXAS	
Eastland (City), Eastland County (FEMA Docket No. 7198)	
North Fork Leon River:	
At confluence with Tributary 1	*1,434
Approximately 600 feet upstream of confluence with Tributary 3	*1,440
Tributary 1:	
At confluence with North Fork Leon River	*1,434
Approximately 1,400 feet upstream of U.S. Highway 80	*1,439
Tributary 2:	
At confluence with North Fork Leon River	*1,435
Approximately 5,200 feet upstream of Missouri Pacific Railroad	*1,461
Tributary 3:	
At confluence with North Fork Leon River	*1,439
Approximately 200 feet upstream of FM Road 3101	*1,460
South Fork Leon River:	
Approximately 100 feet downstream of Bassett Street	*1,442
Approximately 3,200 feet upstream of Bassett Street	*1,443
Maps are available for inspection at 416 South Seaman Street, Eastland, Texas.	

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

Dated: April 23, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–12369 Filed 5–9–97; 8:45 am]

BILLING CODE 6718–04–P

LEGAL SERVICES CORPORATION

45 CFR Part 1642

Attorneys' Fees

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements a restriction in the Legal Services Corporation's FY 1996 appropriations act that is currently incorporated by reference in the Corporation's FY 1997 appropriations act that prohibits LSC recipients from seeking attorneys' fees in cases filed on or after April 26, 1996. The rule clarifies the meaning of attorneys' fees and provides guidance on the scope of the restriction.

DATES: This final rule is effective on June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 336–8817.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee (''Committee'') of the Legal Services Corporation (''LSC'' or ''the Corporation'') Board of Directors (''Board'') requested the LSC staff to prepare an interim rule to implement section 504(a)(13) of the Corporation's FY 1996 appropriations act, Public Law 104–134, 110 Stat. 1321 (1996), prohibiting LSC recipients and their employees from claiming, or collecting and retaining attorneys' fees. The Committee held hearings on July 10 and 19, and the Board adopted an interim rule on July 20, which was published on August 29, 1996, in the **Federal Register** with a request for comments.

The interim rule was based, in part, on a prior version of 45 CFR part 1609, which included the Corporation's regulations dealing with attorneys' fees in relation to fee-generating cases. The Corporation decided to treat fee-generating cases and attorneys' fees in two separate rules. Revisions to the Corporation's fee-generating rule (part 1609) were published in a proposed rule and provisions implementing the new restriction on attorneys' fees (part 1642) were published as an interim rule on August 29, 1996. A final version of the fee-generating rule (part 1609) was published on April 21, 1997 (62 FR 19398).

The Corporation received 37 timely comments on the interim attorneys' fees rule and the Committee held public hearings on the rule on December 13, 1996, and March 7, 1997. The Committee made several revisions to the interim rule before recommending the final rule to the Board. The Board adopted the Committee's recommended version on March 8, 1997.

The Corporation's FY 1997 appropriations act became effective on October 1, 1996, see Public Law 104–208, 110 Stat. 3009. It incorporated by reference the § 504 condition on LSC grants included in the FY 1996 appropriations act implemented by this rule. Accordingly, the preamble and text of this rule continue to refer to the applicable section number of the FY 1996 appropriations act.

A section-by-section discussion of this final rule is provided below.

Section 1642.1 Purpose

The purpose of this rule is to ensure that LSC recipients and their employees do not seek or retain attorneys' fees awarded pursuant to Federal or State law, including common law, permitting or requiring such fees.

Section 1642.2 Definitions

This section first defines what is and what is not included in the term ''attorneys' fees.'' The definition of attorneys' fees elicited much public comment, mostly on the issue of whether Social Security fees should be included. Strongly divergent views were held by the commenters and there was no consistent pattern among types of commenters, which generally included private attorneys, legal services programs and bar associations. Some argued that the statutory restriction was not intended to apply to attorneys' fees in Social Security cases, because such fees are paid pursuant to an agreement by the client to pay the fees out of the client's back benefits and are not awarded by a court or administrative agency. They also stated that allowing recipients to take such fees would provide additional funding for financially strapped programs to provide more representation to the poor. Commenters who opposed allowing recipients to take Social Security fees stated that legal services clients should never have to pay any fee for their legal representation, especially out of their back benefits. Others claimed that private attorneys would be unwilling or reluctant to be part of a recipient's Private Attorney Involvement (''PAI'') project for little or no fee if the program started taking fees from their client's back benefits.

The Corporation did not include Social Security fees in the interim rule's definition because it was not clear to the Corporation whether Congress intended such fees to be included. However, the Corporation did seek comment on the issue and warned recipients in the preamble to the interim rule that such fees might be included in the final rule. After holding public hearings on both the legal and policy implications of including Social Security fees within the definition, a reconsideration of the legal arguments convinced the Board that Section 504(a)(13) was intended to include Social Security fees.

The statutory restriction is on ''attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees.'' Payment to an attorney from back Social Security benefits is expressly permitted by Federal statute. Comments argued that such fees do not fall within the term, because they are not ''awarded'' to the attorney; rather, they are paid pursuant to an agreement between the attorney and client. This is true in part. Such fees are usually the result of a contingency fee agreement between the client and the attorney. However, courts often oversee the agreement and sometimes are involved in determining whether to allow such fees to go to the attorney in a particular situation. The Social Security Act in section 406(b)(1) provides in part that:

> Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the Court by an attorney, the Court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment * * *

42 U.S.C. 406(b)(1). This provision clearly envisions court involvement. Thus, although the norm is for the client to enter into a contingency fee agreement with the attorney, there is often oversight by the courts. For example, in one Social Security case, a court found that ''the Court is not required to give 'blind deference' to a contractual fee agreement and must ultimately be responsible for fixing a reasonable fee for the judicial phase of the proceedings.'' *Kimball* v. *Shalala,* 826 F. Supp. 573 (D. Maine 1993). Other courts have determined that attorneys would not be permitted to receive the full 25 percent contingency fee allowed under the Social Security Act if the attorney engaged in improper conduct or was ineffective or the attorney would enjoy an undeserved windfall due to the client's large back pay award or the attorney's relatively minimal effort. *Hayes* v. *HHS,* 916 F.2d 351 (6th Cir. 1990). Regardless of the scope of Court involvement in any particular agreement between a client and the attorney, the Corporation is persuaded that it is reasonable to interpret the statutory language as including social security fees and that is what Congress intended.

The final definition also continues to include fee-shifting fees, which are fees paid by the losing party to compensate the attorney of the prevailing party. Such fees are generally awarded pursuant to a fee-shifting statute or under common law. The accompanying definition of ''award'' in this section is intended to underscore this meaning.

The Board also decided to define in a new paragraph (c) what is not included in the definition of attorneys' fees. Paragraph (c)(1) includes a provision that was moved from the prohibition section in the interim rule (§ 1642.3(c)(2)), which clarifies that compensation pursuant to court appointments, as authorized by 42 U.S.C. 2996e(d)(6) of the LSC Act, does not constitute attorneys' fees.

Paragraph (c)(2) is a new provision which states that a payment by a governmental agency or other third party to a recipient to represent clients is not an attorneys' fee. Such payments are generally made under a grant or contract and do not consist of an award ordered by a court or administrative party that the unsuccessful party pay attorneys' fees to the prevailing party. Nor do they constitute fees from a client's back statutory benefits.

Paragraph (c)(3) has been revised and moved from § 1642.3(c)(3) of the interim rule. In response to comments, it now provides that attorneys' fees do not include sanctions imposed by court practices as well as court rules, and also do not include sanctions authorized by statute.

Finally, paragraph (c)(4) clarifies that reimbursement of costs and expenses from an opposing party or from a client as permitted under § 1642.6 of this part does not constitute attorneys' fees. This provision was removed from § 1642.3(c)(4) of the interim rule and revised to cite § 1642.6. Fees are compensation for an attorney's time, while costs and expenses are compensation for necessary outlays made in the course of preparation for and/or litigation of a case. Some common types of costs and expenses are: document copying costs, travel expenses such as airline tickets, court reporter fees and other costs of depositions, expert witness fees, filing fees and other court costs charged litigants by the courts.

Based on experience in implementing the interim rule, Corporation staff recommended including in the final rule guidance on what it means to ''claim'' attorneys' fees. The Board agreed and added a definition to clarify that to ''claim'' attorneys'' fees means to include a request for attorneys' fees in any pleading.

Section 1642.3 Prohibition

This section states the restriction on attorneys' fees contained in Section 504(a)(13), which prohibits LSC recipients from claiming, or collecting and retaining attorneys' fees in any cases. This rule uses the term ''cases'' and does not refer to ''matters,'' as does the underlying statute, because attorneys'' fees may only be derived from cases. The interim rule included additional provisions in this section which provided exceptions and provisions explaining situations where the prohibition does not apply. All of those provisions have been moved to either § 1642.2 or § 1642.4 of this part.

Section 1642.4 Applicability of Restriction on Attorneys' Fees

Paragraph (a) provides that this part's prohibition does not apply to cases filed prior to April 26, 1996. For such cases, recipients may file claims for attorneys' fees but are not allowed to accept fees for work done in connection with any new claims filed in pre-existing cases after April 26, 1996. This paragraph is authorized by the appropriations statute, which expressly allows programs to seek and retain attorneys' fees for cases filed prior to April 26, 1996, including Social Security cases.

Paragraph (b) provides that unless the case was filed prior to April 26, 1996, private attorneys who are paid by LSC recipients to handle cases for eligible clients as part of a recipient's PAI program, under a contract or judicare arrangement, may not seek attorneys' fees in those cases. The prohibition does not include *pro bono* attorneys who receive no compensation from a recipient to handle cases, because they are not receiving financial assistance from the recipient to provide the services. Thus, attorneys who are handling cases on behalf of eligible clients on a *pro bono* bases may seek and collect attorneys' fees. It is the Corporation's judgment that the restrictions of this part would be a substantial impediment to the recruitment of *pro bono* lawyers.

Section 1642.5 Accounting For and Use of Attorneys' Fees

This section includes an accounting requirement for attorneys' fees that are permitted under § 1642.4(a) of this part that are received by a recipient. Recipients are required to allocate such fees that are received from cases supported in whole or in part with LSC funds to the LSC fund in the same proportion that the case or matter was funded with LSC funds. Thus, if a particular case was funded 60 percent by LSC funds and 40 percent from non-LSC funds, a recipient would be required to allocate 60 percent of the fees received to the LSC account. There is no requirement that the program allocate the remaining 40 percent to any particular account. This is a change from current law that requires allocation to the same fund to which expenses had been charged. The change is based on a policy that, if a non-LSC funder does not require that its fund be reimbursed from attorneys' fees awarded in litigation supported with its funds, LSC should not dictate how those funds are to be allocated.

Section 1642.6 Acceptance of Reimbursement Rrom a Client

This section allows recipients to accept reimbursement from clients for out-of-pocket costs and expenses incurred in connection with cases where the client recovers damages or statutory benefits, provided that the client has agreed in writing to reimburse the recipient for such costs and expenses out of any recovery. This section also authorizes recipients to require clients who do not qualify for *in forma pauperis* to pay court costs.

Section 1642.7 Recipient Policies, Procedures and Recordkeeping

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Recipients are also required to maintain sufficient documentation to demonstrate compliance with this part.

List of Subjects in 45 CFR Part 1642

Attorneys' fees; Grant programs; Legal services.

For reasons set forth in the preamble, 45 CFR part 1642 is revised to read as follows:

PART 1642—ATTORNEYS' FEES

Sec.

Authority: 42 U.S.C. 2996e(d)(6); Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat 1321, section 504(a)(13).

§ 1642.1 Purpose.

This part is designed to insure that recipients or employees of recipients do not claim, or collect and retain attorneys' fees available under any Federal or State law permitting or requiring the awarding of attorneys' fees.

§ 1642.2 Definitions.

(a) *Attorneys' fees* means an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees or a payment to an attorney from a client's retroactive statutory benefits.

(b) *Attorneys' fees* do not include the following:

(1) Payments made to a recipient or an employee of a recipient for a case in which a court appoints the recipient employee to provide representation pursuant to a statute or court rule or practice equally applicable to all attorneys in the jurisdiction, and in which the recipient or employee receives compensation under the same terms and conditions as are applied generally to attorneys practicing in the court in which the appointment is made;

(2) Payments made to a recipient or an employee of a recipient pursuant to a grant, contract or other agreement by a governmental agency or other third party for representation of clients;

(3) Payments received as a result of sanctions imposed by a court for violations of court rules or practices, or statutes relating to court practice, including Rule 11 or discovery rules of the Federal Rules of Civil Procedure, or similar State court rules or practices, or statutes; and

(4) Reimbursement of costs and expenses from an opposing party or from a client pursuant to § 1642.6.

(c) An *award* is an order by a court or an administrative agency that the unsuccessful party pay the attorneys' fees of the prevailing party or an order by a court or administrative agency approving a settlement agreement of the parties which provides for payment of attorneys' fees by an adversarial party.

(d) To *claim* attorneys' fees means to include a request for attorneys' fees in any pleading.

§ 1642.3 Prohibition.

Except as permitted by § 1642.4, no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient.

§ 1642.4 Applicability of restriction on attorneys' fees.

(a) The prohibition contained in § 1642.3 shall not apply to cases filed prior to April 26, 1996, except that the prohibition shall apply to any additional related claim for the client made in such a case on or subsequent to April 26, 1996.

(b) Except as permitted in paragraph (a) of this section, the prohibition contained in § 1642.3 shall apply to any case undertaken by a private attorney on behalf of an eligible client when the attorney receives compensation from a recipient to provide legal assistance to such client under the recipient's private attorney involvement (PAI) program, judicare program, contract or other financial arrangement.

§ 1642.5 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient pursuant to § 1642.4(a) for representation supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the representation.

(b) Attorneys' fees received pursuant to § 1642.4(a) shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

§ 1642.6 Acceptance of reimbursement from a client.

(a) When a case results in a recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

§ 1642.7 Recipient policies, procedures and recordkeeping.

The recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: May 7, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–12404 Filed 5–9–97; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–60; FCC 97–27]

Cable Television Leased Commercial Access

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: The Commission's amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), 76.975 (b) and (c), which contained information collection requirements, shall become effective May 12, 1997. These amendments, which were published in the **Federal Register** of March 12, 1997, relate to implementation of the leased commercial access provisions of the 1992 Cable Act.

EFFECTIVE DATE: The amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), 76.975 (b) and (c) published at 62 FR 11364 shall become effective May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Julie Buchanan, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

1. On January 31, 1997, the Commission adopted an order revising its leased commercial access rules, a summary of which was published in the **Federal Register**. See 62 FR 11364, March 12, 1997. The Commission's rule changes that did not impose new or modified information collection requirements became effective April 11, 1997. However, because they imposed new or modified information collection requirements, the amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), 76.975 (b) and (c) could not become effective until approved by the Office of Management and Budget (''OMB''), and no sooner than April 11, 1997. OMB approved these rule changes on April 17, 1997.

2. The **Federal Register** summary stated that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval. This statement suggests that further action by the Commission is necessary to establish the effective date, notwithstanding the preceding statement in the summary that the rule changes imposing new or modified information collection requirements would become effective upon OMB approval. See 62 FR 11365, March 12, 1997. In order to resolve this matter in a manner that most appropriately provides interested parties with proper notice, the amendments to 47 CFR 76.970 (c), (d), (e), (f), (g), (h), 76.971(f)(1), 76.975 (b) and (c) shall become effective May 12, 1997. This publication satisfies the statement that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–12279 Filed 5–9–97; 8:45 am]

BILLING CODE 6712–01–U

GENERAL SERVICES ADMINISTRATION

48 CFR Part 6103

RIN Number 3090–AG05

Board of Contract Appeals; Rules of Procedure for Transportation Rate Cases

AGENCY: Board of Contract Appeals, General Services Administration.

ACTION: Final rule.

SUMMARY: This document specifies the rules of procedure of the GSA Board of Contract Appeals applicable to the Board's review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(g)(1). The rules are intended to implement section 201(o) of the General Accounting Office Act of 1996 (Pub. L. 104–316), which transferred the authority to resolve these claims to the Administrator of General Services, who has redelegated that function to the Board.

EFFECTIVE DATE: This regulation is effective May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret S. Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals, telephone (202) 501–0272, Internet address: Margaret.Pfunder@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The General Services Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

C. Effective Dates

These rules are applicable to all transportation rate cases filed on or after May 12, 1997.

D. Background

On July 26, 1996, the Board published in the **Federal Register** (61 FR 39096) an interim rule specifying the rules of procedure the Board would apply to its review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(g)(1). The Board invited written comments on the interim rules. The rules were intended to implement section 211 of the Legislative Branch Appropriations Act, 1996 (Pub. L. 104–53), which, effective June 30, 1996, transferred certain functions of the Comptroller General to the Director of the Office of Management and Budget (OMB), and authorized the Director to delegate any of those functions to another agency or agencies. Effective the same date, the Director delegated the function contained in 31 U.S.C. 3726(g)(1)—the authority to review rate claims of a carrier or freight forwarder—to the Administrator of General Services, who redelegated that function to the GSA Board of Contract Appeals.

On October 19, 1996, Congress enacted the General Accounting Office Act of 1996 (Pub. L. 104–316). Section 201(o) of that Act directly transfers the authority of the Comptroller General to resolve transportation rate claims under 31 U.S.C. 3726(g)(1) to the Administrator of General Services, who has continued to delegate this function to the Board. In addition, the Administrator of General Services has delegated to the Board the authority to adopt and issue rules necessary for the resolution of these claims. This final rule has been adopted by vote of the Board's judges.

E. Summary of Comments and Changes

The Board received written comments on the interim rules from three commentators. Commentators included two motor freight carriers and an association of motor freight carriers. The Board carefully considered these comments, and adopted a number of the suggestions made by the commentators. One commentator made no specific comments, but simply expressed approval of the transfer of transportation rate claims from the Comptroller General to the Administrator of General Services. The other two commentators supported the interim rules and, in general, suggested that some of the rules be more detailed. Their comments and any revisions made, are discussed below in a section-by-section format.

Section 6103.2 (Filing Claims)

Two commentators suggested that the rule should state when a claim is timely filed and/or provide a certain time by which the Board must acknowledge receipt of a claim. They also suggested that the rule permit filing a claim with the Board by facsimile transmission. In response to these comments, the Board has added paragraph (b) to Section 6103.2, which provides that a claim is filed when a written copy is received by the Office of the Clerk of the Board during the Board's working hours. Filing has been and is permitted by facsimile transmission. All Board cases are date-stamped upon receipt and docketed within one to two working days of receipt. In addition, the notice of docketing sent to the claimant, OTA, and the agency states the date the claim was filed with the Board. A claimant will thus be able to verify the date the Board received the claim. In order to facilitate the filing of claims, the address and the telephone and facsimile machine numbers of the Clerk's office are provided, as are the Board's working hours.

Section 6103.3 (Responses to Claims)

The Board made three changes to this section. First, the Board revised the rule to increase from 30 to 60 calendar days after docketing the time the agency has to respond to the claim, if the agency office for which the services were provided is located outside the United States. In the Board's experience, agency offices located outside the United States have generally needed this additional time to receive and respond to claims.

Second, the Board has redrafted Section 6103.3 to provide that all responses submitted to the Board must indicate that a copy has been provided to the claimant. Both commentators stated that the rule should include some type of proof of service provision; one commentator wanted the rule to provide for sanctions in the event that a party failed to serve its submission on all participants. The Board believes that the rule as revised is sufficient to ensure service on the claimant, and that more formal proof of service requirements and specified sanctions are unnecessary. Should the need arise, the judge to whom a case is assigned may determine how to enforce the service requirements. The Board has also added a parallel service of copy requirement to paragraph (d) of Section 6103.2, which requires the claimant to send to OTA and the agency a copy of all material provided to the Board, and to indicate on all submissions to the Board that a copy has been provided to OTA and the agency.

Third, in order to expedite proceedings, Section 6103.3 now provides that, if either OTA or the agency does not wish to file a response, it should so notify the Board and the claimant. If the Board knows that OTA and/or the agency is not filing a response, it may proceed with resolving the claim rather than waiting for the response period to expire.

Section 6103.4 (Reply to OTA and Agency Responses)

This rule has been redrafted to require a claimant wishing to reply to the OTA and agency responses to file and serve the reply within 30 calendar days after receiving the responses (or within 60 days if the claimant is located outside the United States). The interim rule required a claimant first to notify the Board within 10 days after receiving the responses that it wished to file a reply, and then to have the judge establish when the reply was due. One commentator suggested that 10 days was too short a time to determine whether to file a reply. The Board agrees, and has increased the amount of time for a reply to 30 days, the amount of time given OTA and the agency to file responses to a claim. The Board also concluded that it is appropriate to permit a reply in all cases, such that each judge need not make a case-by-case determination.

Both commentators were concerned that the exact date a carrier received the responses would not be known with certainty by the Board, and that either the date the response was mailed to the Board or the date shown in a certificate of service should be determinative. The Board did not incorporate either of these suggestions in the final rule; such formality is unnecessary, given the time frames established in the rules. The carrier will be aware of its receipt date(s), and, therefore, can determine when a reply is due.

Section 6103.5 (Proceedings)

The Board added paragraph (a) to this section to clarify that the claimant, OTA, or the agency may request additional time to make any of the filings required or permitted by the rules. However, the Board may not expand time limits established by statute. Both commentators suggested that the rules should provide for discovery, citing the carriers' past inability to obtain documents and other information possessed by the Government needed to prove entitlement to payment. The commentators and Board practice have not demonstrated a need for a rule on discovery. Under Section 6103.5(c), judges retain the flexibility to require participants to submit necessary additional information.

Section 6103.6 (Decisions)

In response to the suggestions made by both commentators, this section makes explicit that it has been and is the Board's practice to furnish the participants with a copy of the Board's decision. The revised rule also explains that the Board's decisions are posted weekly on the Internet, and provides the Board's Internet address.

Section 6103.7 (Reconsideration of Board Decision)

Both commentators suggested that 15 calendar days after the date a decision is issued was too short a time in which to prepare a request for reconsideration. The Board agrees, and has lengthened the time to 30 days after the date the decision was issued, or to 60 days if the claimant or agency office making the request is located outside the United States. One commentator suggested that all of the Board's rules relating to reconsideration of contract appeals be incorporated into the rules for transportation rate cases. Neither the statute nor the Board envisions these cases as formal, judicial proceedings. Specifically structured reconsideration procedures are unnecessary. However, as made clear in the revised rule, a request for reconsideration should not be a routine practice in these cases. A request for reconsideration must be premised on more than reargument or disagreement.

Section 6103.8 (Payment of Successful Claims)

Both commentators suggested that Section 6103.8 should provide that an agency must pay any amount found due by the Board within 30 days of the date of the Board's decision. Such a requirement comports with the requirement of the Prompt Payment Act, 31 U.S.C. 3903, that payment is due 30 days after the date the invoice is received by the agency. The Board concludes that this matter is not appropriately resolved by a rule of procedure, and that an agency receiving the Board's final administrative decision on a claim will in fact promptly pay any amount found owing the claimant, in accordance with applicable statutes.

List of Subjects in 48 CFR Part 6103

Administrative practice and procedure, Freight forwarders, Government procurement.

For the reasons set out in the preamble, 48 CFR Part 6103 is revised to read as follows:

PART 6103—RULES OF PROCEDURE FOR TRANSPORTATION RATE CASES

Sec.

Authority: 31 U.S.C. 3726(g)(1); 41 U.S.C. 601–613. Section 201(o), Pub. L. 104–316, 110 Stat. 3826.

§ 6103.1 Scope [Rule 301].

(a) *Authority.* Section 201(o) of the General Accounting Office Act of 1996, Public Law 104–316, transfers certain functions of the Comptroller General contained in 31 U.S.C. 3726(g)(1) to the Administrator of General Services, who has redelegated those functions to the General Services Administration Board of Contract Appeals.

(b) *Type of claim; review of claim.* These procedures are applicable to the review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(g)(1). The Board will issue the final agency decision on a claim based on the information submitted by the claimant, the General Services Administration Office of Transportation Audits (OTA), and the department or agency (the agency) for which the services were provided. The burden is on the claimant to establish the timeliness of its claim, the liability of the agency, and the claimant's right to payment.

§ 6103.2 Filing claims [Rule 302].

(a) *Form.* A claim shall be in writing and must be signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include:

(1) The name, address, telephone number, and facsimile machine number, if available, of the claimant;

(2) The Government bill of lading or Government transportation request number;

(3) The claimant's bill number;

(4) The Government voucher number and date of payment;

(5) The OTA claim number;

(6) The agency for which the services were provided; and

(7) Any other identifying information.

(b) *When and where claims are filed.* A claim is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. Claims should be sent to the Board at the following address: Office of the Clerk of the Board, Room 7022, General Services Administration Building, 1800 F Street, NW, Washington, DC 20405. The Clerk's telephone number is: (202) 501–0116. The Clerk's facsimile machine number is: (202) 501–0664. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(c) *Notice of docketing.* A claim will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to the claimant, the Director of OTA, and the agency for which the services were provided. The notice of docketing will identify the judge to whom the claim has been assigned.

(d) *Service of copy.* The claimant shall send to OTA and the agency identified in paragraph (a)(6) of this section copies of all material provided to the Board. All submissions to the Board by a claimant shall indicate that a copy has been provided to OTA and the agency.

§ 6103.3 Responses to claims [Rule 303].

(a) *Content of responses.* Within 30 calendar days after docketing by the Board (or within 60 calendar days after docketing if the agency office for which the services were provided is located outside the 50 states and the District of Columbia), OTA and the agency for which the services were provided shall each submit to the Board:

(1) A simple, concise, and direct statement of its response to the claim;

(2) Citations to applicable statutes, regulations, and cases; and

(3) Any additional information deemed necessary to the Board's review of the claim.

(b) *Service of copy.* All responses submitted to the Board shall indicate that a copy has been sent to the claimant and to OTA or the agency, as appropriate. To expedite proceedings, if either OTA or the agency will not file a response (e.g., it believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant), it should notify the Board, the claimant, and OTA or the agency, as appropriate, that it does not intend to file a response.

§ 6103.4 Reply to OTA and agency responses [Rule 304].

A claimant may file with the Board and serve on OTA and the agency a reply to the OTA and agency responses within 30 calendar days after receiving the responses (or within 60 calendar days after receiving the responses, if the claimant is located outside the 50 states and the District of Columbia). To expedite proceedings, if the claimant does not wish to respond, the claimant should so notify the Board, OTA, and the agency.

§ 6103.5 Proceedings [Rule 305].

(a) *Requests for additional time.* The claimant, OTA, or the agency may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in ex parte communications involving the underlying facts or merits of the claim. The judge may hold a conference with the claimant, OTA, and the agency at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Submissions.* The judge may require the submission of additional information at any time. The claimant, OTA, or the agency may request an opportunity to make additional submissions; however, no such submission may be made unless authorized by the judge.

§ 6103.6 Decisions [Rule 306].

The judge will issue a written decision based upon the record, which includes submissions by the claimant, OTA, and the agency, and information provided during conferences. The claimant, OTA, and the agency will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: www.gsbca.gsa.gov.

§ 6103.7 Reconsideration of Board decision [Rule 307].

A request for reconsideration may be made by the claimant, OTA, or the agency. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the claimant or agency office making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

§ 6103.8 Payment of successful claims [Rule 308].

The agency for which the services were provided shall pay amounts the Board determines are due the claimant.

Dated: May 7, 1997.

Stephen M. Daniels,

Chairman, GSA Board of Contract Appeals.

[FR Doc. 97–12382 Filed 5–9–97; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 6104

RIN 3090–AG06

Board of Contract Appeals; Rules of Procedure for Travel and Relocation Expenses Cases

AGENCY: Board of Contract Appeals, General Services Administration.

ACTION: Final rule.

SUMMARY: This document specifies the rules of procedure of the GSA Board of Contract Appeals applicable to the Board's review of claims made by federal civilian employees against the United States for reimbursement of expenses incurred while on temporary duty travel or in connection with relocation to a new duty station. The rules are intended to implement section 201(n)(3) of the General Accounting Office Act of 1996 (Pub. L. 104–316), which transferred the authority to resolve these claims to the Administrator of General Services, who has redelegated that function to the Board.

EFFECTIVE DATE: This regulation is effective May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret S. Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals, telephone (202) 501–0272, Internet address: Margaret.Pfunder@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The General Services Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

C. Effective Date

These rules are applicable to all travel and relocation expenses cases filed on or after May 12, 1997.

D. Background

On July 26, 1996, the Board published in the **Federal Register** (61 FR 39098) an interim rule specifying the rules of procedure the Board would apply to its review of claims made by federal civilian employees against the United States for reimbursement of expenses incurred while on temporary duty travel or in connection with relocation to a new duty station. The Board invited written comments on the interim rules. The rules were intended to implement section 211 of the Legislative Branch Appropriations Act, 1996 (Pub. L. 104–53), which, effective June 30, 1996, transferred certain functions of the Comptroller General to the Director of the Office of Management and Budget (OMB), and authorized the Director to delegate any of those functions to another agency or agencies. Effective the same date, the Director delegated the function contained in 31 U.S.C. 3702—the authority to review travel and relocation expenses claims—to the Administrator of General Services, who redelegated that function to the GSA Board of Contract Appeals.

On October 19, 1996, Congress enacted the General Accounting Office Act of 1996 (Pub. L. 104–316). Section 201(n)(3) of that Act directly transfers the authority of the Comptroller General to resolve travel and relocation expenses claims under 31 U.S.C. 3702 to the Administrator of General Services, who has continued to delegate this function to the Board. In addition, the Administrator of General Services has delegated to the Board the authority to adopt and issue rules necessary for the resolution of these claims. This final rule has been adopted by vote of the Board's judges.

E. Summary of Comments and Changes

The Board received no written comments on the interim rules. The Board's judges, however, agreed on a number of revisions to the rules which should improve the current, interim procedures used to resolve travel and relocation expenses claims filed with the Board. These revisions are discussed below in a section-by-section format.

Section 6104.1 (Scope)

Section 6104.1(a) has been changed to reference the current statutory authority under which the Board resolves travel and relocation expenses claims.

Section 6104.2 (Filing Claims)

In order to facilitate the filing and processing of claims, Section 6104.2(a)(3) now provides the Board's mailing address and working hours. Section 6104.2(c) now requires that all submissions to the Board by a claimant or an agency must indicate that a copy has been provided to the other party. This exchange of information provided to the Board permits an informed and timely response or reply to a claim and an expeditious resolution of the claim.

Section 6104.3 (Response to Claim)

This rule has been revised in two ways. First, if the agency office involved with a claim is located outside the 50 states and District of Columbia, the rule increases from 30 to 60 calendar days after docketing the time an agency has to respond to the claim. In the Board's experience, agencies located outside the United States have generally needed this additional time to receive and respond to claims. Second, in order to expedite proceedings, the rule now provides that the agency should notify the Board and the claimant if the agency does not intend to file a response; e.g., the agency may believe that the Board has been provided all relevant material (factual and legal) and that the agency's reasons for denying the claim are sufficiently explained in the material filed by the claimant. If the Board knows that the agency is not filing a response, it may proceed with resolving the claim rather than waiting for the response period to expire.

Section 6104.4 (Reply to Agency Response)

This rule has been revised to increase from 10 to 30 calendar days after receiving the agency response the time in which a claimant may file a reply to the response (60 calendar days for a claimant located outside the United States). The Board has concluded that 10 days often is too short a time period for a reply, and that claimants located outside the United States needed the longer time in which to receive responses and submit replies. In addition, the rule now addresses the situation in which the claim has been forwarded by the agency on behalf of the claimant (section 6104.2(a)(2)), and gives the claimant 30 calendar days from the date the claim is docketed by the Board (60 calendar days if the claimant is located outside the United States) to reply. Finally, in order that the Board may proceed with resolving the claim rather than waiting for the reply period to expire, the rule now provides that the claimant should notify the Board and the agency if the claimant does not wish to reply.

Section 6104.5 (Proceedings)

Section 6104.5(a) has been added to clarify that the claimant or the agency may request the Board to grant additional time to make any filing. However, the Board may not expand time limits established by statute.

Section 6104.6 (Decisions)

In response to inquiries by claimants as to whether decisions have been issued and simply not forwarded, the rule makes explicit that it has been and is the Board's practice to furnish the claimant and the agency each with a copy of the decision. The rule also explains that the Board's decisions are posted weekly on the Internet, and provides the Board's Internet address.

Section 6104.7 (Reconsideration of Board Decision)

The rule has been revised to increase from 15 to 30 calendar days (or 60 calendar days if the claimant or the agency making the request is located outside the United States) after the date the Board's decision was issued the time in which either a claimant or an agency may request reconsideration of the decision.

List of Subjects in 48 CFR Part 6104

Administrative practice and procedure, Government procurement, Travel and transportation expenses.

For the reasons set out in the preamble, 48 CFR Part 6104 is revised to read as follows:

PART 6104—RULES OF PROCEDURE FOR TRAVEL AND RELOCATION EXPENSES CASES

Authority: 31 U.S.C. 3702; 41 U.S.C. 601–613; Sec. 201(n)(3), Pub. L. 104–316, 110 Stat. 3826.

§ 6104.1 Scope [Rule 401].

(a) *Authority.* These procedures govern the Board's resolution of claims by federal civilian employees for certain travel or relocation expenses that were formerly settled by the Comptroller General under 31 U.S.C. 3702. Section 201(n)(3) of the General Accounting Office Act of 1996, Public Law 104–316, transfers the authority to resolve these claims to the Administrator of General Services, who has redelegated that function to the General Services Administration Board of Contract Appeals. The requirements contained in 31 U.S.C. 3702, including limitations on the time within which claims may be filed, apply to the Board's review of these claims.

(b) *Types of claims.* These procedures are applicable to the review of two types of claims made against the United States by federal civilian employees:

(1) Claims for reimbursement of expenses incurred while on official temporary duty travel; and

(2) Claims for reimbursement of expenses incurred in connection with relocation to a new duty station.

(c) *Review of claims.* Any claim for entitlement to travel or relocation expenses must first be filed with the claimant's own department or agency (the agency). The agency shall initially adjudicate the claim. A claimant disagreeing with the agency's determination may request review of the claim by the Board. The burden is on the claimant to establish the timeliness of the claim, the liability of the agency, and the claimant's right to payment. The Board will issue the final decision on a claim based on the information submitted by the claimant and the agency.

§ 6104.2 Filing claims [Rule 402].

(a) *Filing claims.* A claim may be sent to the Board in either of the following ways:

(1) *Claim filed by claimant.* A claim shall be in writing and must be signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include:

(i) The name, address, telephone number, and facsimile machine number, if available, of the claimant;

(ii) The name, address, telephone number, and facsimile machine number, if available, of the agency employee who denied the claim;

(iii) A copy of the denial of the claim; and

(iv) Any other information which the claimant believes the Board should consider.

(2) *Claim forwarded by agency on behalf of claimant.* If an agency has denied a claim for travel or relocation expenses, it may, at the claimant's request, forward the claim to the Board. The agency shall include the information required by paragraph (a)(1) of this section and by § 6104.3.

(3) *Where claims are filed.* A claim should be sent to the Board at the following address: Office of the Clerk of the Board, Room 7022, General Services Administration Building, 1800 F Street, NW, Washington, DC 20405. The Clerk's telephone number is: (202) 501–0116. The Clerk's facsimile machine number is: (202) 501–0664. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(b) *Notice of docketing.* A request for review will be docketed by the Office of the Clerk of the Board. A written notice of docketing will be sent promptly to the claimant and the agency contact. The notice of docketing will identify the judge to whom the claim has been assigned.

(c) *Service of copy.* The claimant shall send to the agency employee identified in paragraph (a)(1)(ii) of this section, or the individual otherwise identified by the agency to handle the claim, copies of all material provided to the Board. If an agency forwards a claim to the Board, it shall, at the same time, send to the claimant a copy of all material sent to the Board. All submissions to the Board shall indicate that a copy has been provided to the claimant or the agency.

§ 6104.3 Response to claim [Rule 403].

(a) *Content of response.* When a claim has been filed with the Board by a claimant, within 30 calendar days after docketing by the Board (or within 60 calendar days after docketing, if the agency office involved is located outside the 50 states and the District of Columbia), the agency shall submit to the Board:

(1) A simple, concise, and direct statement of its response to the claim;

(2) Citations to applicable statutes, regulations, and cases; and

(3) Any additional information deemed necessary to the Board's review of the claim.

(b) *Service of copy.* A copy of these submissions shall also be sent to the claimant. To expedite proceedings, if the agency believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant, it should notify the Board and the claimant that it does not intend to file a response.

§ 6104.4 Reply to agency response [Rule 404].

A claimant may file a reply to the agency response within 30 calendar days after receiving the response (or within 60 calendar days after receiving the response, if the claimant is located outside the 50 states and the District of Columbia). If the claim has been forwarded by the agency, the claimant shall have 30 calendar days from the time the claim is docketed by the Board (or 60 calendar days after docketing, if the claimant is located outside the 50 states and the District of Columbia) to reply. To expedite proceedings, if the claimant does not wish to reply, the claimant should so notify the Board and the agency.

§ 6104.5 Proceedings [Rule 405].

(a) *Requests for additional time.* The claimant or the agency may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in ex parte communications involving the underlying facts or merits of the claim. The judge may hold a conference with the claimant and the agency contact, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) Additional submissions. The judge may require the submission of additional information at any time.

§ 6104.6 Decisions [Rule 406].

The judge will issue a written decision based upon the record, which includes submissions by the claimant and the agency, and information provided during conferences. The claimant and the agency will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: www.gsbca.gsa.gov.

§ 6104.7 Reconsideration of Board decision [Rule 407].

A request for reconsideration may be made by the claimant or the agency. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the claimant or the agency office making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

§ 6104.8 Payment of successful claims [Rule 408].

The agency shall pay amounts the Board determines are due the claimant.

Dated: May 5, 1997

Stephen M. Daniels,

Chairman, GSA Board of Contract Appeals.

[FR Doc. 97–12383 Filed 5–9–97; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 6104 and 6105

RIN 3090–AG29

Board of Contract Appeals; Rules of Procedure for Decisions Authorized Under 31 U.S.C. 3529

AGENCY: Board of Contract Appeals, General Services Administration.

ACTION: Final rule.

SUMMARY: This document specifies the procedures the GSA Board of Contract Appeals will apply to the Board's review of a request from an agency disbursing or certifying official, or agency head, for a Board decision on a question involving a payment the official will make, or a voucher presented to a certifying official for certification, which concerns a claim against the agency for reimbursement of expenses incurred by a federal civilian employee while on official temporary duty travel or in connection with relocation to a new duty station.

EFFECTIVE DATE: This regulation is effective May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret S. Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals, telephone (202) 501–0272, Internet address: Margaret.Pfunder@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The General Services Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

C. Effective Date

These rules are applicable to all Board-issued decisions authorized under 31 U.S.C. 3529 filed on or after May 12, 1997.

D. Background

On December 20, 1996, the Board published in the **Federal Register** (61 FR 67241) an interim rule specifying the rules of procedure the Board would apply to the Board's review of a request from an agency disbursing or certifying official, or agency head, for a Board decision on a question involving a payment the official will make, or a voucher presented to a certifying official for certification, which concerns a claim against the agency for reimbursement of expenses incurred by a federal civilian employee while on official temporary duty travel or in connection with relocation to a new duty station. Such a decision is referred to by the rules as a ''Section 3529 decision.'' The Board invited written comments on the interim rules.

The rules were intended to implement section 204 of the General Accounting Office Act of 1996 (Pub. L. 104–316) (GAO Act), which, by amending 31 U.S.C. 3529, transferred the authority of the Comptroller General to make decisions on agency questions regarding payment or certification of vouchers which involved federal civilian employees' travel and relocation expenses, to the Administrator of General Services, who redelegated that function to the GSA Board of Contract Appeals. When issued by the Comptroller General, these decisions were commonly known as ''advance decisions'' since they were sought by agency officials before making payments or certifying vouchers for payment.

Section 204 of the GAO Act amends 31 U.S.C. 3529 by referencing an earlier transfer of functions from the Comptroller General to the Director of the Office of Management and Budget authorized by section 211 of Legislative Branch Appropriations Act, 1996 (Pub. L. 104–53) (LBAA). Section 211 of the LBAA also authorized the Director to delegate any of those functions to another agency or agencies. On June 30, 1996, the Director delegated some of the functions contained in 31 U.S.C. 3702—the authority to review claims made against the United States for reimbursement of expenses incurred by federal civilian employees while on official temporary duty travel or in connection with relocation to a new duty station—to the Administrator of General Services, who redelegated that function to the GSA Board of Contract Appeals.

With respect to a function transferred to OMB under section 211 of the LBAA and delegated by OMB to another agency, section 204 of the GAO Act provides that the head of that agency has the authority to issue ''advance decisions'' authorized by 31 U.S.C. 3529 on questions involving such functions. Thus, the Administrator of General Services is authorized to issue ''advance decisions'' on questions involving reimbursement of expenses incurred by federal civilian employees while on official temporary duty travel or in connection with relocation to a new duty station. The Administrator has redelegated that function to the Board, along with the authority to adopt and issue rules necessary for the issuance of these decisions. This final rule has been adopted by vote of the Board's judges.

E. Summary of Comments and Changes

The Board received no written comments on the interim rule.

The Board's judges, however, agreed on a reorganization of the interim rule which necessitated a number of structural and textual revisions to the rule. The interim rule was published as 48 CFR 6104.9, the final section (and rule) of part 6104, which contains the Board's rules of procedure for travel and relocation expenses cases. In reviewing the interim rule, the Board determined that the procedures for Section 3529 decisions could be simplified and made clearer if the material in the interim rule was expanded to comprise its own part. Former interim rule 48 CFR 6104.9 has therefore been renumbered as 48 CFR part 6105. The following revisions have been made:

Section 6105.1 (Scope)

This section has been added to describe explicitly the matters to which the rules apply and the authority under which the Board reviews requests for Section 3529 decisions.

Section 6105.2 (Request for Decision)

This section comprises paragraphs (a), (b), and (c) of former section 6104.9. Language has been added which: (1) Explains that Section 3529 decisions may be requested on matters which pertain to claims involving reimbursement of travel and relocation expenses; (2) states the address and working hours of the Office of the Clerk of the Board; and (3) requires the agency to provide to the affected employee a copy of all agency submissions to the Board.

Section 6105.3 (Additional Submissions)

Formerly section 6104.9(d) of the interim rule, this section has been revised in two ways. First, the rule increases from 10 to 30 calendar days after receiving the copy of the request for decision the time in which an affected employee may submit any additional information to the Board (60 calendar days for an affected employee located outside the United States). The Board found that 10 calendar days is often too short a time period for employees to make an additional submission, and that employees located outside the United States often need a longer time in which to receive and respond to submissions. Second, to help expedite resolution of these matters, rather than waiting for the additional submission period to expire, the rule now provides that the affected employee should notify the Board and the agency if the employee does not wish to make an additional submission.

Section 6105.4 (Proceedings)

This rule has been added to cover three aspects of proceeding: requests for additional time; conferences; and additional submissions. It parallels the rule on proceedings in part 6104 (Rules of Procedure for Transportation and Relocation Expenses Cases).

Section 6105.5 (Decisions)

This rule has been added to describe the record on which a judge will base a decision under this part. The rule also provides that the Board will furnish the agency and the affected employee each a copy of the decision, and gives the Internet address at which all of the Board's decisions are posted weekly.

Section 6105.6

This rule describes how and under what circumstances an agency or affected employee may request reconsideration of a Board decision.

List of Subjects in 48 CFR Parts 6104 and 6105

Administrative practice and procedure, Government procurement, Travel and transportation expenses.

For the reasons set out in the preamble, 48 CFR Chapter 61 is amended as follows:

1. The authority citation for Part 6104 continues to read as follows:

Authority: 31 U.S.C. 3529; 31 U.S.C. 3702; 41 U.S.C. 601–613; Secs 202(n), 204, Pub. L. 104–316, 110 Stat. 3826; Sec. 211, Pub. L. 104–53, 109 Stat. 535.

2. Section 6104.9 is redesignated as part 6105 and revised to as follows:

PART 6105—RULES OF PROCEDURE FOR DECISIONS AUTHORIZED BY 31 U.S.C. 3529

Sec.

Authority: 31 U.S.C. 3529; 31 U.S.C. 3702; 41 U.S.C. 601–613; Secs. 202(n), 204, Pub. L. 104–316, 110 Stat. 3826; Sec. 211, Pub. L. 104–53, 109 Stat. 535.

§ 6105.1 Scope [Rule 501].

These procedures govern the Board's issuance of decisions, upon the request of an agency disbursing or certifying official, or agency head, on questions involving payment of travel or relocation expenses that were formerly issued by the Comptroller General under 31 U.S.C. 3529. Section 204 of the General Accounting Office Act of 1996, Public Law 104–316, transfers the authority to issue these decisions to the Director of the Office of Management and Budget, and authorizes the Director to delegate the authority to perform that function to another agency or agencies. The Director has delegated the authority to issue these decisions to the Administrator of General Services, who has redelegated that function to the General Services Administration Board of Contract Appeals.

§ 6105.2 Request for decision [Rule 502].

(a) *Request for decision*. (1) A disbursing or certifying official of an agency, or the head of an agency, may request from the Board a decision (referred to as a ''Section 3529 decision'') on a question involving a payment the disbursing official or head of agency will make, or a voucher presented to a certifying official for certification, which concerns the following type of claim made against the United States by a federal civilian employee:

(i) A claim for reimbursement of expenses incurred while on official temporary duty travel; and

(ii) A claim for reimbursement of expenses incurred in connection with relocation to a new duty station.

(2) A request for a Section 3529 decision shall be in writing; no particular form is required. The request must refer to a specific payment or voucher; it may not seek general legal advice. The request should——

(i) Explain why the official is seeking a Section 3529 decision, rather than taking action on his or her own regarding the matter;

(ii) State the question presented and include citations to applicable statutes, regulations, and cases;

(iii) Include——

(A) The name, address, telephone number, and facsimile machine number (if available) of the official making the request;

(B) The name, address, telephone number, and facsimile number (if available) of the employee affected by the specific payment or voucher; and

(C) Any other information which the official believes the Board should consider; and

(iv) Be sent to the Office of the Clerk of the Board, Room 7022, General Services Administration Building, 1800 F Street, NW., Washington, DC 20405. The Clerk's telephone number is: (202) 501–0116. The Clerk's facsimile machine number is (202) 501–0664. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(b) *Notice of docketing.* A request for a Section 3529 decision will be docketed by the Office of the Clerk of the Board. A written notice of docketing will be sent promptly to the official and the affected employee. The notice of docketing will identify the judge to whom the request has been assigned.

(c) *Service of copy.* The official submitting a request for a Section 3529 decision shall send to the affected employee copies of all material provided to the Board. All submissions to the Board shall indicate that a copy has been provided to the affected employee.

§ 6105.3 Additional submissions [Rule 503].

If the affected employee wishes to submit any additional information to the Board, he or she must submit such information within 30 calendar days after receiving the copy of the request for decision and supporting material (or within 60 calendar days after receiving the copy, if the affected employee is located outside the 50 states and the District of Columbia). To expedite proceedings, if the employee does not wish to make an additional submission, the employee should so notify the Board and the agency.

§ 6105.4 Proceedings [Rule 504].

(a) *Requests for additional time.* The agency or the affected employee may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in ex parte communications involving the underlying facts or merits of the request. The judge may hold a conference with the agency and the affected employee, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Additional submissions.* The judge may require the submission of additional information at any time.

§ 6105.5 Decisions [Rule 505].

The judge will issue a written decision based upon the record, which includes submissions by the agency and the affected employee, and information provided during conferences. The agency and the affected employee will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: www.gsbca.gsa.gov.

§ 6105.6 Reconsideration of Board decision [Rule 506].

A request for reconsideration may be made by the agency or the affected employee. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the agency or the affected employee making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

Dated: May 5, 1997.

Stephen M. Daniels,

Chairman, GSA Board of Contract Appeals.

[FR Doc. 97–12384 Filed 5–9–97; 8:45 am]

BILLING CODE 6820–AL–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 960429120–6120–01; I.D. 042997A]

Fisheries Off West Coast and Western Pacific States; West Coast Salmon Fisheries; Closure from Point Lopez to Point Mugu, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Point Lopez to Point Mugu, CA, was closed at 12 midnight (local time), April 22, 1997. The Regional Administrator, Northwest Region, NMFS, has determined that the commercial quota of 10,000 chinook salmon has been reached. This action is necessary to conform to the 1996 announcement of management measures for 1997 salmon seasons opening earlier than May 1 and is intended to ensure conservation of chinook salmon.

DATES: Effective 2400 hours local time, April 22, 1997, through 2400 hours local time April 30, 1997. Comments will be accepted through May 27, 1997.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, or William Hogarth, Acting Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132. Information relevant to this notice is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206–526–6140, or Rodney McInnis, 562–980–4030.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, NMFS will, by an inseason action issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the 1996 management measures for 1997 ocean salmon fisheries opening earlier than May 1 (61 FR 20175, May 6, 1996), NMFS announced that the April 1997 commercial fishery in the area between Point Lopez and Point Mugu, CA, would open on April 15 and continue through April 28 or attainment of the 10,000 chinook salmon quota, whichever occurred first.

The best available information on April 21 indicated that catch and effort data and projections supported closure of the commercial fishery in this area at 12 midnight, April 22. The Regional Administrator consulted with representatives of the Pacific Fishery Management Council and the California Department of Fish and Game in making this determination. The State of California will manage the commercial fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason action procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 2400 hours local time, April 22, 1997, by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to stop the fishery upon achievement of the quota, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: May 5, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–12211 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 91

Monday, May 12, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Public Meeting

AGENCY: Small Business Administration.

ACTION: Public meeting on financing and securitizing the unguaranteed portion of SBA loans made under Section 7(a) of the Small Business Act.

SUMMARY: On February 26, 1997, SBA published in the **Federal Register** a notice of proposed rulemaking to modify its rules regarding financing and securitizing the unguaranteed portions of its loans made under Section 7(a) of the Small Business Act. On April 2, 1997, SBA published in the **Federal Register** an interim final rule on this matter and extended the time for public comments on the proposed regulation. Because of the unusually great interest shown, SBA will hold a public hearing on the proposed rulemaking.

DATES: May 28, 1997, 2 p.m. to 5 p.m.

ADDRESSES: Eisenhower Conference Room, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James Hammersley, Acting Deputy Associate Administrator for Financial Assistance, (202) 205–7505.

SUPPLEMENTARY INFORMATION: The issues for the hearing are contained in the Supplementary Information published in the **Federal Register** on February 26, 1997 (62 FR 8640) and April 2, 1997 (62 FR 15601). Previously, SBA regulations provided non-depository lenders the opportunity to finance and securitize the unguaranteed portion of SBA Section 7(a) guaranteed loans. The proposed rule, published on February 26, 1997, would permit both depository and non-depository lenders to pledge or securitize the unguaranteed portions of SBA guaranteed loans. The proposed rule also describes certain retainage requirements to protect the safety and soundness of the program. The interim final rule, published on April 2, 1997, permits both depository and non-depository lenders to pledge or sell the unguaranteed portions of SBA guaranteed loans. SBA noted in the interim final rule that it expects to give favorable review to any transaction which complies with the retainage requirements in the proposed rule.

To assure the widest possible public participation, SBA will hold a public hearing on this proposal in Washington, DC at the Small Business Administration Office at 409 3rd Street, SW., Washington, DC 20416. The meeting will be held on May 28, 1997, from 2 p.m. to 5 p.m.

Interested parties will be given a reasonable time for an oral presentation and may submit written statements of their oral presentation in advance. If you wish to make a presentation, please contact Betty Smith at (202) 205–6490 at least 5 days before the hearing. If a large number of participants desire to make statements, a time limitation on each presentation will be imposed.

Members of the hearing panel may ask questions of the speaker, but speakers will not be allowed to question each other. Please submit questions in writing in advance, if possible, to the Chair. If the Chair determines them to be relevant, the Chair will direct them to the appropriate panel member.

Dated: May 7, 1997.

Jeanne Sclater,

Acting Associate Deputy Administrator for Economic Development.

[FR Doc. 97–12408 Filed 5–9–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 375

[Docket No. RM95–16–000]

Regulations for the Relicensing of Hydropower Projects; Notice of Extension of Time

Issued May 5, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of extension of time.

SUMMARY: On November 26, 1996, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking (61 FR 64031, December 3, 1996) proposing revisions to its regulations for the relicensing of hydropower projects. The date for filing reply comments is being extended at the request of the National Hydropower Association.

DATES: Reply comments shall be filed on or before June 4, 1997.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, 202–208–0400.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12302 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Countervailing Duties; Extension of Deadline To File Public Comments on Proposed Countervailing Duty Regulations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of deadline to file public comments on proposed countervailing duty regulations.

SUMMARY: The Department of Commerce (‘‘the Department’’) is extending the deadline to file public comments on the proposed countervailing duty regulations containing changes resulting from the Uruguay Round Agreements Act (the URAA). The deadline for filing comments on the proposed regulations is now May 27, 1997.

DATES: The comment deadline has been extended to May 27, 1997.

ADDRESSES: Address written comments to the following: Robert S. LaRussa, Acting Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. The address should also include the following: Attention: Proposed Regulations/Uruguay Round Agreements Act—Countervailing Duties. Each person submitting a comment is requested to include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Yeske at (202) 482–0189.

SUPPLEMENTARY INFORMATION: On February 26, 1997, the Department published proposed countervailing duty regulations (62 FR 8818). We requested written comments from the public to be submitted by April 28, 1997. On April 23, 1997, we published a notification of extension of the deadline for filing comments to May 12, 1997 (62 FR 19719). We have further extended the deadline to May 27, 1997.

Proposed Regulations

The proposed regulations are available on the Internet at the following address: http://www.ita.doc.gov/import__admin/records/

In addition, the proposed regulations are available to the public on 3.5″ diskettes, with specific instructions for accessing compressed data, at cost, and paper copies available for reading and photocopying in Room B–099 of the Central Records Unit. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–0866.

Format and Number of Copies

To simplify the processing and distribution of the public comments pertaining to the Department's proposed regulations, parties are encouraged to submit documents in electronic form accompanied by an original and three paper copies. All documents filed in electronic form must be on DOS formatted 3.5″ diskettes, and must be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. If possible, the Department would appreciate the documents being filed in either ASCII format or WordPerfect, and containing generic codes. The Department would also appreciate the use of descriptive filenames.

Dated: May 8, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12490 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–110–FOR, Amendment No. 93–7]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of part of a proposed amendment to the Indiana regulatory program (hereinafter the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment that is being withdrawn is the second part of a larger amendment submitted by Indiana. The first part of the amendment was previously approved by OSM. The amendments being withdrawn pertain to permit revisions. Indiana is withdrawing this amendment because it was recalled by the Indiana Attorney General.

DATES: This proposed amendment is withdrawn May 12, 1997.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION: By letter dated December 30, 1993 (Administrative Record No. IND–1322), Indiana submitted proposed amendment number 93–7 to its program pursuant to SMCRA. The amendment concerned revisions to numerous sections of the Indiana rules to address OSM Regulatory Reform I, II, and III issues. Indiana subsequently subdivided the amendment, and OSM approved Part I on November 9, 1995 (60 FR 56516).

On April 30, 1997 (Administrative Record No. IND–1568), Indiana requested that Part II of amendment 93–7 be withdrawn. Indiana intends to revise the amendment prior to resubmitting it for formal review and approval by OSM. Therefore, amendment 93–7 Part II as announced in the December 20, 1995, **Federal Register** (60 FR 65611) is withdrawn.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 2, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–12260 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 285

DOD Freedom of Information Act (FOIA) Program

AGENCY: Office of the Secretary, Department of Defense (DOD).

ACTION: Proposed rule.

SUMMARY: This proposed revision to the DOD Freedom of Information Act (FOIA) Program provides substantive and administrative changes. It conforms to the requirements of the Electronic Freedom of Information Act Amendments of 1996, as amended by Public Law 104–231.

DATES: Comments must be received by July 11, 1997.

ADDRESSES: Forward comments to ASD(PA), Room 2C757, 1400 Defense Pentagon, Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, 703–697–1180.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 285 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 285

Freedom of Information.

Accordingly, 32 CFR part 285 is proposed to be revised to read as follows:

PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Sec.
285.1 Purpose.
285.2 Applicability and scope.
285.3 Policy.
252.4 Responsibilities.
285.5 Information requirements.

Authority: 5 U.S.C. 552.

§ 285.1 Purpose.

This part:

(a) Update policies and responsibilities for the implementation of the DOD FOIA Program under 5 U.S.C. 552.

(b) Continues to delegate authorities and responsibilities for the effective administration of the FOIA program.

§ 285.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components'').

(b) National Security Agency/Central Security Service records are subject to this part unless the records are exempt under 50 U.S.C. 401 note. The records of the Defense Intelligence Agency, National Reconnaissance Office, and the National Imagery and Mapping Agency are also subject to this part unless the records are exempt under 10 U.S.C. 424.

§ 285.3 Policy.

It is DoD policy to:

(a) Promote public trust by making the maximum amount of information available to the public, in both hardcopy and electronic formats, on the operation and activities of the Department of Defense, consistent with DOD's responsibility to ensure national security.

(b) Allow a requester to obtain agency records from the Department of Defense that are available through other public information services without invoking the FOIA.

(c) Make available, under the procedures established by 32 part 286, those agency records that are requested by a member of the general public who cites the FOIA.

(d) Answer promptly all other requests for information, agency records, objects, and articles under established procedures and practices.

(e) Release agency records to the public unless those records are exempt from mandatory disclosure as outlined in 5 U.S.C. 552.

(f) Process requests by individuals for access to records about themselves under the Privacy Act procedures as implemented by DOD Directive 5400.11 [1], and procedures outlined in this part as amplified by 32 CFR part 286.

§ 285.4 Responsibilities.

(a) The Assistant Secretary of Defense for Public Affairs (ASD (PA)) shall:

(1) Direct and administer the DOD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

(2) Issue a DOD FOIA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(3) Internally administer the FOIA Program for OSD, the Chairman of the Joint Chiefs of Staff and, as an exception to DOD Directive 5100.3 [2], the Combatant Commands.

(4) As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities within OSD, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, and the DOD Field Activities.

(b) The General Counsel, Department of Defense shall provide uniformity in the legal interpretation of this part.

(c) The Heads of DOD Components shall:

(1) Publish in the **Federal Register** any instructions necessary for the internal administration of this part within a DOD Component that are not prescribed by this part or by other issuances of the ASD(PA). For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) shall be published in accordance with DOD Directive 5400.9[3].

(2) Conduct training on the provisions of this part, 5 U.S.C. 552, and 32 CFR part 286 for officials and employees who implement the FOIA.

(3) Submit the report prescribed in Chapter 7 of DOD 5400.7–R.[4]

(4) Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the **Federal Register** the records specified in 5 U.S.C. 552(a)(2) unless such records are published and copies are offered for sale.

(5) Maintain and make available for public in inspection and copying current indices of these records are required by U.S.C. 552.

§ 285.5 Information requirements.

The reporting requirements in Chapter 7 of DOD 5400.7–R have been assigned Report Control Symbol DD–PA(A) 1365.

Dated: April 29, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer.

[FR Doc. 97–11599 Filed 5–9–97; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 285.3 (f).

[3] See footnote 1 to § 285.3(f)

[4] See footnote 1 to § 285.3(f)

POSTAL SERVICE

39 CFR Parts 111 and 502

Manufacture, Distribution, and Use of Postal Security Devices and Information Based Indicia

AGENCY: Postal Service.

ACTION: Correction to notice of proposed rule.

SUMMARY: The original document (62 FR 14833; March 28, 1997) included an incorrect date and an incorrect statement of reference.

DATES: Comments on the proposed policies must be received on or before June 30, 1997.

SUPPLEMENTARY INFORMATION: For purposes of clarification, the proposed policies and regulations apply to all computer based (open) systems. In addition, they apply to all other technologies that could incorporate the new secure features of an Information Based Indicia, and are specifically submitted as such to the Postal Service by a Product/Service Provider.

Section 502.30 *Provider Infrastructure* (published in the **Federal Register** of March 28, 1997, on page 14842, incorrectly references the Information Based Indicia Program Product/Service Provider Infrastructure Specifications. The first sentence of § 502.30 is hereby corrected as follows: ''The Provider must establish and maintain an interface to USPS systems.''

These proposed regulation changes are not intended to change any of the current published requirements for the approval and distribution of postage meters (closed systems).

The rest of the document was correct as published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–12268 Filed 5–9–97; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, 260, 261, 264, 265, 266, 270, and 271

[FRL–5824–3]

Revised Technical Standards for Hazardous Waste Combustion Facilities; Correction

ACTION: Notice of data availability; correction.

SUMMARY: The Environmental Protection Agency published a notice of data availability and invitation for comment in the **Federal Register** of May 2, 1997, on the following information pertaining to the proposed revised standards for hazardous waste combustors (61 FR 17358 (April 19, 1996)): Report on the status of setting national emission standards for hazardous air pollutants (NESHAPS) based on the revised emissions database; report on the selection of pollutants and source categories, including area and major sources; report on the status of various implementation issues, including compliance dates, compliance requirements, performance testing, and notification and reporting requirements; and report on the status of permit requirements, including waste minimization incentives. The notice inadvertently omitted four paragraphs and contained six incorrect numbers.

FOR FURTHER INFORMATION CONTACT: Larry Denyer, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 703–308–8770, e-mail address: denyer.larry@epamail.epa.gov.

Correction

In the **Federal Register** issue of May 2, 1997, in FR Vol. 62, No. 85, insert the following four paragraphs of text between the last paragraph on page 24240 and the first paragraph on page 24241:

Option 1: Eliminate DRE Testing Except for Potentially Problematic Sources. Under this option, DRE testing would be waived for all sources, except those that are considered to be potentially problematic—sources that inject hazardous waste into the combustor at locations other than the flame zone. Thus, for example, the source discussed above that injected waste into an unfired afterburner (and failed to achieve 99.99% DRE at low CO and HC levels) would be required to perform DRE testing under this option.

Option 2: Single DRE Test for All Sources or Only for Potentially Problematic Sources. Under this option, either all or only potentially problematic sources (as defined above) would be required to perform a single DRE test, unless the facility undergoes a major modification of pollution control equipment, process change, or waste feed composition that could significantly affect combustion performance. We request comment on how to determine when such a change is about to occur and thus trigger the need for a DRE test. One approach is to rely on the requirements for applying for a revised Title V or RCRA permit modification (Class 2 or 3) to identify changes warranted a DRE re-test.

Option 3: Periodic DRE Testing for All Sources or Only for Potentially Problematic Sources. Under this option, all or specific sources must perform a periodic demonstration of DRE. Potential frequencies under consideration are a five, ten or twenty year frequency. The purpose of these tests would be to confirm that the unit is still achieving a high level of combustion performance over the life of the unit. As for option 2, a DRE test would have to be performed at any time that a major change to the facility occurred that could significantly affect combustion performance.

The Agency specifically invites comment on these options for waiving DRE testing. In addition, note that these options are not mutually exclusive.

Correction

In the **Federal Register** issue of May 2, 1997, in FR Vol. 62, No. 85, on page 24232, in the last paragraph, in two different sentences, correct the number 15 to read: 20.

Correction

In the **Federal Register** issue of May 2, 1997, in FR Vol. 62, No. 85, on page 24232, in the last paragraph, correct the number 33 to read: 47.

Correction

In the **Federal Register** issue of May 2, 1997, in FR Vol. 62, No. 85, on page 24233, in the first partial paragraph, correct the number 15 to read: 20.

Correction

In the **Federal Register** issue of May 2, 1997, in FR Vol. 62, No. 85, on page 24233, in the third full paragraph, correct the number 15 to read: 20.

Correction

In the **Federal Register** issue of May 2, 1997, in FR Vol. 62, No. 85, on page 24233, in the third full paragraph, correct the number 33 to read: 47.

Dated: May 5, 1997.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 97–12377 Filed 5–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5824–5]

National Emission Standards for Hazardous Air Pollutants: Source Category List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The Clean Air Act (Act) requires the EPA to list (for regulation under section 112 of the Act) all categories of major sources of hazardous air pollutants (HAP's), and categories of area sources if they present a threat of adverse effects to human health or the environment. The EPA has listed many sources categories, but has yet to list or regulate research and development (R&D) facilities. Today's notice provides advance notice that the EPA intends to list R&D, and solicits comments and information on the best way to list and regulate such sources.

DATES: *Comments.* Comments must be received on or before June 11, 1997.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–11, U.S.

Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Docket. Docket No. A–97–11 is available for public inspection and copying from 8:00 a.m. to 5:30 p.m. Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning this ANPR, contact Mr. Mark Morris at (919) 541–5416, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) requires that EPA evaluate and control emissions of hazardous air pollutants (HAP's). The control of HAP's is achieved through promulgation of emission standards under section 112 of the Act for sources that emit HAP's. The Act requires the EPA to publish a list of all categories and subcategories of sources of HAP's. This list is required to be revised (no less often than every 8 years), if appropriate, in response to public comment or new information. The EPA published an initial list of source categories on July 16, 1992. The list was last revised on June 14, 1996 (correction notice on July 18, 1996).

Section 112(c)(7) of the Act requires the EPA to ''establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities.'' Such language was included in the Act because Congress was concerned that research and laboratory facilities should not arbitrarily be included in regulations that cover manufacturing operations. The Act defines research or laboratory facility as ''any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.''

The EPA has interpreted the Act as requiring the listing of R&D major sources. It is clear from section 112(c)(7) of the Act that Congress intended for R&D to receive special treatment. The EPA has interpreted this section of the Act as requiring the creation of a separate category for R&D (as necessary to ensure equitable treatment of such facilities); the EPA does not believe this section of the Act provides the Agency with discretion regarding whether to list R&D major sources. The EPA welcomes other interpretations (with legal basis) regarding the discretion of the EPA in listing R&D major sources.

Research and development (R&D) is performed at many sources which are already included in listed source categories. For example, R&D is performed in the synthetic organic chemical manufacturing industry (SOCMI), an industry which is addressed by the Hazardous Organic NESHAP (HON). The HON does not apply to R&D operations, regardless of whether they are located on the same site as a commercial chemical manufacturing process. In the preamble to the proposed HON rule, the EPA stated it had limited information on the operations of R&D facilities and the appropriate controls for them. The EPA stated it was uncertain how to structure a standard for R&D facilities, and concluded it would be appropriate to establish a separate source category covering R&D facilities to ensure equitable treatment of them. For reasons similar to those given in the HON, R&D has been exempted from other NESHAP's.

The EPA is now considering adding major R&D sources to the source category list. The term ''major source'' is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit (considering controls), in the aggregate, 10 tons per year or more of any HAP or 25 tons per year of any combination of HAP's. Sources that emit HAP's in amounts smaller than those of a major source are called area sources.

Language in the Act specifying special treatment of R&D facilities (section 112(c)(7)), along with language in the legislative history of the Act, suggests that Congress considered inequitable subjecting the R&D facilities of an industry to a standard designed for the commercial production processes of that industry. The application of such a standard may be inappropriate because the wide range of R&D operations and sizes, and the frequent changes in R&D operations, may be significantly different from the typically large and continuous production processes.

The Act requires the EPA to list all categories of major sources of HAP's, and categories of area sources if they present a threat of adverse effects to human health or the environment. The EPA has no information indicating there are major or area R&D sources that are required to be listed and regulated, other than those associated with sources already included in listed source categories. Although the EPA is not aware of other R&D sources that need to be added to the source category list, such sources may exist, and the EPA is seeking information about them. For example, what Federal, State, or private research facilities, hospitals, universities, military facilities, etc. require listing?

Since R&D is performed in many different industries, the EPA is considering various ways of listing and addressing R&D. R&D major sources could be listed as one category covering all R&D operations in all industries. However, it may be difficult in this case to develop standards general enough for the variety of sources, and to ensure the standards are consistent with the minimum control requirements (''floors'') required by the Act. R&D could also be listed as several (or many) different source categories to account for the significant differences between sources. The source categories already listed could provide a guide for listing the R&D sources of the associated industries, that is, for each listed source category, a corresponding source category for R&D operations could be listed.

The EPA is seeking comments on the advantages and disadvantages of the different ways to list R&D facilities described above, as well as any other options for listing. The EPA is also seeking information on R&D sources so it can assess the most reasonable and practical way to list and regulate R&D. Such information includes descriptions of R&D processes, magnitude of HAP emissions and methods of HAP emission estimation, emission controls and their costs, and any existing State or local regulations that may apply to R&D facilities. The EPA also invites any trade groups associated with R&D operations to provide information and participate in the process of listing and regulating R&D.

Electronic Submission of Comments

Comments may be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–97–11. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Administrative Requirements

Because today's notice is not a rule or a proposed rule, the EPA has not prepared an economic impact analysis pursuant to section 317 of the Act, a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act, or a written statement under section 202 of the Unfunded Mandates Act of 1995. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act.

Under Executive Order 12866 [58 FR 5173 (October 4, 1993)], the EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in standards 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA submitted this action to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

List of Subjects

Air pollution control, Hazardous air pollutants, Research and development, Environmental protection.

Dated: May 2, 1997.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–12376 Filed 5–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5825–3]

Regulations of Fuels and Fuel Additives: Baseline Requirements for Gasoline Produced by Foreign Refiners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: This document announces the time and place for a public hearing regarding EPA's proposed rule to revise the requirements for imported gasoline. The Agency is proposing that a foreign refiner could choose to petition EPA to establish an individual baseline reflecting the quality and quantity of gasoline produced at a foreign refinery in 1990 that was shipped to the United States. The foreign refiner would be required to meet the same requirements relating to the establishment and use of individual refinery baselines as are met by domestic refiners. The agency published this proposed rule in the **Federal Register** on May 6, 1997 (See 62 FR 24775 for further information on the proposal).

DATES: EPA will conduct a public hearing on the proposed rule from 9:00 a.m. on May 20, 1997, in Washington, D.C. If you wish to testify at this public hearing, contact Karen Smith at (202) 233–9674 by Tuesday, May 13, 1997. If there are no parties interested in testifying on this proposal, the hearing will be subject to cancellation without further notification. If you want to know if the hearing has been canceled contact the person named above.

ADDRESSES: The public hearing will be held from 9:00 a.m. until noon at the The Wyndham Bristol Hotel, The Potomac Rooms 2430 Pennsylvania Avenue, N.W. Washington, D.C. 22037. If additional time is needed to hear testimony, the hearing will continue from 1:00 until 5:00 p.m. in the same location. Materials relevant to this document have been placed in Docket A–97–26. 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 materials.

Written 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 Karen Smith at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen Smith at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9674.

SUPPLEMENTARY INFORMATION: A copy of this notice 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.

Procedures for Public Participation

A. Comments and the Public Docket

The Agency is proposing that a foreign refiner could choose to petition EPA to establish an individual baseline reflecting the quality and quantity of gasoline produced at a foreign refinery in 1990 that was shipped to the United States. The foreign refiner would be required to meet the same requirements relating to the establishment and use of individual refinery baselines as are met by domestic refiners. Additional requirements are also being proposed to address issues that are unique to refiners and refineries located outside the United States, related to tracking the movement of gasoline from the refinery to the United States border, monitoring compliance with the requirements that apply to parties outside the United States, and imposition of appropriate sanctions for violations. EPA is also proposing that it would monitor the quality of imported gasoline, and if it exceeded a specified benchmark, EPA would apply appropriate remedial action. EPA is proposing that the baseline for gasoline imported from refiners without an individual baseline would be adjusted to remedy the exceedance.

Persons with comments containing propriety information must distinguish such information from other comments to the greatest extent and label it as ''Confidential Business Information.'' If a person making comments wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in

40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

B. Public Participation

Any person desiring to present testimony regarding this proposed rule at the public hearing (see DATES) should notify the contact person listed above of such intent as soon as possible. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling testimony for those who have not notified the contact person. This testimony will be scheduled on a first come, first served basis to follow the previously scheduled testimony.

EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing in order to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed previously.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–97–26 (see **ADDRESSES**).

Mr. Charles Freed, Division Director of the Fuels and Energy Division, Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. Because a public hearing is designed to give interested parties an opportunity to participate in the proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding. The Presiding Officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness. EPA asks that persons who testify attempt to limit their testimony to ten minutes, if possible. The Administrator will base her decision with regard to the revised requirements for imported gasoline on the record of the public hearing and on any other relevant written submissions and other pertinent information. This information will be available for public inspection at the EPA Air Docket, Docket No. A–97–26 (see **ADDRESSES**).

Dated: May 8, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–12476 Filed 5–9–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7219]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	New Britain (City) Hartford County.	Willow Brook	Approximately 300 feet downstream of Willow Brook Park Road.	*63	*61
			Approximately 800 feet upstream of Reservoir Road.	*345	*344
		Mason Pond Brook	At confluence with Willow Brook	*168	*170
			Approximately 75 feet upstream of Shuttle Meadow Avenue.	*172	*171
		Schultz Pond Brook	At the confluence with Willow Brook	*175	*176
			Approximately 815 feet upstream of Reservoir Road.	*345	*344
		Bass Brook	Approximately 1,600 feet downstream of East Street.	*89	*90
			Approximately 825 feet upstream of upstream crossing of Lewis Road.	*263	*267
		Batterson Park Pond Brook.	Approximately 400 feet downstream of Stanley Park Road.	*178	*177
			Approximately 115 feet upstream of Brittany Farms Road.	*207	*206
		Gaffney Brook	At Francis Street	*174	*176
			Approximately 1,400 feet upstream of Francis Street.	*179	*181
		Sandy Brook	At corporate limits	*89	*90
			Approximately 650 feet upstream of Ella Grasso Road.	None	*131

Maps available for inspection at the New Britain City Hall, Engineering Department—Room 503, 27 West Main Street, New Britain, Connecticut.

Send comments to The Honorable Lucian Pawlak, Mayor of the City of New Britain, New Britain City Hall, 27 West Main Street, New Britain, Connecticut 06051.

Connecticut	Wilton (Town) Fairfield County.	West Branch Saugatuck River.	Approximately 840 feet upstream of Westport/Wilton corporate limits.	*96	*95
			Approximately 800 feet upstream of Route 53 (Cedar Road).	*160	*159

Maps available for inspection at the Inland Wetland Commission, Wilton Town Hall Annex, 238 Danbury Road, Wilton, Connecticut.

Send comments to Mr. Bob Russell, First Selectman for the Town of Wilton, 238 Danbury Road, Wilton, Connecticut 06897.

Georgia	Rockdale County (Unincorporated Areas).	Yellow River	At confluence of Big Haynes Creek	*646	*652
			Approximately 200 feet downstream of Georgia Highway 138.	*659	*660
		Big Haynes Creek	At confluence with Yellow River	*646	*652
			At confluence of Little Haynes Creek	None	*661
		Little Haynes Creek	At confluence with Big Haynes Creek	None	*661
			At county boundary	None	*697

Maps available for inspection at Rockdale County Planning and Development Department, 2570 Old Covington Highway, Conyers, Georgia 30207.

Send comments to Mr. Randolph W. Poynter, Chairman of the Rockdale County Board of Commissioners, 922 Court Street, P.O. Box 289, Conyers, Georgia 30207.

Michigan	Escanaba (Township) Delta County.	Little Bay De Noc	Entire shoreline within community	None	*585

Maps available for inspection at the Escanaba Township Hall, County 416, 20th Road, Gladstone, Michigan.

Send comments to Mr. Kevin Dubord, Escanaba Township Supervisor, 3983 County 416, 20th Road, Gladstone, Michigan 49837.

Georgia	Trion (Town) Chattooga County.	Chattooga River	Approximately 1,400 feet downstream of U.S. 27.	*659	*656
			Approximately 0.75 mile upstream of confluence of Cane Creek.	*684	*682
		Cane Creek	At confluence with Chattooga River	*681	*679
			Approximately 0.5 mile upstream of Welcome Hill Road.	*681	*680
		Spring Branch	At confluence with Chappel Creek	*661	*659

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 100 feet downstream of Central Avenue.	*664	*663
		Chappel Creek	At confluence with Chattooga River	*661	*659
			Approximately 1,150 feet upstream of First Street.	*661	*659
		Trion Branch	At confluence with Chattooga River	*663	*661
			Approximately 50 feet upstream of Allgood Street.	*663	*662

Maps available for inspection at the Trion Town Hall, 128 Park Avenue, Trion, Georgia.

Send comments to The Honorable Alan Plunkett, Mayor of the Town of Trion, Trion Town Hall, P.O. Box 727, Trion, Georgia 30753.

Michigan	Fairbanks (Township) Delta County.	Big Bay De Noc	Approximately 200 feet west and south of the intersection of 11 Road and 11 Drive.	None	*584
		Green Bay	In the vicinity of Sac Bay at the southernmost tip of Garden Peninsula.	None	*585
				None	*584
		Lake Michigan	Entire shoreline within community	None	*584

Maps available for inspection at the Fairbanks Township Hall, 4314 11 Road, Garden, Michigan.

Send comments to Mr. John Latulip, Fairbanks Township Supervisor, 4677 LL Road, Garden, Michigan 49829.

Michigan	Garden (Township) Delta County.	Big Bay De Noc	Entire shoreline within community	None	*585
		Lake Michigan	Entire shoreline within community	None	*584

Maps available for inspection at the Garden Supervisor's Office, State Road, Garden, Michigan.

Send comments to Mr. Gary Plant, Garden Township Supervisor, P.O. Box 82, Garden, Michigan 49835.

Michigan	Frankenmuth (City) Saginaw County.	Cass River	Approximately 0.6 mile downstream of South Main Street.	*607	*612
			Approximately 1.1 miles upstream of South Main Street.	*612	*614

Maps available for inspection at the Frankenmuth City Hall, 240 West Genesee Street, Frankenmuth, Michigan.

Send comments to Mr. Charles Graham, Manager of the City of Frankenmuth, Frankenmuth City Hall, 240 West Genesee Street, Frankenmuth, Michigan 48743.

New York	Yonkers (City) Westchester County.	Saw Mill River	Approximately 1,420 feet downstream of Ashburton Avenue.	None	*95
			Approximately 0.4 mile upstream of Hearst Street.	*117	*115
		Crestwood Lake		None	*161

Maps available for inspection at the Engineering Department, Room 313, Yonkers City Hall, Yonkers, New York.

Send comments to The Honorable John D. Spencer, Mayor of the City of Yonkers, Yonkers City Hall, Yonkers, New York 10701.

North Carolina	North Topsail Beach (Town) Onslow County.	Atlantic Ocean	Approximately 225 feet south of the intersection of 14th Avenue and Ocean Boulevard (SR 1583).	*16	*19
			Just north of the intersection of Gray Street and North Carolina State Route 210.	*7	*11
		Stump Sound/Intracoastal Waterway.	Approximately 0.7 mile north of the intersection of Sand Piper Drive and New River Inlet Road.	*7	*11
			Approximately 0.5 mile northeast of confluence of Normans Creek and Old Sound Channel.	*7	*11

Maps available for inspection at the North Topsail Beach Town Hall, 2008 Loggerhead Court, North Topsail Beach, North Carolina.

Send comments to Ms. Ann Vause, Town of North Topsail Beach Manager, 2008 Loggerhead Court, North Topsail Beach, North Carolina 28460.

North Carolina	Surf City (Town) Pender and Onslow Counties.	Atlantic Ocean	Approximately 250 feet south of the intersection of NC 50 and Reachwood Drive.	*16	*19
			At intersection of Goldsboro Avenue and New River Drive.	*7	*11
		Topsail Sound	Approximately 1,250 feet northwest of the intersection of Pender Avenue and Shore Drive.	*7	*12

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,400 feet northwest of the intersection of NC 50 and Reachwood Drive.	*10	*9

Maps available for inspection at the Surf City Town Hall, P.O. Box 2475, Surf City, North Carolina.

Send comments to The Honorable Vance Kee, Mayor of the Town of Surf City, P.O. Box 2475, Surf City, North Carolina 28445.

North Carolina	Topsail Beach (Town) Pender County.	Atlantic Ocean	Approximately 350 feet southeast of the intersection of Clark Avenue and NC State Route 1554.	*17	*20
			At intersection of Humphrey Avenue and Shore Drive.	None	*13
		Topsail Sound	Approximately 700 feet west of the intersection of Shore Line Drive and Godwin Avenue.	*14	*13
			Approximately 450 feet northwest of intersection of Fields Avenue and Shore Drive.	*9	*10

Maps available for inspection at the Topsail Beach Town Hall, 820 South Anderson Boulevard, Topsail Beach, North Carolina.

Send comments to Mr. Eric Peterson, Topsail Beach Town Manager, P.O. Box 3089, Topsail Beach, North Carolina 28445–9831.

Ohio	Clark County (Unincorporated Areas).	Mad River	At CONRAIL	*889	*888
			Approximately 2,100 feet downstream of Snider Road.	None	*856

Maps available for inspection at the Clark County Building Department, 25 West Pleasant Street, Springfield, Ohio.

Send comments to Mr. Roger Tackett, President of the Clark County Board of Commissioners, P.O. Box 2639, Springfield, Ohio 45501.

Pennsylvania	Hatfield (Township) Montgomery County.	West Branch Neshaminy Creek Tributary No. 2.	Approximately 600 feet upstream of confluence with West Branch Neshaminy Creek.	*288	*289
			Approximately 600 feet upstream of Lansdale Tributary.	*303	*302

Maps available for inspection at the Hatfield Township Administration Building, 1950 School Road, Hatfield, Pennsylvania.

Send comments to Ms. Jean R. Vandegrift, President of the Township of Hatfield Board of Commissioners, 1950 School Road, Hatfield, Pennsylvania 19440.

Pennsylvania	Lansdale (Borough) Montgomery County.	West Branch Neshaminy Creek Tributary No. 2 (previously Lansdale Tributary and Neshaminy Creek Branch).	Approximately 250 feet upstream of Schues Road.	*299	*301
			Approximately 650 feet upstream of West 5th Street.	*324	*318

Maps available for inspection at the Lansdale Borough Building, One Vine Street, Lansdale, Pennsylvania.

Send comments to Mr. Lee Mangan, Lansdale Borough Manager, One Vine Street, Lansdale, Pennsylvania 19446.

Pennsylvania	Pike (Township) Berks County.	Bieber Creek	At a point approximately 730 feet upstream of Keim Road.	None	*398
			At a point approximately 0.27 mile upstream of Keim Road.	None	*407

Maps available for inspection at the Pike Township Building, Hill Church Road, Oley, Pennsylvania.

Send comments to Mr. Timothy P. Korsak, Chairman of the Pike Township Board of Supervisors, R.D. #4, Box 280, Boyertown, Pennsylvania 19512.

Pennsylvania	Plains (Township) Luzerne County.	Mill Creek	Confluence with Susquehanna River	*551	*549
			Approximately 900 feet upstream from State Route 315.	None	*694
		Unnamed Tributary to Mill Creek.	Confluence with Mill Creek	None	*680
			Approximately 1,400 feet upstream of confluence with Mill Creek.	None	*680
		Susquehanna River	At downstream corporate limits	*550	*549
			Approximately 900 feet upstream of the upstream corporate limits.	*555	*553

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at Plains Town Hall Municipal Building, 126 North Main Street, Plains, Pennsylvania.					
Send comments to Mr. Robert Stella, Chairman of the Township of Plains Board of Commissioners, Luzerne County, 126 North Main Street, Plains, Pennsylvania 18705.					
Pennsylvania	Reynoldsville (Borough). Jefferson County	Soldier Run	Approximately 600 feet upstream of Worth Street.	*1,369	*1,368
			At corporate limits	*1,378	*1,376
Maps available for inspection at the Reynoldsville Municipal Building, 460 Main Street, Reynoldsville, Pennsylvania.					
Send comments to Mr. Richard R. Reed, President of the Reynoldsville Borough Council, P.O. Box 67, Reynoldsville, Pennsylvania 15851.					
Pennsylvania	Winslow (Township) Jefferson County	Soldier Run	Downstream corporate limits	*1,378	*1,376
			Upstream corporate limits	None	*1,482
Maps available for inspection at the Winslow Township Municipal Building, R.D. 1, Reynoldsville, Pennsylvania.					
Send comments to Mr. Kenneth J. Long, Chairman of the Township of Winslow Board of Supervisors, Township Municipal Building, R.D. 1, Box 4, Reynoldsville, Pennsylvania 15851.					
Wisconsin	Eau Claire (City) Chippewa and Eau Claire Counties.	Chippewa River	At Interstate 94	*774	*773
		Upstream corporate limits	*808	*806	
		Sherman Creek	Confluence with Chippewa River	*778	*776
			Approximately 1.0 mile upstream of Menomonie Street.	*807	*808
		Eau Claire River	At the confluence with Chippewa River	*784	*782
			Downstream side of Chicago and Northwestern Railroad spur.	*784	*783
Maps available for inspection at the Eau Claire City Hall, Inspection Service Office, 203 South Farwell Street, Eau Claire, Wisconsin.					
Send comments to Mr. Don Norrell, Manager of the City of Eau Claire, 203 South Farwell Street, Call Box 5148, Eau Claire, Wisconsin 54707–5148.					

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

Dated: April 23, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–12370 Filed 5–9–97; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register

Vol. 62, No. 91

Monday, May 12, 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

Food and Consumer Service

Food Distribution Program: Substitution of Donated Poultry with Commercial Poultry

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Food and Consumer Service's (FCS) intent to continue and expand a demonstration project to test program changes designed to improve the State processing of donated chicken by allowing the substitution of donated chicken supplied by the Department of Agriculture (the Department) with commercial chicken. The Department is currently operating a demonstration project that allows selected poultry processors to substitute commercial chicken for donated chicken in the State processing of donated chicken. Only bulk pack chicken and chicken parts are eligible for substitution under the current demonstration project. Notice of the project, which operates from February 1, 1996 through June 30, 1997, was published in the **Federal Register** at 61 FR 5373 on February 12, 1996. Under the demonstration project, FCS invoked its authority under 7 CFR 250.30(t) to waive the current prohibition at 7 CFR 250.30 (f)(1)(I) against the substitution of poultry items and to establish the criteria under which substitution will be permitted.

The Department will continue to operate the demonstration project from July 1, 1997 through June 30, 1999 and will expand the project to include bulk pack turkey in addition to the bulk pack chicken and chicken parts. The Department will use the results of the demonstration project to further examine whether allowing the additional substitution will result in increased processor participation and provide a greater variety of processed end products to recipient agencies in a more timely manner at lower costs.

DATES: The proposals described in this Notice may be submitted to FCS through June 30, 1998. Note that the demonstration project runs until June 30, 1999.

ADDRESSES: Proposals should be sent to Ellen Henigan, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, Park Office Center, Room 501, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: David Brothers, Schools and Institutions Branch, at (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22675, May 31, 1984).

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and is thus exempt from the provisions of that Act.

Background

Section 250.30 of the current Food Distribution Program regulations (7 CFR part 250) sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts. Section 250.30(t) authorizes FCS to waive any of the requirements contained in 7 CFR part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Current Program Requirements

The State processing regulations at § 250.30(f)(1)(i) currently allow for the substitution of certain specified donated food items with commercial foods, with the exception of meat and poultry. Under the current regulations at § 250.30(g), when donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing is required to be performed in plants under continuous Federal meat or poultry inspection or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to Food Safety Inspection Service (FSIS) inspection, all donated meat and poultry processing must be performed under Agricultural Marketing Service (AMS) acceptance service grading.

Traditionally only a few companies have processed donated poultry. Those processors have stated that the policy prohibiting the substitution of donated poultry reduces the quantity of donated poultry they are able to accept and process during a given period. Poultry purchased by USDA for further processing is bulk chill packed. Processors must schedule production around deliveries of the donated poultry since it is a highly perishable product. Some of the processors must schedule production around deliveries of donated poultry for up to 30 individual States. Vendors do not always deliver donated poultry to the processors as scheduled, causing delays in production of end products. These delays may be alleviated if the processors can substitute their commercial poultry for donated poultry.

Demonstration Project

From July 1, 1997 to June 30, 1999, the Department will continue to operate a demonstration project under which it will permit approved processors to substitute commercial poultry for donated poultry in the State processing of donated poultry. In addition, it intends to expand the project to include bulk pack turkey. Processors may submit proposals and be approved to participate in the demonstration project during this time. FCS is invoking its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) against the substitution of poultry for purposes of this demonstration project.

The demonstration project will be limited to bulk pack chicken, chicken parts, and bulk pack turkey because the processing of such items can be readily evaluated. There are a number of reasons why poultry is preferable to meat for purposes of this demonstration project. The definition of substitution in § 250.3 requires the replacement of commercial product for donated food to be of the same generic identity and equal or better quality. With bulk pack chicken, chicken parts, and bulk pack turkey these requirements can be met easily and quickly, but requirements for the substitution of meat would be more complicated. For example, the USDA specification for donated ground beef calls for quality assurance provisions and certification requirements including: (1) Checking fresh chilled beef for condition prior to grinding; (2) implementing a sampling program to determine if physchrotropic plate count levels exceed 100,000 bacteria per gram; (3) assuring removal of bone and trimming defects; (4) complying with time and temperature requirements during processing and storing; and (5) complying with fat content requirements. These requirements cannot be duplicated by many processors. Additionally, donated ground beef is delivered frozen. Therefore, unlike bulk chilled poultry, immediate processing is not crucial. Bulk pack turkey has been added to the original demonstration project that allowed for the substitution of bulk pack chicken and bulk pack chicken parts because USDA graders can easily determine if commercial turkey meets or exceeds the specifications for donated turkey.

FCS is inviting interested poultry processors to submit written proposals to participate in the demonstration project. The following basic requirements will apply to the demonstration project:

- As with the processing of donated poultry into end products, AMS graders must monitor the processing of any substituted commercial poultry to ensure program integrity is maintained.
- Only bulk pack chicken, chicken parts, and bulk pack turkey delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically cut-up frozen poultry parts delivered to schools which may be turned over to processors for further processing at a later time.)
- Commercial poultry substituted for donated poultry must be certified by an AMS grader as complying with all product specifications for the donated poultry.
- Substitution of commercial poultry may occur in advance of the actual receipt of the donated poultry by the processor. However, no substitution may occur before the product is purchased by USDA and the contract is awarded. Lead time between the purchase and delivery of donated poultry may be up to five weeks. Any variation between the amount of commercial poultry substituted and the amount of donated poultry received by the processor will be adjusted according to guidelines furnished by USDA.
- Any donated poultry not used in end products because of substitution must only be used by the processor at one of its facilities in other commercial processed products and cannot be sold as an intact unit. However, in lieu of processing the donated poultry, the processor may use the product to fulfill other contracts with USDA provided all terms of the other contract are met.
- The only regulatory provision or State processing contract term affected by the demonstration project is the prohibition on substitution of poultry (§ 250.30(f)(1)(i) of the regulations). All other regulatory and contract requirements remain unchanged and must still be met by processors participating in the demonstration project.

The demonstration project will enable FCS to evaluate whether to amend program regulations to provide for the substitution of donated poultry with commercial poultry in the State processing program. Particular attention will be paid to whether such an amendment of the regulations would probably increase the number of processors participating, and whether it would probably increase the quantity of donated poultry that each processor accepts for processing. Further, FCS will attempt to determine whether the expected increase in competition and the expected increase in the quantity of donated poultry accepted for processing enables processors to function more efficiently, producing a greater variety of processed poultry end products in a more timely manner at lower costs.

FCS has determined that the current demonstration project did not allow sufficient time for the poultry industry to consider the ramifications and possible benefits of the demonstration. The initial, but limited, data gathered from recipient agencies, AMS graders, and AMS procurement has been positive. USDA is convinced that given additional time, more chicken processors will decide to participate. Processors in the turkey industry, who are subject to the same inspection standards as the chicken industry, have expressed a strong desire to enter the demonstration. The limited participation in the demonstration, to date, has not provided FCS with sufficient data to make an informed decision regarding benefits that might accrue to State processing programs should the terms of the demonstration be made permanent. Interested processors should submit a written proposal to FCS outlining how they plan to carry out the substitution while complying with the above conditions. Processors who are currently participating in the demonstration should apply to continue in the demonstration. The proposal must contain (1) a step-by-step description of how production will be monitored (2) a complete description of the records that will be maintained for (a) the commercial poultry substituted for the donated poultry (b) the disposition of the donated poultry delivered. All proposals will be reviewed by representatives of the Food Distribution Division of FCS and by representatives of AMS Poultry Division's Grading Branch. Companies approved for participation in the demonstration project will be required to enter into an agreement with FCS and AMS which authorizes the processor to substitute commercial bulk pack chicken, chicken parts, and bulk pack turkey in fulfilling any current or future State processing contracts during the demonstration project period. Participation in the demonstration project will not ensure the processor will receive any State processing contracts.

Dated: May 5, 1997.

George A. Braley,

Associate Administrator, Food and Consumer Service.

[FR Doc. 97–12277 Filed 5–9–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on May 29 and May 30, 1997 at the Six Rivers

National Forest Conference Room, 1330 Broadway, Eureka, California. On May 29, the meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. The meeting will reconvene at 8:00 a.m. on May 30 and adjourn at 3:00 p.m. Agenda items to be covered include: (1) Klamath Province storm damage overview; (2) Aquatic Conservation Strategy, discussing its role in the Northwest Forest Plan; (3) a Forest approach to economic monitoring; (4) Subcommittee Reports; and (5) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Connie Hendryx, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1309.

Dated: May 6, 1997.

Barbara Holder,

Forest Supervisor.

[FR Doc. 97–12336 Filed 5–9–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on May 28, 1997 at the Oregon Department of Fish and Wildlife Office at 4192 North Umpqua Highway, Roseburg, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m.

Agenda items to be covered include: (1) Update on coarse woody material standard; (2) Update on COHO listing; (3) Update on Rogue and Umpqua Basin Assessments; (4) Forest Service and Bureau of Land Management local issues; (5) Interagency Executive Committee issues and end results, and (6) Public comments. All Province Advisory committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone 541–858–2322.

Dated: April 29, 1997.

James T. Gladen,

Acting Forest Supervisor, Designated Federal Official.

[FR Doc. 97–12407 Filed 5–9–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Water Rights Task Force Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Forest Service announces meetings of the Water Rights Task Force established on August 20, 1996, in accordance with the provisions of the Federal Agricultural Improvement and Reform Act of 1996, as amended. The chairman has scheduled the 10th, 11th, and 12th meetings of the Task Force in Denver, CO, on June 9–10, July 17–18, and August 4–5, 1997, respectively.

DATES: The meetings will be held June 9 from 9:30 a.m. to 5:30 p.m.; June 10 from 8:30 a.m. to 2:00 p.m.; July 17 from 8:30 a.m. to 5:30 p.m.; July 18 from 8:30 a.m. to noon; August 4 from 9:30 a.m. to 5:30; and August 5 from 8:30 a.m. to 5:30 p.m.

ADDRESSES: All three meetings will be held in Conference Room D of the Presidents Club, Continental Airlines, in Concourse A of Denver International Airport terminal.

Send written comments to Eleanor Towns, FACA Liaison, Water Rights Task Force, c/o USDA Forest Service, MAIL STOP 1124, P.O. Box 96090, Washington, DC 20090–6090. Telephone (202) 205–1248; Fax: (202) 205–1604.

FOR FURTHER INFORMATION CONTACT: Stephen Glasser, Watershed & Air Management Staff, Telephone: (202) 205–1172; Fax: (202) 205–1096.

SUPPLEMENTARY INFORMATION: The Water Rights Task Force is comprised of seven members appointed by Congress and the Secretary of Agriculture to study and make recommendations on issues pertaining to water rights. All meetings are open to the public. However, time for the public to address the Task Force must be arranged prior to the meetings by contacting either the Chairman, Mr. Bennett W. Raley, c/o Trout & Raley, P.C., 1775 Sherman Street, Suite 1300, Denver, CO 80203, phone (303) 861–1963, extension 125, or Ms. Towns at the address and phone number under **ADDRESSES**. Meeting discussion is limited to the Task Force members and Forest Service personnel. Persons who wish to bring water rights matters to the attention of the Task Force may file written statements with the Forest Service liaison at the address listed earlier in this notice, either before or after each meeting.

Dated: May 2, 1997.

Valdis E. Mezainis,

Acting Chief.

[FR Doc. 97–12278 Filed 5–9–97; 8:45 am]

BILLING CODE 3410–11–M

ARMS CONTROL AND DISARMAMENT AGENCY

The Director's Advisory Committee; Notice of Closed Meetings

May 7, 1997.

In accordance with the Federal advisory Committee Act, as amended 5 U.S.C. App. (1988), the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meetings:

Name: The Director's Advisory Committee (DirAC).

Dates: May 27 and May 28, 1997.

Time: 8:30 a.m.

Place: State Department Building, 320 21st Street, N.W., Room 4930, Washington, D.C.

Type of Meetings: Closed.

Contact: Robert Sherman, Executive Director, Director's Advisory Committee, Room 5844, Washington, D.C. 20451, (202) 647–4622.

Purpose of Advisory Committee: To advise the President, the Secretary of state, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

Purpose of the Meetings: The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Comprehensive Test Ban Treaty and the Conventional Weapons Convention. Members will also be briefed on issues regarding the Chemical and Biological Weapons Conventions. Members will exchange information and concepts with key ACDA personnel. Both of the meetings will be held in Executive Session.

Reason for Closing: The DirAC members will be reviewing and discussing matters specifically authorized by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy.

Authority to Close Meetings: The closing of the meetings is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated May 7, 1997 made pursuant to the provisions of Section 10(d) of the Federal

Advisory Committee Act as amended (5 U.S.C. App.).

Cathleen Lawrence,

Director of Administration.

Determination to Close Meetings of the Director's Advisory Committee

The Director's Advisory Committee (DirAC) will hold meetings in Washington, D.C., on May 27 and 28, 1997.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), it has been determined that discussions during the meetings will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552b(c)(1). Materials to be discussed at the meetings have been properly classified and are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), I have determined that, because of the need to protect the confidentiality of such national security matters, the meetings should be closed to the public.

John D. Holum,

Director.

[FR Doc. 97–12420 Filed 5–7–97; 3:51 pm]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Aluru J. Prasad; Order Denying Permission To Apply for or Use Export Licenses

On December 9, 1996, following a plea of no contest, Aluru J. Prasad (Prasad) was convicted in the United States District Court for the District of Massachusetts of violating Section 793(b) of the Espionage Act (18 U.S.C.A. 792–799 (1976 & Supp. 1997)). Prasad was convicted of knowingly and willfully attempting to obtain classified information connected with the national defense of the United States for the Union of Soviet Socialist Republics.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1997)) (the Act,[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (61 FR 12734–13041, March 25, 1996, to be codified at 15 C.F.R. Parts 730–774) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Prasad's conviction for violating the Espionage Act, and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Prasad permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on December 9, 2006. I have also decided to revoke all licenses pursuant to the Act in which Prasad had an interest at the time of his conviction.

Accordingly, it is hereby ordered;

I. Until December 9, 2006, Aluru J. Prasad, Road #10, Benjara Hills, Hyderabad, India, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Prasad by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 FR 42527, August 15, 1996), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1997)).

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 9, 2006.

VI. A copy of this Order shall be delivered to Prasad.

This Order shall be published in the **Federal Register.**

Dated: April 30, 1997.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 97–12322 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–835]

Oil Country Tubular Goods From Japan; Notice of Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission and preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on oil country tubular goods from Japan. This review was initiated in response to requests by importers, Helmerich & Payne, Inc. (H&P) and Caprock Pipe and Supply (Caprock), for a review of NKK Corporation of Japan (NKK) and HEBRA AS (HEBRA), respectively. Although we initiated a review of both NKK and HEBRA, we are rescinding the review with respect to HEBRA because Caprock timely withdrew its request for review. This review covers one producer/exporter and entries of drill pipe during the period August 11, 1995 through July 31, 1996, and entries of oil country tubular goods (OCTG) other than drill pipe during the period February 2, 1995 through July 31, 1996.

Because NKK did not submit a complete response to our questionnaire, we have preliminarily determined that facts available will be used. Interested parties who submit comments are requested to submit with each comment a statement of the issue and a brief summary of the comment.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–1395 or 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (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 intermim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Scope of the Review

The merchandise covered by this order is oil country tubular goods (OCTG), hollow steel products of circular cross-section, including only oil well casing, tubing and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Please note that many of these HTS numbers have changed since the less-than-fair value (LTFV) investigation. Although the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Background

In its final determination of sales at LTFV on OCTG from Japan, 60 FR 33560 (June 28, 1995), the Department determined that the two respondents, Nippon Steel Corp. and Sumitomo Metal Industries, Ltd., refused to cooperate by failing to respond to the Department's questionnaire. Therefore, in accordance with § 776(b) of the Act and its standard practice, the Department assigned the highest margin in the petition, 44.20 percent, to both respondents, and assigned the same rate to all others.

On August 2, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determination in this investigation. In its determination the ITC found two like products, (1) drill pipe, and (2) OCTG other than drill pipe (*i.e.*, casing and tubing). The ITC determined that imports of drill pipe from Japan threatened material injury to a U.S. industry. However, the ITC did not determine that, but for the suspension of liquidation of entries of drill pipe from Japan, the domestic industry would have been materially injured, pursuant to section 735(b)(4)(B) of the Act.

When the ITC finds threat of material injury, and makes a negative ''but for'' finding, the ''Special Rule'' provision of section 736(b)(2) of the Act applies. Therefore, all unliquidated entries of drill pipe from Japan, entered or withdrawn from warehouse, for consumption, on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, are liable for the assessment of antidumping duties.

On August 11, 1995, we published an antidumping duty order on the subject merchandise (60 FR 41058). Pursuant to section 736(b)(2) of the Act, the Department directed the U.S. Customs Service to terminate the suspension of liquidation for entries of drill pipe imported from Japan and entered, or withdrawn from warehouse, for consumption, before August 10, 1995, the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and to refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption, before that date. The Department also directed the U.S. Customs Service to suspend liquidation for drill pipe from Japan with respect to shipments entered, or withdrawn from warehouse, for consumption on or after August 10, 1995. Regarding OCTG other than drill pipe, because the ITC determined that imports of such merchandise were materially injuring a U.S. industry, in accordance with section 736(a) of the Act, the Department directed the U.S. Customs Service to continue to suspend liquidation of such shipments entered, or withdrawn from warehouse, for consumption on or after February 2, 1995, the date on which the Department published its LTFV preliminary determination notice in the **Federal Register** (60 FR 6506). The Department also directed the U.S. Customs Service to require for all entries of OCTG from Japan falling under the scope of the order, effective August 11, 1995, a cash deposit equal to the margin rate determined in the investigation.

On August 12, 1996, we published a notice of opportunity to request an administrative review (61 FR 41768), covering the period February 2, 1995 through July 31, 1996 for OCTG other than drill pipe, and the period August 11, 1995 through July 31, 1996 for drill pipe. On August 28, 1996, H&P, an importer of drill pipe, requested an administrative review of sales of subject merchandise produced by NKK and imported, or withdrawn from a foreign trade zone, by H&P during the review period for drill pipe (August 11, 1995, through July 31, 1996). On August 29, 1996, Caprock, an importer of used OCTG, requested an administrative review of OCTG produced by all Japanese manufacturers. On September 4, 1996, Caprock clarified that the company to be reviewed was actually HEBRA (which Caprock identified as a Norwegian export company), rather than all Japanese manufacturers.

The Department published a notice of initiation of an administrative review covering HEBRA and NKK on September 17, 1996 (61 FR 48882).

On September 19, 1996, we sent a questionnaire to NKK and HEBRA. On November 14, 1996, HEBRA submitted a letter stating that it would not submit a response to the Department's questionnaire, and Caprock submitted a letter withdrawing its request for a review.

Use of Facts Otherwise Available

NKK indicated that it did not sell or ship subject merchandise to the United States during the period of review (POR). Information on the record of this review, however, indicates that there were entries during the POR of subject merchandise produced by NKK. Pursuant to § 751(a)(2) of the Act, these entries are subject to review, regardless of NKK's assertions regarding sale and shipment dates. NKK twice failed to answer the questions in the Department's questionnaire, so the Department must base the margin upon facts available.

Where the Department must base the entire dumping margin for a respondent in an administrative review on facts otherwise available because that respondent failed to cooperate, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. (*See* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994).)

Consistent with Section 776(b) of the Act, we have assigned to NKK a rate equal to the highest rate for any company for the same class or kind of merchandise from the same country from this or any prior segment of the proceeding, or from the petition. In this instance, we have used the highest rate in the petition, the rate adopted by the Department in the investigation underlying this order.

In accordance with section 776(c) of the Act, to corroborate secondary information the Department will, to the extent practicable, examine the reliability and relevance of the information to be used—in this case, the highest rate from the petition. That rate was based upon the difference between U.S. price of a representative OCTG product sold by one Japanese company and constructed value for that product. Our review of the information in the original petition pertaining to the price of the product and to the major inputs (*e.g.*, iron ore, coke, scrap) and processes (ironmaking, steelmaking, and bloom and pipe production) used for the production of the final merchandise did not indicate that the analysis of the OCTG market in the petition is no longer appropriate to use as a basis for facts available. Furthermore, nothing on the record of this review supports a determination that the highest margin rate from the petition in the underlying investigation does not represent reliable and relevant information for purposes of adverse facts available. Therefore, in this proceeding, the highest margin from the petition is the most appropriate information on which to base a margin for this uncooperative respondent.

Preliminary Results of the Review

As a result of the review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/producer/exporter	Weighted-average margin percentage
NKK	44.20

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of the administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Cash Deposit

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of OCTG from Japan entered, or withdrawn from warehouse, for consumption, on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act and 19 CFR 353.22: (1) the cash deposit rate for NKK will be the rate established in the final results of this administrative review; (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 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) the cash deposit rate for all other manufacturers or exporters will be 44.20 percent, the ''all others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12388 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–701]

Brass Sheet and Strip From The Netherlands; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by respondent Outokumpu Copper Strip B.V. (OBV) and its United States affiliate Outokumpu Copper (USA), Inc. (OCUSA), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip from the Netherlands (A–421–701). This review covers one manufacturer/exporter of the subject merchandise to the United States during the period August 1, 1995 through July 31, 1996. We preliminarily determine that sales of brass sheet and strip (BSS) from the Netherlands have not been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties with respect to the entries of OBV. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) A statement of the issues; and (2) a brief summary of the argument.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Karla Whalen or Lisette Lach, Office of Antidumping/Countervailing Duty Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–0408 or (202) 482–6412, respectively.

SUPPLEMENTARY INFORMATION: Applicable Statute and Regulations: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are 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).

Background

On August 12, 1988, the Department published in the **Federal Register** the antidumping duty order on BSS from the Netherlands (53 FR 30455). On August 12, 1996, the Department published the notice of ''Opportunity to Request Administrative Review'' for the period August 1, 1995 through July 31, 1996 on BSS from the Netherlands (61 FR 41768). In accordance with 19 CFR 353.22 (a)(1), OBV requested that we conduct a review of its sales. On September 17, 1996, we published in the **Federal Register** a notice of initiation of this antidumping administrative review (61 FR 48882).

Verification

From February 24 through February 28, 1997, in accordance with section 782(i) of the Act, we verified information provided by OBV using standard verification procedures including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original source documentation containing relevant information. Our verification results are outlined in the verification report, the public version of which is available in the Central Records Unit of the Department of Commerce, Room B–099.

Scope of the Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise under investigation is currently classifiable under item 7409.21.00 and 7409.29.20 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Level of Trade

To the extent practicable, we determine NV for sales at the same level of trade as the U.S. sales (either export price (EP) or constructed export price (CEP)). When there are no sales at the same level of trade, we compare U.S. sales to home market (or, if appropriate, third-country) sales at a different level-of-trade. The NV level of trade is that of the starting-price sales in the home market. When NV is based on CV, the level of trade is that of the sales from which we derive selling, SG&A and profit.

For both EP and CEP, the relevant transaction for the level of trade analysis is the sale (or constructed sale) from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer the expenses under section 772(d) of the Tariff Act and the profit associated with these expenses. These expenses represent activities undertaken by the affiliated importer. Because the expenses deducted under section 772(d) represent selling activities in the United States, the deduction of these expenses normally yields a different level of trade for the CEP than for the later resale (which we use for the starting price). Movement charges, duties and taxes deducted under section 772(c) do not represent activities of the affiliated importer, and we do not remove them to obtain the CEP level of trade.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user, regardless of whether the final user is an individual consumer or an industrial user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed levels of trade. If the claimed levels are different, the selling functions performed in selling to each level should also be different. Conversely, if levels of trade are nominally the same, the selling functions performed should also be the same. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the levels of trade. A different level of trade is characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in levels of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. We use the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there is a pattern of no consistent price differences, the difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary.

The statute also provides for an adjustment to NV when NV is based on a level of trade different from that of the CEP if the NV level is more remote from the factory than the CEP and if we are unable to determine whether the difference in levels of trade between CEP level and NV level affects the comparability of their prices. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is an equivalent home market level but the data are insufficient to support a conclusion on price effect. This adjustment, the CEP offset, is identified in section 773(7)(B) of the Tariff Act and is the lower of the following:

- The indirect selling expenses on the home market sale, or
- The indirect selling expenses deducted from the starting price used to calculate CEP. The CEP offset is not automatic each time we use CEP. The CEP offset is made only when the level of trade of the home market sale is more advanced than the level of trade of the U.S. (CEP) sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

In the present review, OBV did not request an LOT adjustment. To ensure that no such adjustment was necessary, we examined information regarding OVB's distribution system in both the United States and the Netherlands, including selling functions, class of customer and selling expenses. In the home market, OBV sold to two categories of customers, end-users and trading companies. However, OBV's HM sales were all manufactured to order and the merchandise was shipped directly from the mill to both types of customer. OBV's packing process was also similar for both markets, and the selling expenses for the POR were comparable for all sales, regardless of the type of customer. Evidence on the record also demonstrates that OBV did not have a formal policy for providing payment terms, including discounts to different types of customers. Based upon this evidence, we determine that the selling activities involved with these sales were the same, and that OBV's HM sales were all made at the same level of trade.

OBV's sales in the United States, all of which were EP sales, were also at the same level of trade. All of OBV's United States customers were end-users and the sales were all manufactured to order. The packing process was basically the same as that of the HM sales, as was OBV's customer-specific approach to payment terms. Therefore, we conclude that no level of trade adjustment is warranted.

Export Price

For sales to the United States, we used export price (EP) as defined in section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser prior to the date of importation and the use of constructed export price was not indicated by the facts on the record. We calculated EP as the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2) of the Tariff Act, we reduced this price by post-sale warehousing, international freight, inland and marine insurance, U.S. brokerage and handling, U.S. duty, Customs Service fees, Department of Agriculture fees, and credit expenses, where appropriate.

Normal Value

A. Viability

Based upon (i) the Department's comparison of the aggregate quantity of home market and U.S. sales, (ii) the absence of any information that a particular marketing situation in the Netherlands does not permit a proper comparison, and (iii) the fact that OBV's quantity of sales in the home market exceeded five percent of its sales to the U.S. market, we determined that the quantity of foreign like product OBV sold in the Netherlands was sufficient to permit a proper comparison with the sales of subject merchandise to the United States pursuant to section 773(a) of the Tariff Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Tariff Act, we based NV on the prices at which the foreign like products were first sold for consumption in the Netherlands.

B. Cost-of-Production Analysis

Because we disregarded sales below the cost of production in the most recently completed review, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Tariff Act. *See Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Reviews* (57 FR 9534, March 19, 1992). Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by OBV.

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information OBV provided in its questionnaire responses.

After calculating COP, we tested whether home market sales of subject BSS were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges and post-sale price adjustments (reported as early payments and credit adjustments), where appropriate.

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than twenty percent of home market sales for a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below cost sales were not made within an extended period of time in ''substantial quantities.'' Where twenty percent or more of home market sales of a given product were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2) (C) of the Tariff Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act, we compared home market prices to the weighted-average COPs for the POR.

The results of our cost test for OBV indicated that for certain home market models less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV, where applicable. Our cost test also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Tariff Act) for certain other home market models, more than twenty percent of the sales were at prices below COP which would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Tariff Act, we therefore disregarded the below-cost sales of these models and used the remaining above-cost sales as the basis for determining NV, where applicable.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted average home market selling expenses. Where appropriate, we made adjustments to CV, in accordance with section 773(a)(8) of the Act and section 353.56(a) of the Department's regulations, for circumstances of sale (COS) differences. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

C. Product Comparisons

We compared OBV's U.S. sales with contemporaneous sales of the foreign like product in the home market. We compared BSS based on the following hierarchy of physical characteristics: (1) Grade (alloy); (2) gauge (thickness); (3) width; (4) temper; (5) coating; and (6) packed form. For purposes of these preliminary results, we have used differences in merchandise adjustments based on the difference in the variable cost of manufacturing between each U.S. model and its most similar home market model.

D. Date of Sale

The Department examined a number of distinct events in OBV's sales process to determine the appropriate date of sale. These included the frame agreement date, order entry date, and invoice date. OBV's sales listing included data permitting use of any of these for the date of sale. OBV argued that the appropriate date of sale methodology should be the order entry date. Petitioners [1] argued that the appropriate date of sale methodology should be the date of the frame agreement, as that date was used in the immediately preceding review. However, for purposes of these preliminary results, the Department has used the invoice date as the date of sale in determining the appropriate sales universe for comparison based upon the information provided by respondent and our findings at verification. (*See* Memorandum to the File Regarding Verification, dated April 16, 1997, from Lisette Lach and Lisa Yarbrough; and Analysis Memorandum to the File Regarding Preliminary Determination Analysis, dated May 6, 1997, from Lisette Lach and Karla Whalen.)

E. Home Market Prices

We based home market prices on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market or on CV, where applicable. For matching to home market prices, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, and for COS differences in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and § 353.56(2) of the Department's regulations.

Duty Absorption

On October 3, 1996, petitioners requested that the Department

[1] Hussey Copper, Ltd.; The Miller Company; Olin Corporation; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; International Union, Allied Industrial Workers of America (AFL–CIO); Mechanics Educational Society of America (Local 56); and United Steelworkers of America (AFL–CIO/CLC).

determine whether OBV had absorbed antidumping duties during the period of review pursuant to section 751(a)(4) of the Tariff Act. Section 751(a)(4) requires the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Tariff Act by the URAA. The Department's interim regulations do not address this provision of the Tariff Act. For transition orders as defined in section 751(c)(6)(C) of the Tariff Act, i.e., orders in effect as of January 1, 1995, § 351.213(j)(2) of the Department's proposed antidumping regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. *See* Notice of Proposed Rulemaking, 61 FR 7308, 7366 (February 27, 1996). The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. *Id.* at 7317. Although these proposed regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in applying section 751(a)(4) of the amended statute. This approach assures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c).

Because the order on BSS from the Netherlands has been in effect since 1988, this qualifies as a transition order. Therefore, based on the policy stated above, the Department will first consider a request for an absorption determination during a review initiated in 1996. This being a review initiated in 1996, we are making a duty-absorption determination as part of this segment of the proceeding. The statute provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, OCUSA, OBV's wholly owned subsidiary, is the importer of record for OBV's U.S. sales. Therefore, the importer and the exporter are ''affiliated'' within the meaning of sections 751(a)(4) and 771(33) of the Tariff Act. Furthermore, we have preliminarily determined that there is a dumping margin for OBV on 9.17 percent (by quantity) of its U.S. sales during the period of review. In addition, we cannot conclude from the record that the unaffiliated purchaser in the United States will pay the ultimately assessed duty. Under these circumstances, we preliminarily find that there is a dumping margin on OBV's sales through its affiliate representing 1.13 percent of its total U.S. sales and that antidumping duties have been absorbed by OBV.

Fair Value Comparison

To determine whether OBV made sales of subject BSS in the United States at prices that were less than fair value, we compared the EP to NV, as described in the ''Export Price'' and ''Normal Value'' analysis sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted-average prices for NV or CV where appropriate, and compared these monthly averages to individual U.S. sales transactions.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our comparison of EP to NV, we preliminarily determine that the weighted-average dumping margin for OBV for this administrative review period is as follows:

Manufacturer/ exporter	Period	Margin
OBV	8/1/95–7/31/96	0.10

Parties to these proceedings may request disclosure within five days of the date of publication of this notice and may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be submitted no later than 37 days after the date of publication of this notice.

Parties who submit arguments in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues in any such written comments or at a hearing, within 180 days of issuance of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of BSS from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for OBV will be the rate established in the final results of this administrative review;

(2) For previously reviewed or investigated companies other than OBV, 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 the less-than-fair-value 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 the ''all others'' rate of 16.99 percent established in the less-than-fair-value investigation. See Antidumping Duty Order of Sales at Less-Than-Fair-Value; Brass Sheet and Strip From the Netherlands (53 FR 30455, August 12, 1988).

All U.S. sales by the respondent OBV will be subject to one deposit rate according to the proceeding. The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, we will use the entered value of the subject merchandise to determine the appraisement rate.

This notice serves as preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12386 Filed 5–9–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–827]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Ellen Grebasch, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–3773, respectively.

The Applicable Statute

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 (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).

Preliminary Determination

We preliminarily determine that collated roofing nails (''CRN'') from Korea are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigations: Collated Roofing Nails from the People's Republic of China, the Republic of Korea, and Taiwan* (61 FR 67306, December 20, 1996)), the following events have occurred:

On January 17, 1997, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (see ITC Investigation Nos. 731–TA–757–759).

During November 1996 through January 1997, the Department obtained information from various sources identifying producers/exporters of the subject merchandise. (*See* Memo to the File, dated May 5, 1997, for a detailed explanation of the Department's search for producers/exporters of the subject merchandise.) During January, based on this information, the Department issued antidumping questionnaires to Kabool Metals (''Kabool''), Koram Steel Co., Ltd (''Koram''), Rewon Metals (''Rewon''), Jisco Steel, Han Duk Industrial Co. (''Han Duk''), New Korea, Jeil Steel, and Senco Korea (''Senco''). The questionnaire is divided into four sections: Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production (''COP'') of the foreign like product and constructed value (''CV'') of the subject merchandise.

The Department received responses to Section A of the questionnaire during February and March 1997. On March 13, 1997, pursuant to section 777A(c) of the Act, the Department determined that, due to the large number of exporters/producers of the subject merchandise, it would limit the number of mandatory respondents in this investigation. The Department determined that the resources available to it for this investigation and the two companion investigations limited our ability to analyze any more than the responses of the two largest exporters/producers of the subject merchandise in this investigation. Based on Section A questionnaire responses, the Department chose Kabool and Senco as mandatory respondents. (For detailed information regarding this issue, see memo to Lou Apple from the CRN team, dated March 13, 1997.)

Kabool and Senco submitted questionnaire responses in February and March 1997. We issued supplemental requests for information in March and April 1997, and received supplemental responses to these requests in April 1997.

On March 28, April 21 and 23, 1997, the Paslode Division of Illinois Tool Works Inc. (''Petitioner'') filed comments on the Kabool and Senco questionnaire responses.

Postponement of Final Determination and Extension of Provisional Measures

On May 1, 1997, Senco requested that, pursuant to section 735(a)(2)(A) of the Act, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of publication of the affirmative preliminary determination in the **Federal Register**. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 353.20(b), inasmuch as our preliminary determination is affirmative, Senco accounts for a significant proportion of exports of the subject merchandise under investigation, and we are not aware of the existence of any compelling reasons for denying the request, we are granting Senco's request and postponing the final determination. Suspension of liquidation will be extended accordingly. *See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan* (61 FR 8029, March 1, 1996).

Scope of Investigation

The product covered by this investigation is CR nails made of steel, having a length of 13⁄16 inch to 1 13⁄16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 7317.00.55.05. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation (''POI'') comprises each exporter's four most recent fiscal quarters prior to the filing of the petition. In this case, the POI for both companies is October 1, 1995, through September 30, 1996.

Fair Value Comparisons

Kabool and Senco

To determine whether sales of the subject merchandise by Kabool and Senco to the United States were made at less than fair value, we compared the Export Price (''EP'') or Constructed Export Price (''CEP'') to the Normal Value (''NV''), as described in the EP, CEP, and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

Kabool reported that it had no viable home market or third country sales during the POI. Therefore, we made no price-to-price comparisons for Kabool. See the ''Normal Value'' section of this notice, below, for further discussion.

For certain U.S. sales Senco had no appropriate third country matches. For purposes of calculating a unit margin for these sales, as the ''facts available'' we are applying the highest rate calculated in Senco's margin calculations for a control number.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the ''Scope of Investigation'' section of this notice, above, produced in Korea and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): head size, type of collation (used to connect the wire to the nail), shank size, length of the nail, steel type, number of nails packed into a box or carton, type of coating, coating thickness (in ounces per foot), and coating thickness (in microns).

(ii). Level of Trade and CEP Offset

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (''SAA'') at 829–331, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale (s), the Department may compare sales in the U.S. and foreign markets at different levels of trade. Section 773(a)(7)(A) provides that if we compare a U.S. sale with a home market sale made at a different level of trade, when appropriate, we will adjust NV to account for this difference. When NV is based on CV, the level of trade is that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit.

For comparisons to CEP sales, section 773(a)(7)(B) of the Act provides for making a CEP offset when two conditions are met. First, the NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP, and second, the data available do not establish an appropriate basis for calculating a level of trade adjustment.

In this case, however, Senco, the only respondent with a viable home or third country market, did not claim that sales are made at different levels of trade. Additionally, the information on the record does not demonstrate that there are any differences in levels of trade. We therefore preliminarily determine that all of Senco's sales are made at a single level of trade. Because U.S. sales are at the same level as home market sales, no level of trade adjustment or CEP offset is warranted.

We have not applied a level of trade adjustment or CEP offset for Kabool because Kabool did not claim a level of trade adjustment and we are unable to determine whether the NVs are calculated at different levels of trade than the U.S. sales. As explained below in the ''Normal Value'' section of this notice, we calculated the NV for Kabool based entirely on CV. We derived SG&A and profit from data from the profitable companies' most recent financial statements contained in the Section A responses (*see* memorandum to the file dated May 5, 1997, for the CV profit rate calculation). This data does not permit an appropriate level of trade analysis because we are unable to isolate the particular selling expenses associated with the selling functions for Kabool's NV. Therefore, we find insufficient evidence on the record to justify a level of trade adjustment or CEP offset.

Export Price and Constructed Export Price

Kabool

We used EP in accordance with section 772(a) of the Act because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on packed prices, either CIF or CNF to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight—plant/warehouse to port of exit, brokerage and handling in Korea, international freight, and marine insurance. We added to EP reported duty drawback amounts.

Senco

We used EP in accordance with section 772(a) of the Act where the subject merchandise was sold to unaffiliated customers prior to importation and the CEP methodology was not indicated by the facts of record. We used CEP in accordance with section 772(b) of the Act where the subject merchandise was sold to unaffiliated customers after importation. We calculated both EP and CEP, as appropriate, based on packed prices, to the first unaffiliated purchaser in the United States. For both EP and CEP sales we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage and handling, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse to the unaffiliated customer, international freight (including U.S. customs duties), marine insurance (including U.S. inland insurance), and other price adjustments (*see* memorandum to the file dated May 5, 1997), where appropriate. With respect to foreign inland freight and brokerage and handling expenses, Senco reported that it incurred these expenses but did not report any amounts for these expenses in its sales listing. As the ''facts available,'' for foreign inland freight we are using the same freight amount reported for U.S. inland freight from the warehouse to the unaffiliated customer, and for brokerage and handling expenses we are using the brokerage and handling expenses from a sample sales document supplied by Senco in its Section A response and applying that amount to all U.S. sales.

For CEP sales, we made additional deductions, in accordance with section 772(d) (1) and (2) of the Act, for credit expenses, advertising expenses, other direct selling expenses, indirect selling expenses, and inventory carrying costs incurred in the United States. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit, to arrive at the CEP. The amount of profit deducted was calculated in accordance with section 772(f) of the Act. Because we did not have cost information for Senco, that would permit us to calculate total expenses (and total actual profit) under paragraph 772(f)(2)(C) (i) or (ii) we used the total expenses incurred (and total actual profit earned) with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise, in accordance with paragraph 772(f)(2)(C)(iii). We have calculated profit as a percentage of the cost of production as recorded in Senco's most recent financial statement and applied that ratio to the CEP selling expenses to arrive at an amount for CEP profit.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compare each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Senco

Senco reported that it had no home market sales during the POI. Therefore, in accordance with section 773(a)(1)(B)(ii), we based normal value for Senco on sales to its largest third country market, Canada. We calculated NV based on packed prices, to unaffiliated customers. In accordance with section 773(a)(6) of the Act, we deducted third country packing costs and added U.S. packing costs. However, we note that Senco failed to report packing amounts in its sales listings. Therefore, in accordance with section 776(a) of the Act, as the ''facts available'' we are applying the ratio of packing costs to gross unit price as supplied in the petition. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight. With respect to foreign inland freight expenses, Senco reported that it incurred these expenses but did not report any amounts for these expenses in its sales listing. As the ''facts available'' for foreign inland freight we are using the same freight amount reported for U.S. inland freight from the warehouse to the unaffiliated customer. In addition, where appropriate, we adjusted for differences in circumstances of sale for imputed credit expenses.

Kabool

Kabool reported that it had no viable home or third country sales during the POI. Therefore, in accordance with section 773(a)(4) of the Act, we based normal value for Kabool on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the costs of materials and fabrication, selling, general, and administrative expenses (''SG&A''), profit and U.S. packing costs. We used Kabool's costs of materials, fabrication and packing as reported in the U.S. sales databases. In this case, Kabool had no home market selling expenses or home market profit upon which to base CV.

Section 773(e)(2)(B) of the Act sets forth three alternatives for computing profit and SG&A without establishing a hierarchy or preference among the alternative methods. We did not have the necessary cost data for methods one (calculating SG&A and profit incurred by the producer on the sales of merchandise of the same general type as the exports in question), or two (averaging SG&A and profit of other producers of the foreign like product for sales in the home market). The third alternative (section 773(e)(2)(B)(iii) of the Act) provides that profit and SG&A may be computed by any other reasonable method, capped by the amount normally realized on sales in the foreign country of the general category of products. The SAA states that, if the Department does not have the data to determine amounts for profit under alternatives one and two or a profit cap under alternative three, it still may apply alternative three (without the cap) on the basis of the ''facts available.'' SAA at 841. As the facts available, we are calculating an average SG&A and profit rate from the most recent financial statements of the profitable companies from which we received Section A responses. We note that some financial statements were unreadable; we did not include these numbers in our calculation. We preliminarily determine this data to be a reasonable surrogate for SG&A and profit of the subject merchandise. However, we will consider the issue of appropriate SG&A and profit information further for the final determination and invite comment on this issue.

Price to CV Comparisons

Because we based SG&A for CV on the financial statements of each individual company, where we compared CV to EP, we did not make any circumstance of sale adjustments for direct expenses, as we were unable to split out from total SG&A the direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996)). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because neither the Korean Won nor the Canadian Dollar underwent a sustained movement.

Critical Circumstances

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knows or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order on CRN in the United States or elsewhere to be sufficient. *See e.g., Preliminary Determinations of Critical Circumstances: Brake Drums and Rotors from the People's Republic of China,* 61 FR 55269 (Oct. 25, 1996); *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Rotors from the People's Republic of China,* 62 FR 9160 (Feb. 28, 1997). Currently, no countries have outstanding antidumping duty orders on CRN from Korea. The petitioner alleged a history of dumping based upon antidumping orders on steel wire nails from Korea and the People's Republic of China, both of which covered CRN. *See Certain Steel Wire Nails From Korea; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order,* 50 FR 40045 (Oct. 1, 1985); *Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order; Certain Steel Wire Nails from The People's Republic of China,* 52 FR 33463 (Sept. 3, 1987). We preliminarily determine that these antidumping orders are not a sufficient basis to find a history of dumping because both orders were revoked many years ago. However, we will consider this issue further for the final determination and we invite interested parties to comment on the issue.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers margins over 15% for EP sales and 25% for CEP sales to impute knowledge of dumping and of resultant material injury. *Brake Drums and Rotors,* 62 FR at 9164–65. When a company has both EP and CEP sales, we normally weight-average the 15% and 25% benchmarks using the volume of EP and CEP sales, respectively, to arrive at a weighted-average benchmark percentage for imputing knowledge of dumping. In this investigation, of the exporters/manufacturers has a margin over 15% for EP sales or 25% for CEP sales. Based on these facts, we determine that the first criterion for ascertaining whether or not critical circumstances exist is not satisfied. Therefore, we have not analyzed the shipment data for any of these companies to examine whether imports of CRN have been massive over a relatively short period. Thus, because neither alternative of the first criterion has been met, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to exports of CRN from Korea by Kabool or Senco.

Regarding all other exporters, because we do not find that critical circumstances exist for any of the investigated companies, we also determine that critical circumstances do not exist for companies covered by the ''All Others'' rate.

We will make a final determination concerning critical circumstances when we make our final determination in this investigation, if that final determination is affirmative.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise—except those exported by Kabool—that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Kabool	0
Senco	5.53
All Others	5.53

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded the zero margin from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 29, 1997, and rebuttal briefs, no later than August 5, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 6, at 9:00 a.m. in Room 1412 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(d) of the Act.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12393 Filed 5–9–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–850]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Ellen Grebasch, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–3773, respectively.

The Applicable Statute

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 (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).

Preliminary Determination

We preliminarily determine that collated roofing nails (''CR nails'') from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigations: Collated Roofing Nails from the People's Republic of China, the Republic of Korea, and Taiwan* (61 FR 67306, Dec. 20, 1996), the following events have occurred.

On January 17, 1997 the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (*see* ITC Investigation Nos. 731–TA–757–759). During November 1996 through February 1997, the Department obtained information from various sources regarding producers/exporters of the subject merchandise. (*See* Memorandum to the File, dated May 5, 1997, for a detailed explanation of the Department's efforts to identify producers/exporters of the subject merchandise.) On January 23, 1997, the Department issued an antidumping questionnaire to the China Chamber of Commerce for Import & Export of Metals, Minerals & Chemicals and the Ministry of Foreign Trade and Economic Cooperation with instructions to forward the document to all producers/exporters of the subject merchandise and that these companies must respond by the due dates. We also sent courtesy copies of the antidumping duty questionnaire to the following companies identified as possible exporters/producers of the subject merchandise during the POI: China Wuxi Zhenfen Screw Factory (''Wuxi''), Zhejiang Material Industry (Group) General Company (''Zhejiang''), Shanghai Minmetals Pu Dong Corporation (''Pu Dong''), Honshu Changing Hardware Tools Factory (''Honshu''), Taiqian Construction Materials Plant (''Taiqian''), Tianjin Beiyang Standard Equipment Factory (''Tianjin''), Shenzhen Top United Steel Co., Ltd. (''Top United''), Suzhou Jun Hua Metal Products Co., Ltd. (''Junhua''), Qingdao Zong Xun Nail Products Co., Ltd. (''Zongxun''), Wuxi Jiangchao Metal Products Co. Ltd. (''Wuxi Jiangchao''), and JAACO Corporations Incorporated (''JAACO''). The questionnaire is divided into four sections: Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively (Section B does not normally apply in investigations involving the PRC). Section D requests information on the factors of production of the subject merchandise.

During February and March 1997, the Department received questionnaire responses from Top United, Zongxun, Junhua, Pu Dong and Wuxi. We issued supplemental requests for information in March 1997, and received supplemental responses to these requests in April 1997. The remaining companies never responded to the Department's antidumping questionnaire. (See the ''Fair Value Comparisons'' section, below, for further discussion.)

Despite numerous attempts by the Department to make the filing requirements perfectly clear, Wuxi failed to file its questionnaire responses with the Department in the proper manner and to serve its responses on the other interested parties in this investigation (*see* letters from Erik Warga, Acting Program Manager, AD/CVD Enforcement, to Wuxi dated January 23, 1997, February 18, 1997, and March 24, 1997). In the Department's final letter notifying Wuxi of these errors, the due date to correct such matters was set at March 31, 1997. Wuxi has never filed a response with the Department in the proper manner nor served any submission on the other interested parties. Moreover, Wuxi's supplemental questionnaire response was due on April 11, 1997; however, the Department did not receive Wuxi's response until April 14, 1997, when it was faxed to (not filed with) the Department. (See the ''Fair Value Comparisons'' section, below, for further discussion.)

On March 24, 1997, the Department requested that interested parties provide publicly available information (''PAI'') for valuing the factors of production and for surrogate country selection. We received comments from the interested parties in April 1997.

On April 17 and 25, 1997, petitioner filed comments on the Top United, PuDong, Junhua, and Zongxun questionnaire responses.

Postponement of Final Determination

On April 22, 1997, respondents requested that, pursuant to section 735(a)(2)(A) of the Act, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the publication of the affirmative preliminary determination in the **Federal Register**. In accordance with section 735(a)(2) of the Act and 19 CFR 353.20(b), and inasmuch as our preliminary determination is affirmative, the respondents account for a significant proportion of exports of the subject merchandise, and we are not aware of the existence of any compelling reasons for denying the request, we are granting the respondents' request and postponing the final determination. Suspension of liquidation will be extended accordingly. *See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan* (61 FR 8029, March 1, 1996).

Scope of Investigation

The product covered by this investigation is CR nails made of steel, having a length of $^{13}/_{16}$ inch to $1^{13}/_{16}$ inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 7317.00.55.05. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation (''POI'') comprises each exporter's two most recent fiscal quarters prior to the filing of the petition.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country (''NME'') in all past antidumping investigations (*see, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'') and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22545 (May 8, 1995) (''*Furfuryl Alcohol*'')). Neither respondents nor petitioner have challenged such treatment. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base normal value (''NV'') on the NME producers'' factors of production, valued, to the extent possible, in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed in the NV section of this notice, below.

Separate Rates

Each of the respondents has requested a separate company-specific rate. Pu Dong was reported as being ''owned by all the people.'' Top United is a joint venture between (a) Guangming Overseas Chinese Farm (company ''owned by all the people''), (b) Padico Investment (China), Ltd. (company in Hong Kong), and (c) Topvan International (company in British Virgin Islands). Junhua is a joint venture between Taicang Metal Fusu Factory (collective-owned enterprise) and Hong Kong Zhanghua Company, Ltd. (a Hong Kong company). Zongxun is a joint venture between Qingdao Jiaozhou City Hardware Factory (collective-owned enterprise) and Taiwan Fuxun Enterprise Company, Ltd. (a Taiwan company).

As stated in *Silicon Carbide* and *Furfuryl Alcohol*, ownership of the company by all the people does not require the application of a single rate. Accordingly, Pu Dong and Top United are eligible for consideration of a separate rate.

The business licenses' of the remaining two respondents, Junhua and Zongxun, note that these PRC companies are foreign trade joint ventures which own the production and export facilities used to manufacture and export the subject merchandise they sell to the United States. In other cases involving the PRC, joint ventures between ''collective''-owned enterprises and foreign investors have not been precluded from consideration of a separate rate (*see Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472 (Oct. 23, 1995) and *Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995)). Therefore, for purposes of the preliminary determination, the remaining respondents are eligible for consideration of a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The respondents have placed on the record a number of documents to demonstrate absence of de jure control, including laws, regulations, and provisions enacted by the State Council of the central government of the PRC. They have also submitted documents which establish that collated roofing nails are not included on the list of products that may be subject to central government export constraints. In addition, respondents submitted the ''Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures' (April 13, 1988). The articles of this law authorize joint venture companies to make their own operational and management decisions. Further, Junhua and Zongxun submitted the ''Regulations Governing Rural Collective Owned Enterprises of the PRC'' (July 1, 1990). The articles of this law authorize collective-owned enterprises to make their own operational and management decisions.

In prior cases, the Department has analyzed the very laws which the respondents have submitted in this investigation and found that they establish an absence of de jure control. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472 (Oct. 24, 1995); *see also Furfuryl Alcohol*.) We have no new information in these proceedings which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide and Furfuryl Alcohol*.) Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Pu Dong, Zongxun, Junhua, and Top United each asserted the following: (1) They establish their own export prices; (2) they negotiate contracts without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales, use profits according to their business needs, and have the authority to sell their assets and to obtain loans. Additionally, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is de facto absence of governmental control of the export functions of these companies.

Consequently, we determine preliminarily that these exporters have met the criteria for the application of separate rates. We will examine this matter further at verification.

Facts Available

A. Non-Responding Exporters

Because some companies did not respond to the questionnaire, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC (except the four fully participating exporters) based on our presumption that the export activities of the companies that failed to respond are controlled by the PRC government. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, Apr. 30, 1996).

This PRC-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) Withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. The exporters that decided not to respond in any form to the Department's questionnaire demonstrate that these companies have failed to act to the best of their ability in this investigation. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rates determination. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. As adverse facts available, we are assigning the higher of the petition margin or margin calculated for any participating respondent in this investigation. Because the margins in the petition (as recalculated by the Department at initiation) were higher than any of the calculated margins, we used the highest margin stated in the *Notice of Initiation*, 118.41%, as total adverse facts available for the PRC-wide rate.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the ''SAA''), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

In the petition, the petitioner based its allegation of export price on price quotations from two manufacturer/exporters of CRN in the PRC. These price quotations were adjusted for movement expenses using customs data and IM–145 Import Statistics. *See Notice of Initiation*, 61 FR at 67307–08. As we stated in *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey*, 61 FR 30309 (June 14, 1996), we consider price quotations as information from independent sources. The export price calculations were based upon independent sources and Import Statistics, both sources which we consider to require no further corroboration by the Department. Therefore, we determined at initiation, and continue to find, that the calculations set forth in the petition have probative value.

The petitioner based its allegation of NV on the factors of production. *See Notice of Initiation*, 61 FR at 67308. To calculate the factors of production, the petitioner used manufacturing costs based on its own production experience, its 1995 audited financial statements, and publicly available industry data. *Id.* The factor of production amounts for the most significant raw material input (*i.e.*, steel wire) in the petition are consistent with the factor of production amounts reported by the respondents on the record of this investigation. As such, we determine that the NV calculations have probative value. (*See* memorandum to the file dated May 5, 1997.)

Based on our pre-initiation analysis and reexamination of the price information supporting the petition, we determine that the highest margin stated in the *Notice of Initiation* is corroborated within the meaning of section 776(c) of the Act.

B. Wuxi

As stated above, Wuxi failed to file their questionnaire responses with the Department in the proper manner and to serve their responses on the other interested parties in this investigation. In addition, Wuxi's submissions did not provide adequate information for determining that Wuxi is sufficiently independent from government control to be entitled to a separate rate. As such, we determine that Wuxi is not entitled to a separate rate. We, therefore, have included Wuxi in the ''PRC-wide'' rate.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Top United, Zongxun, Junhua, and Pu Dong to the United States were made at less than fair value, we compared the export price (''EP'') or constructed export price (''CEP'') to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

Export Price/Constructed Export Price

Top United

We used CEP in accordance with section 772(b) of the Act, because the sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices, FOB U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price (''gross unit price''): discounts, inland freight from the plant/warehouse to port of exit, PRC brokerage and handling, international freight, U.S. inland freight from port to warehouse, and U.S. customs duties, where appropriate. Because domestic brokerage and handling and inland freight were provided by a NME carrier, we based those charges on surrogate rates from Indonesia. We made additional deductions, in accordance with section 772(d)(1) of the Act, for credit expenses, indirect selling expenses, and inventory carrying costs. Pursuant to section

772(d)(3) of the Act, the price was further reduced by an amount for profit, to arrive at the CEP. The amount of profit deducted was calculated in accordance with section 772(f) of the Act. Because Top United is located in an NME country, we did not include any home market expenses, either actual or surrogate, in the CEP profit calculation. (*See Notice of Final Determination of Sales at Less than Fair Value: Certain Bicycles from the People's Republic of China* 61 FR 19026, 19032, Apr. 30, 1996.) Because the PRC is an NME we are using a surrogate profit rate based on total expenses and total actual profit reflective of the industry experience in our CEP profit calculations.

Zongxun

We used EP in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on packed prices, FOB to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to port of exit, and brokerage and handling in the PRC. Because domestic brokerage and handling and inland freight were provided by a NME carrier, we based those charges on surrogate rates from Indonesia.

Junhua

We used EP in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on packed prices, FOB to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to port of exit, and brokerage and handling in the PRC. Because domestic brokerage and handling and inland freight were provided by a NME carrier, we based those charges on surrogate rates from Indonesia.

Pu Dong

We used EP in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on packed prices, FOB to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (i.e., gross unit price) for inland freight from the plant/warehouse to port of exit, and brokerage and handling in the PRC. Because domestic brokerage and handling and inland freight were provided by a NME carrier, we based those charges on surrogate rates from Indonesia.

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Sri Lanka, Egypt, and Indonesia are countries comparable to the PRC in terms of overall economic development (*see* Memorandum dated March 24, 1997). According to the available information on the record, we have determined that Indonesia is a significant producer of merchandise that is comparable to CRN. Accordingly, we have calculated NV using Indonesian import prices—except, as noted below, in the ''Normal Value'' section of this notice, in certain instances where an input was sourced from a market economy—for the PRC producer's factors of production. We have obtained and relied upon PAI wherever possible.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced CR nails for the exporters which sold CR nails to the United States during the POI. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indonesian values, where possible.

For those inputs (*i.e.*, steel wire) that were sourced (either partially or totally) from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance with our practice. (*See Lasko Metal Products* v. *United States*, 437 F. 3d 1442, 1443 (Fed. Cir. 1994).) We valued the remaining factors using PAI from Indonesia.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI and quoted in a foreign currency, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's *International Financial Statistics*. For a complete analysis of surrogate values, *see* the Preliminary Determination Calculation Memorandum from the team to the File (''*Preliminary Determination Calculation Memorandum*''), dated May 5, 1997.

Except where noted below, we valued the following reported direct raw material inputs and packing materials using 1996 *Foreign Trade Statistics* (''*FTS*'') data from Indonesia: welding wire, hydrochloric acid, zinc, zinc powder, barium carbonate, potassium chloride, zinc chloride, boracic acid, nitric acid, potassium chromate, sulfuric acid, caustic soda, ammonia chloride, and sodium hydrosulfite. Reported packing materials include: paper carton, rubber bands, adhesive strips, nylon strips, staples, wood, nails, steel strips, and plastic sheets. Absent accurate *FTS* data, we used 1995 *United Nations Trade Statistics* from Indonesia to value the following inputs: welding wire and rubber bands. One of the reported material inputs, water, was determined not to be a direct material input in the production of subject merchandise and, therefore, has been treated as part of the factory overhead cost. (For further discussion, *see Preliminary Determination Calculation Memorandum.)*

To value direct skilled, direct unskilled, indirect labor and packing labor, we used the 1994 wage rate—the latest available information—for the manufacturing sector of fabricated metal products, machinery, and equipment in Indonesia published in the 1994 *Statistical Yearbook of Indonesia.* Because we cannot determine whether the labor values from this source were for skilled or unskilled workers, in accordance with the Department's practice in past NME cases, we applied a single earnings rate to all reported labor factors (*see Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the PRC*, 60 FR 52647 (Oct. 10, 1995) and *Preliminary Determination of Sales at Less Than Fair Value: Steel Pipe from Romania*, 60 FR 61532 (Nov. 30, 1995)).

To value electricity, we used the 1995 electricity rate reported in *A Brief Guide for Investors*, published by the Republic of Indonesia's Investment Coordinating Board. We based the value of diesel oil on 1996 *FTS* data for Indonesia.

We based our calculation of factory overhead, SG&A expenses, and profit on financial information for nail, screw, and bolt industries' experience in Indonesia, as reported in *Biro Pusat Statistik* 1995, Volume II, Indonesian Large and Medium Manufacturing Statistics.

To value truck freight rates, we used information in a September 1991, cable from the U.S Embassy in Jakarta, Indonesia.

To value foreign brokerage and handling, we relied on information reported in the antidumping investigation of stainless steel bar from India (*see Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915, Dec. 28, 1994).

Critical Circumstances

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knows or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order on CRN in the United States or elsewhere to be sufficient. *See e.g., Preliminary Determinations of Critical Circumstances: Brake Drums and Rotors from the People's Republic of China,* 61 FR 55269 (Oct. 25, 1996); *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Rotors from the People's Republic of China,* 62 FR 9160 (Feb. 28, 1997). Currently, no countries have outstanding antidumping duty orders on CRN from the PRC. The petitioner alleged a history of dumping based upon antidumping orders on steel wire nails from Korea and the People's Republic of China, both of which covered CRN. *See Certain Steel Wire Nails From Korea; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order,* 50 FR 40045 (Oct. 1, 1985); *Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order; Certain Steel Wire Nails from The People's Republic of China,* 52 FR 33463 (Sept. 3, 1987). We preliminarily determine that these antidumping orders are not a sufficient basis to find a history of dumping because both orders were revoked several years ago. However, we will consider this issue further for the final determination and we invite interested parties to comment on the issue.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers margins over 15% for EP sales and 25% for CEP sales to impute knowledge of dumping and of resultant material injury. *Brake Drums and Rotors,* 62 FR at 9164–65. In this investigation, none of the participating exporters/manufacturers has a margin over 15% for EP sales or 25% for CEP sales. Based on these facts, we determine that the first criterion for ascertaining whether or not critical circumstances exist is not satisfied. Therefore, we have not analyzed the shipment data for any of these companies to examine whether imports of CRN have been massive over a relatively short period. Thus, because neither alternative of the first criterion has been met, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to exports of CRN from the PRC by Top United, Junhua, Pu Dong, and Zongxun.

Regarding firms covered by the ''PRC-wide'' rate, we have used the ''facts available'' as the basis for determining whether critical circumstances exist for non-respondent exporters. The ''facts available'' margin exceeds the threshold for imputing knowledge of dumping to the importers of the merchandise. In addition, we have adversely assumed, as the ''facts available'', a massive increase in imports from these non-respondent exporters. We, therefore, determine that critical circumstances exist for non-responding exporters.

We will make a final determination concerning critical circumstances when we make our final determination of sales at less than fair value in this investigation.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise—except those exported by Top United, Zongxun, Junhua, or Pu Dong—that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Top United	0
Zongxun	0
Junhua	[1]
Pu Dong	0
PRC-wide Rate	118.41

[1] De Minimis.

The PRC-wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 28, 1997, and rebuttal briefs, no later than August 4, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 5, 1997, at 9:00 a.m. in Room 1412 at the U.S.

Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(d) of the Act.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12394 Filed 5–9–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–826]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Ellen Grebasch, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–3773, respectively.

The Applicable Statute

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 (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).

Preliminary Determination

We preliminarily determine that collated roofing nails (''CRN'') from Taiwan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (Notice of Initiation of Antidumping Duty Investigations: Collated Roofing Nails from the People's Republic of China, the Republic of Korea, and Taiwan (61 FR 67306, December 20, 1996), the following events have occurred:

On January 17, 1997, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in this case (see ITC Investigation Nos. 731–TA–757–759).

During November 1996 through January 1997, the Department obtained information from various sources identifying producers/exporters of the subject merchandise. (*See* Memorandum to the File, dated May 5, 1997, for a detailed explanation of the Department's search for producers/exporters of the subject merchandise.) During January and February, based on this information, the Department issued antidumping questionnaires to Unicatch Industrial Co. Ltd. (''Unicatch''), K. Ticho Industries Co., Ltd. (''K. Ticho''), Hao Chun B&M Corporation (''Hao Chun''), Lei Chu Enterprise Co., Ltd. (''Lei Chu''), Forrader Union Company (''Forrader''), Double Dragon Ent. Co. Ltd. (''Dragon''), S&J Wire Products Company, Ltd. (''S&J''), Certified Products Inc. (''Certified''), Sun Jade Handicraft Ltd. (''Sun Jade''), Master United Corporation (''United''), Trim International Incorporated (''Trim''), and Romp Coil Nail Industries (''Romp''). The questionnaire is divided into four sections: Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production (''COP'') of the foreign like product and constructed value (''CV'') of the subject merchandise.

The Department received responses to Section A of the questionnaire during February and March, 1997. K. Ticho did not respond to the Department's questionnaire. (*See* the ''Fair Value Comparisons'' section below, for further discussion).

On March 13, 1997, pursuant to section 777A(c) of the Act, the Department determined that, due to the large number of exporters/producers of the subject merchandise, it would limit the number of mandatory respondents in this investigation. The Department determined that the resources available to it for this investigation and the two companion investigations limited our ability to analyze any more than the responses of the four largest exporters/producers of the subject merchandise in this investigation. Based on Section A questionnaire responses, the Department determined that the four largest companies, and therefore the mandatory respondents in this proceeding, were: Unicatch, Lei Chu, Romp, and S&J. (For detailed information regarding this issue, *see* memorandum to Lou Apple from the CRN team, dated March 13, 1997.)

Unicatch, Lei Chu, Romp, and S&J submitted questionnaire responses in February and March 1997. We issued supplemental requests for information in March and April 1997, and received supplemental responses to these requests in April 1997.

On April 14, 16, 23, and 25, 1997, the Paslode Division of Illinois Tool Works Inc. (''Petitioner'') filed comments on the Unicatch, Lei Chu, Romp, and S&J questionnaire responses.

Postponement of Final Determination and Extension of Provisional Measures

On April 22, 1997, Respondents Unicatch and Lei Chu requested that, pursuant to section 735(a)(2)(A) of the Act, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of publication of the affirmative preliminary determination in the **Federal Register**. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 353.20(b), inasmuch as our preliminary determination is affirmative, Unicatch and Lei Chu account for a significant proportion of exports of the subject merchandise under investigation, and we are not aware of the existence of any compelling reasons for denying the request, we are granting the respondents' request and postponing the final determination. Suspension of liquidation will be extended accordingly. *See* Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan (61 FR 8029, March 1, 1996).

Scope of Investigation

The product covered by this investigation is CR nails made of steel, having a length of 13⁄16 to 1–13⁄16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 7317.00.55.05. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation (''POI'') comprises each exporter's four most recent fiscal quarters prior to the filing of the petition. In this case, the POI for all companies is October 1, 1995 through September 30, 1996.

Fair Value Comparisons

A. K. Ticho

As discussed above, K. Ticho did not respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner and in the form requested, significantly impedes a proceeding, or provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination. Because K. Ticho failed to submit the information that the Department specifically requested, we must base our determination for K. Ticho on the facts available.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. K. Ticho's decision not to participate in the Department's investigation demonstrates that K. Ticho has failed to act to the best of its ability in this investigation. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. As adverse facts available, we are assigning to K.Ticho the higher of the petition margin or margin calculated for any respondent in this investigation. Because the margins in the petition (as recalculated by the Department at initiation) were higher than any of the calculated margins, we used the highest margin stated in the *Notice of Initiation*, 40.28%, as total adverse facts available for K. Ticho.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the ''SAA''), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

In the petition, the petitioner based its allegation of export price on price quotes from two manufacturer/exporters of CRN in Taiwan. These price quotations were adjusted for movement expenses using customs data and IM–145 Import Statistics. *See* Notice of Initiation, 61 FR at 67307–08. As stated in Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey, 61 FR 30309 (June 14, 1996), we consider price quotations as information from independent sources. The export price calculations were based upon independent sources and Import Statistics, both sources which we consider to require no further corroboration by the Department. Therefore, we determined at initiation, and continue to find, that the calculations set forth in the petition have probative value.

The petitioner based Normal Value (''NV'') on CV. *See* Notice of Initiation, 61 FR at 67308. To calculate CV, the petitioner used manufacturing costs based on its own production experience, its 1995 audited financial statements, and publicly available industry data. *Id.* The CV calculations in the petition are consistent with the CVs reported by the respondents on the record of this investigation. As such, we determine that the NV calculations have probative value. (See memorandum, dated May 5, 1997.)

Based on our pre-initiation analysis and reexamination of the price information supporting the petition, we determine that the highest margin stated in the Notice of Initiation is corroborated within the meaning of section 776(c) of the Act.

B. Unicatch, Lei Chu, S&J, and Romp

To determine whether sales of the subject merchandise by Unicatch, Lei Chu, S&J, and Romp to the United States were made at less than fair value, we compared the Export Price (''EP'') or Constructed Export Price (''CEP'') to the NV, as described in the EP, CEP, and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the ''Scope of Investigation'' section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Unicatch, Lei Chu, S&J, and Romp reported that they had no viable home market or third country sales during the POI. We therefore made no price-to-price comparisons. *See* the ''Normal Value'' section of this notice, below, for further discussion.

Level of Trade and CEP Offset

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA at 829–331, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade. Section 773(a)(7)(A) provides that if we compare a U.S. sale with a home market sale made at a different level of trade, when appropriate, we will adjust NV to account for this difference. When NV is based on CV, the level of trade is that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit.

For comparisons to CEP sales, section 773(a)(7)(B) establishes the procedure for making a CEP offset when two conditions are met. First, the NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP, and second, the data available do not establish an appropriate basis for calculating a level of trade adjustment.

We have not applied a level of trade adjustment or CEP offset for any respondent in this investigation because none of the respondents claimed a level of trade adjustment and we are unable to determine whether the NVs for each respondent are calculated at different levels of trade than their U.S. sales. As explained below in the ''Normal Value'' section of this notice, we calculated NV for each respondent based entirely on CV. We derived SG&A and profit from data contained in each respondents' financial statements. This data does not permit an appropriate level of trade analysis because we are unable to isolate the particular selling expenses associated with the selling functions for each respondents' NV. Therefore, we find insufficient evidence on the record to justify a level of trade adjustment or CEP offset.

Export Price/Constructed Export Price

Unicatch

We used EP in accordance with section 772(a) of the Act where the subject merchandise was sold to unaffiliated customers prior to importation and the CEP methodology was not indicated by the facts of record. We used CEP in accordance with section 772(b) of the Act where the subject merchandise was sold to unaffiliated customers after importation. We calculated EP/CEP, as appropriate, based on packed prices, either FOB Taiwan, C&F USA, CIF USA, Free on Road (''FOR'') Taiwan, or FOB U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. For both EP and CEP sales we made deductions from the starting price (gross unit price) for discounts, inland freight from the plant/warehouse to port of exit, Taiwan brokerage and handling, international freight, marine insurance, U.S. inland freight from port to the warehouse, and U.S. customs duties, where appropriate. We also adjusted the starting price and quantity for returns. We added to both EP and CEP reported duty drawback amounts.

For Unicatch's CEP sales, we made additional deductions, in accordance with section 772(d) (1) and (2) of the Act, for commissions, credit expenses, indirect selling expenses, and inventory carrying costs. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit, to arrive at the CEP. In accordance with section 773(f) of the Act, the CEP profit rate was calculated using the expenses incurred by Unicatch and its affiliates on their sales of the subject merchandise in the United States and the profit associated with those sales. Because Unicatch had no home market sales, we did not include any home market expenses in the CEP profit rate calculation.

Lei Chu

We used EP in accordance with section 772(a) of the Act because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on packed prices, either FOB, CNF USA, or CIF USA to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to port of exit, brokerage and handling in Taiwan, international freight, marine insurance, and bank charges. We added to EP reported duty drawback amounts.

S&J

We used EP in accordance with section 772(a) of the Act because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on packed prices, either FOB, CNF, or CIF to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to port of exit, brokerage and handling in Taiwan, international freight, marine insurance and direct selling expenses.

Romp

We used EP in accordance with section 772(a) of the Act because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on packed prices, FOB to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to port of exit, and brokerage and handling in Taiwan. We added to EP reported duty drawback amounts.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compare each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Unicatch, Lei Chu, S&J, and Romp reported that they had no home market sales during the POI. Therefore, we have determined that none of the respondents have a viable home market. Because Unicatch, Lei Chu, S&J, and Romp also reported that they had no third country sales during the POI, we based normal value on CV in accordance with section 773(a)(4) of the Act.

Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of a respondent's cost of materials, fabrication, SG&A, profit and U.S. packing costs as reported in the U.S. sales databases. In this case, none of the respondents had home market selling expenses or home market profit upon which to base CV.

Section 773(e)(2)(B) of the Act sets forth three alternatives for computing profit and SG&A without establishing a hierarchy or preference among the alternative methods. We did not have the necessary cost data for methods one (calculating SG&A and profit incurred by the producer on the home market sales of merchandise of the same general category as the exports in question), or two (averaging SG&A and profit of other investigated producers of the foreign like product). The third alternative (section 773(e)(2)(B)(iii) of the Act) provides that profit and SG&A may be computed by any other reasonable method, capped by the amount of profit normally realized on sales in the home market of the same general category of products. The SAA states that, if the Department does not have the data to determine amounts for profit under alternatives one and two or a profit cap under alternative three, it may apply alternative three (without determining the cap) on the basis of ''the facts available.'' SAA at 841. Therefore, as the facts available, we are using each respondent's overall profit and SG&A rate associated with its total sales as recorded in its most recent financial statement. Because the figures recorded in the financial statements are company-specific and contemporaneous with the POI, we preliminarily determine this data to be a reasonable surrogate for SG&A and profit of the subject merchandise. However, we will consider the issue of appropriate SG&A and profit information further for the final determination and invite comment on this issue.

Price to CV Comparisons

Because we based SG&A for CV on the financial statements of each individual company, where we compared CV to EP, we did not make any circumstance of sale adjustments for direct expenses and commissions as we were unable to split out from total SG&A these expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996)). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan dollar did not undergo a sustained movement.

Critical Circumstances

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knows or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order on CRN in the United States or elsewhere to be sufficient. See e.g., Preliminary Determinations of Critical Circumstances: Brake Drums and Rotors from the People's Republic of China, 61 FR 55269 (Oct. 25, 1996); Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Rotors from the People's Republic of China, 62 FR 9160 (Feb. 28, 1997). Currently, no countries have outstanding antidumping duty orders on CRN from Taiwan. The petitioner alleged a history of dumping based upon antidumping orders on steel wire nails from Korea and the People's Republic of China, both of which covered CRN. See Certain Steel Wire Nails From Korea; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order, 50 FR 40045 (Oct. 1, 1985); Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order; Certain Steel Wire Nails from The People's Republic of China, 52 FR 33463 (Sept. 3, 1987). We preliminarily determine that these antidumping orders are not a sufficient basis to find a history of dumping because both orders were revoked several years ago. However, we will consider this issue further for the final determination and we invite interested parties to comment on the issue.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers margins over 15% for EP sales and 25% for CEP sales to impute knowledge of dumping and of resultant material injury. Brake Drums and Rotors, 62 FR at 9164–65. In this investigation, none of the exporters/manufacturers has a margin over 15% for EP sales or 25% for CEP sales. Based on these facts, we determine that the first criterion for ascertaining whether or not critical circumstances exist is not satisfied. Therefore, we have not analyzed the shipment data for any of these companies to examine whether imports of CRN have been massive over a relatively short period. Thus, because neither alternative of the first criterion has been met, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to exports of CRN from Taiwan by Unicatch, Lei Chu, Romp, and S&J.

Regarding all other exporters, because we do not find that critical circumstances exist for any of the investigated companies, we also determine that critical circumstances do not exist for companies covered by the ''All Others'' rate.

We will make a final determination concerning critical circumstances when we make our final determination in this investigation, if the final determination is affirmative.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise—except those exported by Unicatch or Lei Chu—that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Unicatch	0
Lei Chu	4.38
Romp	6.09
S&J	6.21
K. Ticho	40.28
All Others	5.39

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded zero margins and the margin determined entirely under section 776 of the Act from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 30, 1997, and rebuttal briefs, no later than August 6, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 7th, at 9:00 a.m. in Room 1412 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(d) of the Act.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12395 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 24, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel (POS) cookware from Mexico. This review covers the period December 1, 1993, through November 30, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical and computer program errors, we have changed the preliminary results, as described below in the comments section of this notice.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Mary Jenkins, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone, (202) 482–4929 or (202) 482–1756, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 1995, the Department published in the **Federal Register** the Notice of Preliminary Results of Administrative Review: Porcelain-on-Steel Cookware from Mexico (60 FR 58044) (Preliminary Results). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The merchandise covered by this review is porcelain-on-steel cookware, including tea kettles that do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 7323.94.00. Kitchenware currently entering under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

The period of review (POR) is December 1, 1993, to November 30, 1994. The review covers one manufacturer/exporter of Mexican POS cookware, Cinsa, S.A. de C.V. (Cinsa).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Product Comparisons

In accordance with the Department's standard methodology, we calculated transaction-specific U.S. prices for Cinsa based on purchase price (PP), and compared these U.S. sales to foreign market values (FMVs) based on either monthly weighted-average home market prices or constructed value (CV). For price-to-price comparisons, we made comparisons based on the following product characteristics: gauge (*i.e.*, whether heavy or light), quality, product configuration/size (*e.g.*, frying pan, roaster), number of enamel coats, and color.

We have determined that heavy gauge (HG) and light gauge (LG) cookware are not such or similar merchandise (*see Final Analysis Changes for the 8th Review of Porcelain-on-Steel Cookware from Mexico,* Memorandum from the Team to Louis Apple, Acting Director, Group II, AD/CVD Enforcement dated February 21, 1997, (*Final Analysis Memorandum*)). For this reason, and because Cinsa made no home market sales of HG merchandise and there were no CV data on the record for Cinsa's sales of HG merchandise, we assigned these HG sales the weighted average of all margins calculated for Cinsa's U.S. sales of LG cookware. *See* Comments 1–4.

Verification

As provided in section 776(b) of the Tariff Act, we verified information provided by Cinsa using standard verification procedures, including onsite inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Although primarily engaged in the production and sale of LG cookware, Cinsa also made a few U.S. sales of HG cookware produced by ENASA, a manufacturer of HG cookware. Cinsa did not make any home market sales of HG cookware.

United States Price

We calculated PP based on the same methodology used in the Preliminary Results, except in the following instances: (1) we used a revised U.S. interest rate to calculate imputed credit expenses; and (2) we calculated U.S. imputed credit expenses on sales to U.S. customers who paid by letter of credit. *See* Comment 9.

Foreign Market Value

We calculated FMV based on the same methodology used in the Preliminary Results, except in the following instances: (1) We recalculated home market credit expenses using the revised interest rate reported in the July 26, 1995, supplemental response; (2) for sales in the home market with missing payment dates, we applied a credit expense calculated using the average period between shipment and payment for those sales where payment date was reported; and (3) we deducted home market commissions and added U.S. indirect selling expenses capped by the amount of home market commissions, in accordance with 19 CFR 353.56.

Cost of Production

As discussed in the Preliminary Results, the Department conducted a test of home market sales made during the POR to determine if sales were made at prices below Cinsa's cost of production (COP) within the meaning of section 773(b) of the Act. For home market models which would have been the best match for a U.S. model but for which there were insufficient home market sales at or above the COP, we compared USP to CV.

A. Calculation of COP

We calculated COP based on the sum of respondent's cost of materials, fabrication, and general expenses, in accordance with 19 CFR 353.51(c), and as described in the Preliminary Results.

B. Test of Home Market Sales Prices

As stated in the Preliminary Results, we used Cinsa's adjusted cost data. We compared the weighted average product specific COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. We tested whether a substantial quantity of respondent's home market sales of subject merchandise were made at prices below COP over an extended period of time. On a product-specific basis, we compared the COP to the reported home market prices, less any applicable movement charges and rebates. We made the following changes to the COP calculation used in the Preliminary Results: (a) as COP was calculated exclusive of packing expenses, we deducted these expenses from the net home market sales price used to determine whether sales were below the COP; and (b) we corrected the COP calculation to eliminate double counting of commission expenses in the COP selling expenses.

To satisfy the requirement of section 773(b)(1) of the Act that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. If, by quantity, over 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. If between 10 and 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, and sales of that product were also found to be made over an extended period of time, we disregarded only the below-cost sales. Where we found that more than 90 percent of the respondent's sales of a product were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales of that product, and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POR in which that product was sold. If a product was sold in three or more months of the POR, we do not exclude below-cost sales unless there were below-cost sales in at least three months during the POR. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time, *i.e.*, where sales of a product were made in only two months, the extended period of time was two months; where sales of a product were made in only one month, the extended period of time was one month. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom*, 60 FR 10558, 10560 (February 27, 1995).

C. Results of COP Test

We found that for certain products, between 10 and 90 percent of Cinsa's home market sales were sold at below-COP prices over an extended period of time. Because Cinsa provided no indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b) of the Act, we based FMV on CV for all U.S. sales left without a home market sales match as a result of our application of the COP test.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, general expenses, packing costs, and profit. In accordance with section 773(e)(1)(B)(i) and (ii), we used: (1) The actual amount of general expenses because those amounts were greater than the statutory minimum of ten percent and (2) the actual amount of profit where it exceeded the statutory minimum of eight percent on above-cost sales.

Price-to-CV Comparisons

Where we made CV to PP comparisons, we made a circumstance-of-sale (COS) adjustment, where appropriate, for differences in credit expenses and bank fees between the two markets. We deducted home market commissions and added U.S. indirect selling expenses capped by the amount of home market commissions, in accordance with 19 CFR 353.56.

Interested Party Comments

Comment 1: Whether or not Cinsa and ENASA Should be Collapsed

Petitioner argues that the Department's determination in the Preliminary Results not to collapse Cinsa and ENASA, a related manufacturer of HG cookware, is contrary to its long-standing practice with respect to collapsing related parties. Petitioner claims that, in the instant review, Cinsa and ENASA are so closely intertwined that there is a strong possibility of manipulation of prices and/or production decisions. Petitioner further argues that the Department must use a ''totality of the circumstances'' test in its collapsing analysis as opposed to determining that the ability to shift production between related parties without retooling is the determinative factor.

Cinsa states that it would not contest a finding by the Department that the two companies should be collapsed and treated as a single entity given their common ownership, and shared board members and managerial employees. However, Cinsa also maintains that sufficient evidence exists on the administrative record in this case to support the Department's determination in the preliminary results not to collapse the two companies. Cinsa argues that the administrative record, including the Department's verification of the physical differences between HG and LG merchandise, the separate production facilities, and the different production processes provide sufficient evidence to support the substantial evidence standard for determining that the two companies should not be collapsed and treated as a single entity.

DOC Position: The Department will collapse two producers if *each* of three requirements are met: (1) the producers must be ''affiliated''; (2) they must have manufacturing facilities sufficiently similar that no substantial retooling would be needed to restructure manufacturing priorities with respect to the subject merchandise (*i.e.*, that the physical infrastructure exists for the two firms to act as one in producing the merchandise), and (3) the Department concludes, based on a series of listed factors, that there is a significant potential for manipulation of price or production (*i.e.*, that the control infrastructure exists which would enable the firms to realize any ability to shift production or price made possible by the overlapping production facilities referred under the second requirement). *See Antidumping Duties: Countervailing Duties: Notice of Proposed Rule Making and Request for Public Comments*, 61 FR 7308, 7330 and 7381 (February 27, 1996), at section 351.401. This proposed regulation represents the Department's current practice. The principles underlying these criteria have been cited with approval in court decisions. *See, e.g., FAG Kugelfischer Georg Schafer KGaA* v. *United States*, 932 F. Supp. 315, 323 (CIT 1996).

The verification report states that Cinsa makes only LG cookware and ENASA makes only HG cookware, and that extensive and expensive retooling appeared to be necessary for Cinsa to produce HG products or for ENASA to produce LG products (see November 27, 1995, Verification Report at .4). Accordingly, we have determined that the physical infrastructures of the two firms are insufficiently similar to meet the second requirement of the collapsing test. Further, having made this determination, we do not need to examine the questions of significant common ownership and interlocking directors and managers. Therefore, it is not appropriate to treat these firms as a single entity for the purpose of assigning an antidumping margin. However, should changes in production occur in the future, we may reexamine this issue in the context of subsequent reviews.

Comment 2: Inclusion of HG Cookware Sales to the United States in the Review

Petitioner argues that Cinsa's sales of ENASA-produced HG cookware to the United States were made during the POR and therefore should be included in the margin calculation. Petitioner contends that the facts concerning the appropriate date of sale for these U.S. sales are not in dispute, and that Cinsa's contention that the date of sale should be the date of ultimate reconciliation contradicts the fact that the sales contract was signed during the POR. Petitioner states that almost all shipments to the United States, pursuant to the contract, occurred during the POR, the subject merchandise was resold to end users during the POR, and end users were actually cooking with the merchandise during the POR. Petitioner also claims that, because the questionnaire states that there can be no new dates of sale after shipment, the date of sale for these U.S. sales must be either the date of the contract or the dates of shipment to the United States.

Cinsa contends that the sales in question were not made during the POR. Cinsa argues that the Department's definition of date of sale expressly contemplates situations where a date ''subsequent to the date of shipment * * * may be the appropriate date of sale,'' particularly when the quantity terms change subsequent to the date of contract or the date of shipment. Cinsa cites *Toho Titanium Co., Ltd.* v. *United States* (''*Toho*''), 14 CIT 500, 501 (1990), for the proposition that the sale is complete when the essential terms of the transaction are set. Cinsa does not dispute that the contract was signed and shipments were made during the POR. However, in this particular instance, the quantity of HG cookware to be purchased by the customer was to be based solely upon the amount of merchandise used by the customer in a promotional program that ended outside the POR. Cinsa argues that because the final reconciliation of the contract occurred outside the POR, the date of sale for all sales of HG cookware was also outside the POR.

DOC Position: We agree with petitioner. We consider the date of the contract between Cinsa's related sales entity, Yamaka China Co., Inc. (''Yamaka''), and its unrelated customer to be the date of sale for Yamaka's U.S. sales of HG cookware manufactured by ENASA during the POR. Thus we have included these sales in our analysis for this review.

Cinsa has argued that Yamaka's customer had the ability to affect the quantity ultimately sold, based on its management of the logistics of the promotion. The contract between Yamaka and its unrelated customer established the terms on which the quantity to be sold would be set: the amount of goods sold through the promotion. Under the contract, the customer did not have the discretion to alter or renegotiate those terms. In the end, the quantity of goods which is sold and not returned will be decided by how much cookware the public buys during the promotion. Although the precise amount to be sold was not known at the time of the contract, the contract clearly spelled out the basis on which it would be determined; hence the contract is consummated and the sale made as of June 1994. The situation in this review can be distinguished from the situation underlying the CIT's decision in *Toho*. In that case, the contract at issue required a minimum purchase and gave the buyer the option of purchasing additional product at the same price. The CIT upheld Commerce's decision that the quantity in the contract became ''set'' only when the customer issued delivery instructions on each optional shipment, since it could have, had it chosen, renegotiated the contract price based on its total discretion to order beyond the minimum amount. In the instant case, there was no minimum purchase requirement in the contract, and the customer had no explicit discretion to set quantity that could serve as the basis of a future negotiation. Thus, whereas the seller in *Toho* contracted for a minimum amount and made a binding offer as to further sales, Yamaka entered into a binding contract for whatever business the promotion would generate.

The fact that Yamaka at the same time contracted to, and later did, ''repurchase'' cookware which its customer was unable to resell during the promotion does not mean that the sales of the cookware eventually repurchased were not made. The very fact that the contract refers to ''repurchase'' rather than to return prior to invoicing, together with the fact that partial payment was received on these goods, indicates that this was a sale-and-refund arrangement, rather than a sale only of those items which were never returned.

Because the June 1994 contract constitutes a binding agreement in the nature of a requirements contract, whereby Yamaka and its customer agreed upon the price and quantity (whatever was sold in connection with the promotion, with a guarantee of repurchase for items not sold at retail), the date of this contract is the appropriate date of sale for all cookware sold to the United States in connection with the promotion.

Comment 3: Reporting of ENASA's Home Market Sales of HG Cookware Sets

Petitioner states that during this review the Department sent a letter to Cinsa requiring it to report ''all sales of such or similar merchandise sold by ENASA in the home market during the 90/60 day period surrounding the date of each of ENASA's sales to the United States.'' Petitioner maintains that Cinsa did not comply with this request because it only submitted ENASA's home market sales of HG open stock (*i.e.*, single piece) cookware and did not submit ENASA's home market sales of HG cookware sets. The issue, according to petitioner, is whether the Department should compare the individual pieces in the sets sold in the home market to open stock items sold in the United States.

Cinsa states that, even if the Department concludes that its sales of ENASA-produced HG open stock cookware to the United States were made during the POR, the Department should decide that reporting was properly limited to home market sales of HG cookware that ENASA sold as open stock.

Cinsa further contends that there is no basis to require reporting of sales of HG cookware sets since no HG sets were sold to the United States. Further, Cinsa argues that the cost of manufacture of a set of HG cookware would exceed that of a single piece by more than the Department's twenty percent limit on adjustments for differences in merchandise when comparing non-identical products.

DOC Position: Because we decided not to collapse Cinsa and ENASA, we compared the prices of sales by Cinsa only to prices of other sales by Cinsa. The only HG cookware sold by Cinsa during the POR was open stock U.S. sales of cookware manufactured by ENASA. Because *Cinsa* made no home market sales of HG cookware sets during the POR, and only *Cinsa's* sales are being reviewed for this POR, we need not address the issue of whether sales of open stock cookware manufactured by ENASA and sold by Cinsa should be compared to individual components of HG cookware sets (which were sold only by ENASA). Furthermore, because we have determined that HG cookware is not properly compared to LG cookware (*see* Product Comparison section of this notice), we need not address the issue of whether Cinsa's U.S. sales of HG open stock cookware should be compared to Cinsa's sales of LG sets in the home market. (For a full discussion of set-splitting *see Final Analysis Memorandum,* page 9).

Comment 4: Cinsa's Failure To Submit COP and CV Data for HG Cookware

Petitioner contends that Cinsa failed to report cost data with respect to sales of (ENASA-manufactured) HG cookware despite being required to do so by the questionnaire. Petitioner believes that the Department must resort to BIA (suggesting the highest margin calculated for any U.S. sale of LG cookware made during the POR) to calculate the dumping margin for each HG sale made to the United States. Alternatively, petitioner believes that the Department should reopen the record, collect cost data for all HG products sold in both the home market and the United States, and incorporate these data into the model matching, sales-below-cost, and CV analyses used in the final results.

Cinsa contests petitioner's argument that the Department should use BIA in the absence of ENASA's cost information with respect to HG cookware. Cinsa states that the statute, at 19 U.S.C. 1677e(b), ''requires noncompliance with an information request before resorting to the best information rule is justified.''

Cinsa also states that 19 CFR 353.31(c)(i)(ii) specifically requires that allegations of below-cost sales must be made in a timely manner, in any event prior to the Department's verification and the issuance of the preliminary results. Therefore, Cinsa argues that, given that the Department never requested cost information for ENASA merchandise, and that prior to the preliminary results petitioner neither objected to the Department's limited information request nor alleged in a timely manner that ENASA's home market sales were made below cost, application of BIA would be inappropriate.

DOC Position: We disagree with petitioner. In its June 5, 1995, supplemental questionnaire to Cinsa, the Department requested that Cinsa provide ENASA's home market and U.S. sales data as well as start up costs for ENASA's production of HG cookware. In response, Cinsa argued that reporting home market sales, cost and CV data was unnecessary because Cinsa's only sales of ENASA-produced HG cookware were made outside the POR. Because the date of sale issue remained unresolved for some time and because a review had not been initiated for ENASA, we did not pursue our request for ENASA's cost information. However, we subsequently determined that these U.S. sales of HG cookware were made within the POR (*see* Comment 2). Rather than unduly delay the review at this point to seek cost information for these sales, and because the sales of HG cookware constituted only a small part of Cinsa's total sales to the United States during the POR, we based the margin for these sales of HG cookware on the weighted average of all margins calculated for Cinsa's sales of LG cookware to the United States.

Comment 5: Inclusion of Home Market Sales of Second-Quality Merchandise in the Cost Test

Petitioner asserts that the exclusion of sales of second-quality merchandise from the preliminary cost test is inconsistent with standard practice, including the Department's previous practice in reviews of imports subject to this order. Accordingly, petitioner claims that the Department should revise its preliminary results and include Cinsa's home market sales of second-quality merchandise in the sales-below-cost test for purposes of the final results.

Cinsa contends that the Department has determined in this and all prior administrative reviews in this case that second-quality articles sold in the home market are not comparable to the first-quality articles sold to the United States. Thus, according to Cinsa, the Department has always excluded second-quality articles from the FMV calculation without regard to the results of the Department's cost test, which only serves to eliminate first quality home market sales sold below cost from consideration in the FMV calculation. Cinsa further adds that, since the second-quality articles are never used for comparison with any U.S. sales, there is no practical reason for the Department to use them to perform the cost test.

DOC Position: We agree with petitioner and have included in the cost test all home market sales of both first and second quality merchandise. There are no production cost differences between first and second quality merchandise that is otherwise identical. *See IPSCO, Inc.* v. *United States*, 965 F.2d 1056, 1060–61 (Fed. Cir. 1992). Although in certain circumstances Commerce may choose to reduce its own administrative burden and simplify reporting by not requiring parties to report home market sales of types of merchandise unlikely to be matched to any U.S. sales, data for second quality merchandise is already on the record of this review. Second quality merchandise can be compared to first quality merchandise if there are insufficient matches of first quality merchandise, and therefore second quality merchandise on the record is properly included in the cost test, just as similar merchandise is included in the cost test even when there are ample identical matches.

As we did in the fourth review (*See Porcelain-on-Steel Cooking Ware From Mexico: Final Results of Antidumping Duty Administrative Review,* 58 FR 43327 (August 16, 1993)), we compared only first quality merchandise sold in the U.S. market with first quality merchandise sold in the home market. We did not in calculating FMV use sales of second quality merchandise in the instant review because there were no sales of second quality merchandise in the United States—unlike in the fourth review where second quality merchandise sold in the United States was compared with second quality merchandise sold in the home market—nor were there any instances where available first quality home market sales were not adequate for matching purposes.

Comment 6: Calculation of General and Administrative Expenses

Petitioner argues that, consistent with its practice, the Department should have based Cinsa's G&A expenses on the consolidated G&A expenses of Grupo Industrial Saltillo, S.A. de C.V. (GIS), not Cinsa-specific G&A expenses. Accordingly, petitioner argues that the Department should modify its COP/CV calculations and use the ratio of GIS's 1993 consolidated G&A expenses to GIS's 1993 consolidated cost of goods sold, instead of the Cinsa-specific rate allocable to each product sold.

Cinsa states that the statute requires that the COP and CV of merchandise subject to review be calculated in a manner that reflects the expenses attributable to the class or kind of merchandise, citing 19 U.S.C. 1677b(e)(1)(B). In this instance, Cinsa maintains that it is the manufacturer, seller, shipper, and exporter of the subject merchandise, and that only the G&A expenses borne directly by Cinsa itself may be used to calculate COP and CV. Therefore, since GIS is not directly involved in any of Cinsa's production or sales activities concerning the subject merchandise, attributing all of GIS's G&A expenses to the subject merchandise would be inappropriate. Cinsa notes that the financial statements of GIS state that the entire household division of GIS, which includes Cinsa as well as other producers, only accounts for approximately one-third of the consolidated sales value of GIS. Cinsa further states that comparison of the total G&A expenses of Cinsa to the G&A expense of GIS establishes that the vast majority of the G&A expenses recorded in the consolidated GIS financial statement is attributable to activities other than Cinsa's production and sales of the subject merchandise.

Cinsa maintains that, in the event the Department uses GIS's G&A expenses, the Department should base that calculation on GIS's 1993 and 1994 financial statements, which were submitted as Appendix 24 to Cinsa's July 10, 1995, supplemental response.

DOC Position: We disagree with petitioner. The petitioner's suggestion that the Department modify the COP/CV calculations and use the ratio of GIS's 1993 consolidated G&A expenses to GIS's 1993 consolidated cost of goods sold, is contrary to Department practice. We only include a portion of these expenses if the parent performs services for the affiliated company (*See Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia,* 59 FR 4023, 4027 (January 28, 1994)). Based on the information on the record of this review, we used Cinsa's reported G&A factor for the final results. The record evidence does not indicate the value of services provided by GIS.

Comment 7: The ''Extended Period of Time'' Used in the Cost Test

Petitioner states that Import Administration Policy Bulletin No. 94.3 (March 25, 1994) states that the Department will consider below-cost sales to have been made over an extended period of time only if:

(a) the respondent sold a model in only one month of the POR and certain or all of those sales of the model in that month were below cost;

(b) the respondent sold a model in two months of the POR and certain or all of those sales of that model in each of the two months were below cost; or

(c) the respondent sold a model during three or more months of the POR and certain or all of those sales of that model in at least three of those months were below cost.

Petitioner argues that the Department's policy is arbitrary, unfair to petitioner and internally inconsistent. Petitioner believes that a more reasonable approach would be to consider below-cost sales made in at least 25 percent of the months in which a model was sold to have been made ''over an extended period of time.''

Cinsa points out that the Department's three month test is an established Department administrative practice, adopted over two years ago and used consistently since that time. Cinsa cites numerous recent administrative and court proceedings to support its argument. Cinsa contends that petitioner's arguments have been considered repeatedly by the Department and the reviewing courts and have been consistently rejected. Therefore, Cinsa argues that, for purposes of the final results, the Department should continue to apply its standard test to determine whether below cost sales have been made over an extended period of time.

DOC Position: We agree with Cinsa. The Department's three month test is an established administrative practice which has been affirmed by the U.S. Court of International Trade. *See, e.g., NTN Bearing Corp.* v. *United States* (''*NTN Bearing Corp.*''), 881 F. Supp. 595, 602 (1995). Accordingly, for purposes of the final results, we have applied our standard cost test to determine whether below cost sales have been made over an extended period of time.

Comment 8: Cinsa's October 3, 1995, Correction to its Home Market Sales Listing

Cinsa argues that the Department's preliminary results incorrectly did not reflect the October 3, 1995, revision to the quantity and unit price for one transaction in its home market sales listing. Cinsa argues that because it notified the Department of the revision, including documentary support, approximately seven weeks prior to the issuance of the preliminary results, the preliminary results should have incorporated this correction.

Cinsa further argues that petitioner's assertion that Cinsa's revision was untimely filed should be disregarded given the decision in *NTN Bearing Corporation* v. *United States* (''*NTN Bearing Corp*''), 74 F.3d 1204 (December 11, 1995). Cinsa argues that the Court of Appeals for the Federal Circuit held that the Department has the authority to correct inadvertent data input errors made by, and then later discovered by a respondent, when such errors were brought to the attention of the Department in a timely manner during the comment period subsequent to the preliminary results. Cinsa also notes that the general 180-day time limit applies to new factual information being placed in the administrative record. Cinsa contends that the revision to its home market sales listing did not add additional sales or new information to the record. Moreover, Cinsa claims that the revision is properly part of the administrative record and should be taken into account in the final results because the Department did not reject the submission despite a specific request for rejection by the petitioner. Finally, Cinsa argues that under similar circumstances in the fifth administrative review, when Cinsa brought corrections to the Department's attention prior to the preliminary results, and such corrections were not incorporated into the preliminary results, the Department agreed with Cinsa over the objection of the petitioner and incorporated the necessary corrections into the final results. Accordingly, Cinsa argues that since it notified the Department of this error prior to the issuance of the preliminary results, the final results should incorporate this correction.

Petitioner argues that the opinion of the Federal Circuit in *NTN Bearing Corp.* simply does not apply in this situation. Petitioner states that *NTN Bearing Corp.* involved an antidumping administrative review in which there was no verification. Thus, all information submitted in that review was unverified, and the Department was not required by the statute to have verified all information relied upon in the final results. Petitioner contends that in contrast, the Department has no such discretion in this review. Petitioner argues that in this review the alleged clerical error represents new, untimely, unsolicited information that the Department has not verified; thus, under 19 U.S.C. 1677e(b), the Department may not use this information, because it would be unlawful to rely upon unverified information in the final results of this review. Petitioner also believes that even if the Department could change this data, Cinsa has not established that any error was made because the invoice for this sale, which is the best evidence of the transaction, reflects that the unit price used in the preliminary results was correct.

DOC Position: Cinsa's submission of October 3, 1995, does not adequately demonstrate why the reported information is incorrect, or that its post-verification revision is correct. In fact, the documentary evidence submitted in support of the proposed revision appears to support the reported information. Without clear documentary evidence that the response information is incorrect, and given that verification had already occurred at the time of the submission, the Department has no means to confirm Cinsa's claim. This situation is distinguishable from *NTN Bearings Corp.*, in which supporting documentation in NTN's post-disclosure submission clearly indicated that an error had, in fact, been made. Merely deciding not to reject a submission does not constitute acceptance of the arguments put forth in the document. Because Cinsa is not able to establish that the reported quantity and unit price are actually erroneous, no revision is appropriate.

Comment 9: Inclusion of U.S. Imputed Credit Expenses on Sales to U.S. Customers Who Paid by Letter of Credit

Cinsa argues that the Department's preliminary results improperly adjusted for U.S. imputed credit expenses on sales to U.S. customers who paid by letter of credit. Cinsa states that its revised U.S. sales listing mistakenly failed to list this expense as zero for the sales in question. According to Cinsa, the Department verified that two U.S. customers paid by letter of credit and did not incur imputed credit expenses. Cinsa argues that the final results should incorporate the verified information even though Cinsa failed to report it properly.

Petitioner argues that it is too late in this instance for further correction of data when the failure to correct the data is the result of Cinsa's own negligence. Petitioner contends that permitting such requests would be a disincentive to respondents to respond accurately and a burden to administer for the Department.

DOC Position: We verified that two U.S. customers paid by letter of credit and have included the associated bank fees for these letters of credit as a COS adjustment. However, Cinsa did not receive payment for these sales from its bank immediately upon shipment, but rather some time later. In accordance with our standard practice, we have also imputed credit expenses for these letter of credit sales for the days payment was outstanding between shipment and payment.

Comment 10: Revalued Versus Historical Depreciation

Cinsa argues that the use of revalued rather than historical depreciation distorts Cinsa's COP and is contrary to law because it distorts Cinsa's actual fixed overhead cost incurred in producing the subject merchandise. Cinsa further states that, in this review, the Department verified that revalued depreciation was used for financial purposes only, and that historical depreciation is used in company records for income tax purposes. Consequently, according to Cinsa, the use of revalued depreciation in this case would overstate the actual depreciation expenses incurred in producing the subject merchandise, since Cinsa's cost and accounting records are maintained using historical, not revalued, depreciation.

Petitioner maintains that the Department uses revalued depreciation in its calculation of COP/CV because use of historical acquisition costs, unadjusted for high inflation, would distort the measure of Cinsa's current depreciation cost. Petitioner cites numerous court proceedings to support its argument. Petitioner further states that, contrary to Cinsa's argument, the Department's use of revalued depreciation costs actually prevents distortion, by ensuring that Cinsa's depreciation costs are not understated due to currency devaluation resulting from inflation.

DOC Position: We agree with petitioner and have included Cinsa's revalued depreciation expense in the company's COP and CV. We disagree with Cinsa's assertion that this methodology distorts the actual production costs of subject merchandise. *See Results of Redetermination Pursuant to Court Remand in Aimcor, Alabama Silicon, Inc.* v. *United States,* Ct. No. 93–07–00428 (May 15, 1995) (upheld by Order of the CIT, September 15, 1995), and *Fresh Cut Roses from Ecuador,* 60 FR 7019, 7029 (February 6, 1995). It is the Department's policy to adhere to the home market Generally Accepted Accounting Principles (GAAP) as long as they reflect actual costs. Mexican GAAP require Cinsa to use revalued depreciation in its financial statements. In this case, we find the use of revalued depreciation reasonably reflects Cinsa's actual costs. Thus, Mexican GAAP recognize the effect of inflation upon the value of assets and require companies to revalue assets to compensate for the change. Depreciation enables companies to spread large expenditures on purchases of machinery and equipment over the expected useful lives of these assets. Not adjusting for the deflation of currency due to inflation results in the depreciation deferred to future years being understated in constant currency terms and, therefore, distorts the Department's COP and CV calculations. Thus, in light of the rate of inflation in Mexico during the POR, it would be distortive to use historical depreciation in this case.

The Department's determination to use revalued rather than historical depreciation in accordance with home market GAAP was upheld by the Court of International Trade in *Laclede Steel Co.* v. *United States,* 18 CIT 965 (October 12, 1994). In *Laclede Steel,* the

Court found that depreciation expense based on the historical method rather than depreciation expense based on the revalued method would distort the production costs of the company because such a methodology would overlook the significant impact that revaluing the assets had on the company. We find the Court's analysis in *Laclede Steel* instructive with respect to the instant review. Due to the revaluation of assets as reflected on Cinsa's financial statements, Cinsa would enjoy an increase to its equity values reflected on the Company's balance sheet, a potentially enhanced stock value resulting from greater equity, and an improved ability to borrow or acquire capital. Therefore, the Department followed Mexican GAAP and adjusted CINSA's COP data to reflect the revalued depreciation. We note, although it is not binding precedent, that a NAFTA Panel has affirmed the Department's use of revalued depreciation for Cinsa in the fifth administrative review. *In the Matter of Porcelain-on-Steel Cookware From Mexico* (''*POS Cookware NAFTA decision*''), USA–95–1904–01 (April 30, 1996), at 31.

Comment 11: Inclusion of Profit Sharing Payments in COP and CV

Cinsa argues that the inclusion of profit sharing payments as a component expense of Cinsa's COP and CV is contrary to law. Cinsa asserts that although the statutory definition of CV includes profit, the inclusion of an amount for profit, plus an additional amount (derived from Cinsa's profit) to account for profit sharing, results in the double counting of profits earned. Cinsa argues that in this review, profit sharing was inextricably linked to the amount of profit earned by Cinsa and was not dependent upon production of the subject merchandise. In addition, according to Cinsa, because both profit and profit sharing payments are determined at the close of the fiscal period, profit sharing payments were not incurred upon the production of the subject merchandise and were not incurred prior to exportation of the subject merchandise, as required by the statute if included as a cost. Finally, Cinsa claims that this payment is similar to dividend distributions or income tax payments, which are not included in COP and CV.

Petitioner argues that, consistent with the Department's practice in previous administrative reviews of this order, the Department should continue to include profit sharing expenses in its calculation of Cinsa's COP and CV. Petitioner states that such payments are treated like bonuses for accounting purposes, and the Department's practice is to treat bonuses as labor costs. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-To-Length Carbon Steel from Canada,* 58 FR 37099, 37113–14 (July 9, 1993).

Petitioner maintains that Cinsa's argument that profit sharing expenses are analogous to income taxes and are ''unrelated to the production of the subject merchandise'' is incorrect. Petitioner states that profit sharing expenses are more related to production than some other forms of compensation, such as health or pension benefits, because they are a function of gross revenue and profit, which generally vary according to production.

Petitioner also refutes Cinsa's argument that the inclusion of both profit sharing expenses and profit in the CV calculation results in the double-counting of profits. Petitioner states that profit sharing expenses are not profit, but expenses, i.e., a reduction to profit. Petitioner states that the profit that is included in Cinsa's CV is the profit that remains after profit sharing expenses have been deducted. Therefore, the Department's inclusion of profit sharing expenses in the calculation of CV does not double-count profit.

DOC Position: We disagree with the respondent and have included Cinsa's profit sharing expense in COP and CV because it relates to the compensation of direct labor, a factor of production. We treat profit-sharing distributions to employees in a manner similar to bonuses. Further, we disagree with Cinsa's argument that the profit-sharing expense is similar to profit, dividends, and income tax.

Profit-sharing is not profit because it is an expense which is a reduction to profit. Therefore, profit-sharing is not explicitly excluded from COP calculations under 19 CFR 353.51(c). As for Cinsa's concern that we double counted profit in its CV, we note that profit-sharing expense is not part of the Company's ''profit'' included in CV. The ''profit'' that is included in Cinsa's CV represents the amount that remains after reductions to income, such as the profit-sharing expense.

Cinsa's profit-sharing expense is distinct from dividends in two key respects. First, Cinsa's profit-sharing payments represent a legal obligation to a productive factor in the manufacturing process and not a distribution of profits to the owners of Cinsa. Second, the right to participate in profit-sharing conveys no ownership rights in Cinsa.

Cinsa's profit-sharing expense is unlike an income tax because it is paid to labor. Thus, unlike income taxes paid to the government, profit sharing payments flow directly to a factor of production. Also, Cinsa's income tax is based on taxable income that is net of Cinsa's profit-sharing expense.

We note that, although it is not binding precedent, a NAFTA Panel has affirmed the Department's inclusion of Cinsa's profit-sharing in COP and CV in the fifth administrative review. *See POS Cookware NAFTA Decision,* at 37–39.

Final Results of Review

As a result of our review, we determine that the following margin exists for the period December 1, 1993, through November 30, 1994:

Manufac-turer/ex-porter	Review period	Margin (percent)
Cinsa [1]	12/1/93–11/30/94	6.55

[1] Includes sales by Cinsa of HG merchandise manufactured by ENASA. No review was requested of any sales which ENASA may have had to the United States for this POR.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirement will be effective for all shipments of subject merchandise from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, an earlier review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, earlier reviews, or the LTFV investigation, whichever is the most recent; (4) the cash deposit rate for all other manufacturers or exporters, including ENASA, will be 29.52 percent, the ''all others'' rate established in the original LTFV investigation by the Department.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12396 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–811]

Certain Stainless Steel Wire Rods From France: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–4037, respectively.

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rods (SSWR), products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Amendment of Final Results

On February 18, 1997, the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on certain stainless steel wire rods from France (62 FR 7206). This review covered Imphy S.A., and Ugine-Savoie, two manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is January 1, 1995, through December 31, 1995.

On February 19, 1997, we received submissions from Imphy, S.A. and Ugine-Savoie, and their affiliated United States entities, Metalimphy Alloys Corp. and Techalloy Company (''respondents'') alleging of clerical errors with regard to the final results in the first administrative review of the antidumping duty order of certain stainless steel wire rods from France. On February 25, 1997, counsel for the petitioning companies, Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., United Steelworkers of America, AFL–CIO/CLC (''petitioners'') filed allegations of clerical errors. Respondents submitted rebuttal comments on March 4, 1997 and petitioners submitted their rebuttal comments on February 26, 1997. The allegations and rebuttal comments of both parties were filed in a timely fashion.

Respondents allege that the Department made four ministerial errors in the final results. First, respondents contend that the Department neglected to use the revised general and administrative expense (GNA) and interest expense (INTEX) in the calculation of CEP profit. Second, respondents allege that in calculating the CEP profit rate, the Department's margin calculation program failed to include foreign indirect selling expenses in total expenses, as required by section 772(f)(2) of the antidumping law. Third, respondents allege that the Department omitted to correct a typographical error in the product code for a home market control number. Fourth, respondents assert that the Department did not correctly revise respondents' cost of manufacture (COM) for constructed value (CV) for certain remelting services.

Petitioners agree with respondents concerning errors 1, 3 and 4. However, concerning the issue of failing to include foreign indirect selling expenses in total expenses for the calculation of CEP profit, petitioners disagree that the Department erred in this respect. Petitioners contend that respondents' allegation does not constitute a ministerial issue. Petitioners note that the only revisions to the final calculations that the Department may make after issuance of a final results are ''ministerial error'' corrections (see 19 CFR 353.28). Petitioners note that the question of which types of expenses are proper deductions from CEP profit is a substantive question that respondents failed to address in their case brief or otherwise prior to issuance of these final results. Consequently, petitioners argue that it would be inappropriate for the Department to consider as a ministerial error the substantive merits of the CEP profit calculation.

After a review of respondents' allegations, we agree with respondents and have corrected these errors for the amended final results. For the computer code we used to correct these ministerial errors, please see the Memorandum from Joseph A. Spetrini to Robert S. LaRussa dated May 5, 1997 (''Memorandum''), a public version of which is in the file in Central Records, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, NW., Washington, DC. We disagree with petitioners that respondents' error allegation regarding the calculation of CEP profit is not a ministerial error. The Department includes foreign indirect expenses in total expenses for purposes of calculating CEP profit and did not do so in this case. Consequently, we have corrected it for the amended final.

Petitioners also alleged that the Department made several ministerial errors. First, petitioners alleged that the Department's programming language for the final results incorrectly revised the computer language concerning payment dates. Petitioners contend that the Department's original computer language in the preliminary results correctly set the date of the final results. However, petitioners contend that the computer programming revised the methodology used by the Department despite the statement in the Department's final results notice that it made no changes to the computer program.

Respondents contend that petitioners are wrong and are confusing two different issues raised in briefing with respect to the calculation of U.S. credit expense. Respondents note that the Department disagreed with respondents' claim that the Department incorrectly set the payment date for every U.S. sale to the projected final results date and the Department stated in the final results that it did not change the computer program (see Comment 1 of Final Results). However, respondents note that the Department agreed with respondents that the formula used to calculate U.S. credit expense contained two errors. The Department corrected the error in the Final Results (see Comment 2 of Final Results). Consequently, respondents contend that petitioners are misreading the Department's statement in Comment 1 that it made no changes to the computer program to correct the error in the credit calculation. Respondents contend that the Department made the necessary corrections for the final results and there are no ministerial errors to correct.

We agree with respondents. The Department stated in Comment 1 of the final results that it disagreed with respondents' argument that we incorrectly set the payment date for all sales to the date of the final results. Consequently, for that comment, we stated we did not change the computer program. However, we agreed with respondents in Comment 2 of the final results that the Department incorrectly calculated respondents' credit expense. Consequently, we changed the computer coding in the margin calculation program to reflect the corrected credit expense. Since the calculation of credit expense was corrected for the final results, there is no ministerial error.

Second, petitioners also contend that the Department failed to exclude home market sales that failed the arm's length test from the CV profit calculation. Respondents did not submit a rebuttal argument concerning this issue. We agree with petitioners that this is a clerical error and have corrected the error for the amended final results.

Third, petitioners assert that the Department failed to adjust COM for CV for remelting services. Respondents did not object to petitioners' ministerial allegations but argued that certain computer coding suggested by petitioners was incorrect. We agree that this is a clerical error and have corrected the error for the amended final results using respondents' computer code. Petitioners also requested that the Department correct a certain typographical error by inserting a comma between two control numbers. We also agree that this is a clerical error and have corrected the error for the amended final results.

Fourth, petitioners allege that the Department erroneously deducted the same indirect home market expenses from normal value twice, once in the form of a commission offset and then again in the form of a CEP offset for sales where commissions were paid on respondents' CEP sales, but no commissions were paid for the comparison home market sales.

Respondents contend that this is a methodological issue and not a ministerial error. Respondents note that petitioners failed to address this matter in their case brief or otherwise prior to issuance of the final results. Furthermore, respondents note that petitioners stated in their rebuttal comments for the amended final that a substantive question embodied in the preliminary results but not raised in briefing is not a ministerial error following the final results. Respondents state that applying petitioners' own principle, consideration of this methodological matter is untimely and the Department should dismiss petitioners' comment.

We agree with petitioners that the Department's computer program incorrectly double deducted the same indirect home market expenses from normal value twice. It was not the Department's intention to deduct these expenses twice. Consequently, we consider this to be a ministerial error and have corrected it for the amended final.

Last, petitioners contend that the Department should deduct inventory carrying costs incurred after exportation in calculating CEP. Petitioners note that the Department stated in the final results that it agreed with petitioners that inventory carrying costs incurred after import relate to respondents' economic activity in the United States and are properly deducted as indirect selling expenses. Consequently, petitioners argue that if the Department agreed with petitioners' argument regarding the deduction of post-exportation inventory carrying costs, the Department's failure to deduct such expenses constitutes a ministerial error.

Respondents note that in the final results, the Department disagreed with petitioners, stating that "the Department does not deduct indirect expenses incurred in selling to the affiliated U.S. importer under section 772(d) of the Act." Respondents assert that petitioners misconstrued the Department's position in the final results. Respondents contend that inventory carrying costs incurred from the date of exportation from France to the date the affiliate MAC received the subject merchandise in the United States relate to selling to MAC (respondents' U.S. affiliate), not to selling to an unaffiliated U.S. customer. Consequently, respondents argue that these expenses were properly not deducted in the calculation of CEP and there is no ministerial error to correct.

We agree with respondents. The inventory carrying costs relate to selling to MAC respondents' U.S. subsidiary, and not to the final unaffiliated customer. Thus these costs should not be deducted from CEP.

Amended Final Results of Review

As a result of our review and the correction of the ministerial errors described above, we have determined that the following margins exist:

Manufacturer/ exporter	Time period	Margin (percent)
Imphy/Ugine-Savoie	1/1/95–12/31/95	7.29

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review for all shipments of certain stainless steel wire rods from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously 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, or the original 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) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent for stainless steel wire rods, the all others rate established in the LTFV investigations. See *Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France*, (59 FR 4022, January 28, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as 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 § 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12389 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers exports of this merchandise to the United States for the period August 1, 1995 through July 31, 1996, and thirteen firms: China National Chemical Import and Export Corporation, Hebei Branch (Sinochem Hebei); China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinochem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Zhenxing Chemical Factory; Mancheng Zinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Bejing; Hainan Garden Trading Company; Yude Chemical Company and Shunping Lile. The preliminary results of this review indicate that there were no dumping margins for the two responding parties: Yude Chemical Company (Yude) and Zhenxing Chemical Factory (Zhenxing).

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Kristen Smith or Kristen Stevens, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the 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).

Background

On August 12, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 41768) a notice of ''Opportunity to Request Administrative Review'' for the August 1, 1995 through July 31, 1996, period of review (POR) of the antidumping duty order on Sulfanilic Acid from the People's Republic of China (57 FR 37524). In accordance with 19 CFR 353.22, Sinochem Hebei, Yude Chemical Industry Co. (Yude), Zhenxing Chemical Industry Co. (Zhenxing), PHT International and the petitioners, Nation Ford Chemical Company, requested a review for the aforementioned period. On September 17, 1996, the Department published a notice of ''Initiation of Antidumping Review.'' 61 FR 48882. The Department is now conducting a review pursuant to section 751(a) of the Act.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.24 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt, classifiable under the HTS subheading 2921.42.79, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers thirteen producers/exporters of Chinese sulfanilic acid. The review period is August 1, 1995 through July 31, 1996.

Separate Rates

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity in a nonmarket economy (NME) country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in the law (*de jure*) and in fact (*de facto*), with respect to exports of the subject merchandise. Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to sign contracts and other agreements.

Yude and Zhenxing were the only companies to respond to the Department's request for information regarding separate rates. We have found that the evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to their exports according to the criteria identified in *Sparklers* and *Silicon Carbide* for this period of review, and have assigned to each of these companies a separate rate. For further discussion of the Department's preliminary determination that these two companies are entitled to a separate rate, see Decision Memorandum to Joe Spetrini, Assistant Deputy Secretary, DAS III, dated April 14, 1997, and titled ''Separate rates in the 1995/1996 administrative review of sulfanilic acid from the People's Republic of China.'' This memorandum is on file in the Central Record Unit (room B–099 of the Main Commerce Building).

Collapsing

We have determined, after examining the relevant criteria, that Yude and Zhenxing, are affiliated parties within the meaning of section 771(33)(F) of the Act. We have further determined that these affiliated producers, both of which make export sales to the United States, should be treated as a single entity (*i.e.*, ''collapsed'') for purposes of assigning an antidumping margin in this review. Section 351.401(f) of the proposed antidumping regulations sets forth the Department's policy with respect to the treatment of affiliated producers in antidumping proceedings. 61 FR 7308, 7329 (February 27, 1996.) Specifically, the Department ''will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.'' In identifying the potential for manipulation of price or production, the proposed rules provide that the Department may consider the following factors: level of common ownership; whether managerial employees or board members of one of the affiliated producers sit on the board of directors of the other affiliated person; and whether operations are intertwined, such as through the sharing of facilities or employees, or significant transactions between the affiliated parties. A full discussion of our conclusions, requiring reference to proprietary information, is contained in a Department memorandum in the official file for this case (a public version of this memorandum is on file in room B–099 of the Department's main building). Generally, however, we have found that: Yude and Zhenxing are ''affiliated'' parties, substantial retooling would not be necessary to restructure manufacturing priorities and there is potential for manipulating price and production between the two producers. As a result we are collapsing Yude and Zhenxing for purposes of conducting the 1995/1996 administrative review.

Use of Facts Otherwise Available

All firms that have not demonstrated that they qualify for a separate rate are deemed to be part of a single enterprise under the common control of the government (the ''PRC enterprise''). Therefore, all such entities receive a single margin, the ''PRC rate.'' We preliminarily determine, in accordance with section 776(a) of the Act that resort to the facts otherwise available is appropriate for the PRC rate because companies deemed to be part of the PRC enterprise for which a review was requested have not responded to the Department's antidumping questionnaire.

Where the Department must resort to the facts otherwise available because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, 776(b) authorizes the Department to use an inference adverse to the interests of that respondent in choosing from the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is ''secondary information.'' *See* H. Doc. 3216, 103rd Cong. 2d Sess. 870 (1996). If the Department relies on secondary information as facts available, section 776(c) provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

In the present case the Department has based the margin on information in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa*, 61 FR 24272 (May 14, 1996). In accordance with section 776(c) of the Act, we corroborated the data contained in the petition, as adjusted for intitiation purposes, to the extent possible. The petition data on major material inputs are consistent with Indian import statistics, and also with price quotations obtained by the U.S. Embassies in Pakistan and India. Both of these corroborating sources were placed on the record during the investigation and have been added to the record of this review. In addition, we note that the petition used World Bank labor rates which we have repeatedly found to be a probative source of data. Based on our ability to corroborate other elements of the petition calculation, we preliminarily find that the information contained in the petition has probative value. However, we will continue to evaluate this information on the basis of more current data.

Accordingly, we have relied upon the information contained in the petition. We have assigned to all exporters other than Yude and Zhenxing a margin of 85.20, the margin in the petition, as adjusted by the Department for initiation purposes.

United States Price

For sales made by Yude and Zhenxing, we calculated constructed export price based on FOB prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, U.S. duties, U.S. transportation, credit, warehousing, repacking in the U.S., indirect selling expenses and constructed export price profit, as appropriate, in accordance with section 772(d)(3) of the Act.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production methodology if (1) the merchandise is exported from an NME country, and (2) the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production as set forth in section 773(c)(3) of the Act in a comparable market economy country which is a significant producer of comparable merchandise. Pursuant to section 773(c)(4) of the Act, we determined that India is comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor, and that India is a significant producer of comparable merchandise. For further discussion of the Department's selection of India as the primary surrogate country, see Memorandum from David Mueller, Director, Office of Policy, to Steve Presing, dated March 20, 1997, ''Sulfanilic Acid from the PRC: Nonmarket Economy Status and Surrogate Country Selection,'' and File Memorandum, dated April 11, 1997, ''India as a significant producer of comparable merchandise in the 1995/1996 administrative review of sulfanilic acid from the People's Republic of China,'' which are on file in the Central Records Unit (room B–099 of the Main Commerce Building).

For purposes of calculating NV, we valued PRC factors of production as follows, in accordance with section 773(c)(1) of the Act:

To value aniline used in the production of sulfanilic acid, we used the rupee per kilogram value of imports into India during April 1995–March 1996, obtained from the March 1996, *Monthly Statistics of the Foreign Trade of India,* Volume II—Imports (*Indian Import Statistics.*) Using wholesale price indices (WPI) obtained from the International Financial Statistics, published by the International Monetary Fund (IMF), we adjusted this value to reflect inflation in India through the period of review. We made adjustments to include costs incurred for freight between the Chinese aniline suppliers and the Chinese sulfanilic acid factories, based on freight rates from the August 1993 embassy cable for the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China* (58 FR 48833, September 20, 1993) (*Lock Washers*) and the December 22, 1989 embassy cable for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, February 1, 1991) and used in *Lock Washers.* These rates were inflated to be concurrent with the period of review.

To value sulfuric acid used in the production of sulfanilic acid, we used the rupee per kilogram value for sales in India during the period of review as reported in *Chemical Weekly.* We have adjusted this value to exclude the Central Excise Tariff of India and the Bombay Sales Tax. We made additional adjustments to include costs incurred for freight between the Chinese sulfuric acid supplier and the sulfanilic acid factories in the PRC.

To value activated carbon used in the production of sulfanilic acid, we used the rupee per kilogram value for sales in India reported in *Chemical Weekly* from March 1995 to January 1996, adjusting sales outside of the period of review for inflation using the WPI index data from *International Statistics* published by the International Monetary Fund. We made adjustments to include cost incurred for inland freight between Chinese activated carbon suppliers and the sulfanilic acid factories in the PRC.

For direct labor, we used the labor rates reported in the *Economist Intelligence Unit's Investing, Licensing and Trading Conditions Abroad: India,* released November 1995, and November 1996. This source breaks out labor rates between skilled and unskilled labor for 1995, and 1996, and provides information on the number of labor hours worked per week and fringe benefits paid to workers.

For factory overhead, we used information reported in the April 1995 *Reserve Bank of India Bulletin.* From this information, we were able to determine factory overhead as a percentage of total cost of manufacture.

For selling, general and administrative (SG&A) expenses, we used information obtained from the April 1995 Reserve Bank of India Bulletin. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture.

To calculate a profit rate, we used information obtained from the April 1995 *Reserve Bank of India Bulletin.* We calculated a profit rate by dividing the before-tax profit by the sum of those components pertaining to the cost of manufacturing plus SG&A.

To value the inner and outer bags used as packing materials, we used import statistics for India obtained from *Indian Import Statistics.* Using WPI obtained from *International Financial Statistics,* we adjusted these values to reflect inflation through the period of review. We adjusted these values to include freight costs incurred between the Chinese plastic bag suppliers and the sulfanilic acid factories in the PRC.

To value coal, we used the price of steam coal reported in the *Gazette of India,* June 16, 1994. We adjusted the value of coal to reflect inflation through the period of review using WPI index data published by the IMF.

To value electricity, we used the simple average of the Indian state electricity rates for the large industry category on March 1, 1995 as reported in *Current Energy Scene in India,* July 1995, by the Centre for Monitoring the

Indian Economy. We adjusted the value of electricity to reflect inflation through the period of review using WPI index data published by the IMF.

To value truck freight, we used the rate reported in an August 1993, cable from the U.S. Embassy in India submitted for the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China* (58 FR 48833, September 20, 1993), and added to the record of this review. We adjusted the truck freight rates to reflect inflation through the period of review using WPI data published by the IMF.

To value rail freight, we used the price reported in a December 1989, cable from the U.S. Embassy in India submitted for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, February 1, 1991). We adjusted the rail freight rates to reflect inflation through the period of review using WPI data indices published by the IMF.

Preliminary Results of the Review

We preliminarily determine the dumping margin for Yude and Zhenxing for the period August 1, 1995–July 31, 1996 to be 0. The rate for all others firms which have not demonstrated that they are entitled to a separate rate is 85.20. This rate will be applied to all firms other than Yude and Zhenxing, including all firms which did not respond to our questionnaire requests: China National Chemical Import and Export Corporation, Hebei Branch (Sinochem Hebei); China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinchem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Mancheng Zinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Bejing; Hainan Garden Trading Company; and Shunping Lile.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice or the first workday thereafter. Interested parties may submit case briefs, which should not contain factual information not already on the record of this review, within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs and which should not contain factual information not already on the record of this review, may be filed not later than 37 days after the date of this preliminary determination.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States prices and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective with respect to all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for reviewed companies listed below will be the rates for those firms established in the final results of this review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters, the cash deposit rate will be the China-wide rate of 85.20; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Manufacturer/producer/exporter	Margin percentage
Yude Chemical Industry, Co.	0
Zhenxing Chemical Industry, Co.	0
PRC Rate	85.2

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under § 353.26 of the Department's regulation to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with § 751(a)(1) of the Act (19 U.S.C. 1674(a)(1)) and § 353.22 of the Department's regulations.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12387 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration A–821–803

Titanium Sponge from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review

SUMMARY: In response to requests from AVISMA Titanium-Magnesium Works (AVISMA), Interlink Metals, Inc. and Interlink Metals & Chemicals, S.A. (collectively, Interlink), Cometals, Inc. (Cometals), TMC Trading International Ltd. (TMC), and Titanium Metals Corporation (TIMET, a petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on titanium sponge from the Russian Federation (Russia). This notice of preliminary results covers the period August 1, 1995 through July 31, 1996. This review covers one manufacturer/exporter, AVISMA, and three trading companies, Interlink, Cometals, and TMC.

We have preliminarily determined that dumping margins apply during this review period. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the difference between the United States price (USP) and the normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or James Terpstra, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230; telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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 Rounds 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).

Background

The Department published an antidumping finding on titanium sponge from the Union of Soviet Socialist Republics (U.S.S.R.) on August 28, 1968 (33 FR 12138). In December 1991, the U.S.S.R. divided into fifteen independent states. To conform to these changes, the Department changed the original antidumping finding into fifteen findings applicable to the each of the former republics of the U.S.S.R. (57 FR 36070, August 12, 1992).

The Department published a notice of "Opportunity To Request an Administrative Review" of the antidumping finding from Russia for this review period on August 12, 1996 (61 FR 41768). On August 29, 1996, AVISMA and Interlink requested that the Department conduct an administrative review of the antidumping finding on titanium sponge from Russia for one manufacturer/exporter, AVISMA, and one trading company, Interlink, covering the period August 1, 1995 through July 31, 1996. On August 30, 1996, TIMET requested that the Department conduct an administrative review for AVISMA, Interlink, and another trading company, Cometals. On the same date, Cometals and TMC both requested that the Department conduct an administrative review for each respective company. We published a notice of initiation of the review on September 17, 1996 (61 FR 48882).

The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this administrative review is titanium sponge from Russia. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) subheading 8108.10.50.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive.

The period of review (POR) is August 1, 1995 through July 31, 1996. The review covers one manufacturer/exporter, AVISMA, and three trading companies, TMC, Interlink, and Cometals.

Verification

As provided in section 782(i) of the Act, we verified the information provided by TMC by using standard verification procedures, including examination of relevant sales and financial records and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the public file of the Central Records Unit (Room B–099 in the Department of Commerce).

Affiliation

TIMET, a petitioner, alleged that an affiliation existed between TMC and AVISMA, within the context of section 771(33) of the Act. TIMET based these allegations on newspaper and magazine articles and TMC's submissions, which indicated that TMC and AVISMA may have been connected through a common entity. TIMET requested that the Department further scrutinize this relationship and ensure that TMC has fully disclosed its corporate structure.

In response, the Department issued several supplemental questionnaires to TMC and AVISMA regarding any relationships that may exist between them within the context of section 771(33) of the Act. TMC and AVISMA both responded to questions regarding control and equity in each respective company.

After analyzing the totality of the responses, we have determined that it is not necessary to address this affiliation issue for the purposes of this review. We determined that regardless of whether any affiliation between TMC and AVISMA exists, we would perform our calculations and analysis in the same manner. The relevant transaction for U.S. price is that of TMC to the first unaffiliated customer in the United States. As with other third-country resellers in an NME context where, as in this case, the producer does not know the ultimate destination of the merchandise, we will base U.S. price on the sale between TMC and its unaffiliated U.S. customer and normal value on the producer's (*e.g.*, AVISMA's) factors of production. Insofar as AVISMA did not make any direct shipments to the United States (*see* below) and did not have knowledge of the ultimate destination of the merchandise sold through TMC, all relevant sales to the United States are captured in our analysis without making an affiliation determination.

United States Price (USP)

AVISMA and Cometals

We determined that AVISMA's and Cometals' exports during the POR entered the United States under temporary importation bonds (TIBs). This entry information was provided to the Department by respondents in their questionnaire responses and confirmed by Customs. At this time, because merchandise entered under a TIB is not entered for consumption, such merchandise is not subject to the antidumping finding. *See Titanium Metals Corp.* v. *The United States*, 901 F.Supp 362 (CIT 1995).

Therefore, we determined that AVISMA and Cometals did not export for consumption any subject merchandise to the United States during the review period. If these preliminary results are adopted in our final results of review, AVISMA will continue to be subject to the current Russia-wide cash deposit rate of 83.96 percent and Cometals will continue to be subject to its current cash deposit rate of 28.31 percent, which are the rates established in the final results of the most recent administrative review of titanium sponge from Russia (61 FR 58525, November 15, 1996).

Interlink and TMC

Interlink and TMC are located in market-economy countries. For purposes of this review, we are calculating a separate rate for these resellers. In calculating USP for Interlink and TMC, we used export price, as defined in section 772(a) of the Act. For date of sale, we used the sales invoice date because this is the date when the price and quantity are set. We excluded those sales made to the United States which the respondents identified as having entered the United States under TIBs. Respondents provided information regarding TIB entries, and we were able to confirm this information through Customs and National Census Bureau data.

We calculated export price based on the price to unaffiliated purchasers in the United States. We made deductions, where appropriate, for ocean freight, warehouse expenses, insurance, brokerage and handling, inland freight, and U.S. duty charges.

No other adjustments to USP were claimed or allowed.

Surrogate Country Selection

Section 773(c)(1) of the Act provides that the Department shall determine the normal value on the basis of the value of the factors of production if (1) the subject merchandise is exported from a non-market economy (NME) country, and (2) the available information does not permit the calculation of normal value under section 773(a) of the Act. In previous proceedings, the Department has considered Russia an NME country. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation* (*Magnesium*), 60 FR 16440 (March 30, 1995); *Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium from the Russian Federation*, 60 FR 27957 (May 26, 1995). Section 771(18)(C) of the Act states that ''any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.'' Because this NME status has not been revoked for Russia, we are considering Russia an NME country for purposes of this review. Therefore, because AVISMA is located in Russia, we are not able to determine normal value on the basis of AVISMA's costs and prices. Therefore, we have applied surrogate values to the factors of production to determine normal value.

We calculated normal value based on factors of production provided by AVISMA, in accordance with section 773(c)(1) of the Act and 19 CFR 353.52 of the Department's regulations. We determined that Brazil is comparable to the Russian Federation in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. In addition, Brazil is a significant producer of comparable merchandise. Therefore, in accordance with section 773(c)(4) of the Act, we chose Brazil as a comparable surrogate on the basis of the above criteria and have used publicly available information relating to Brazil to value the various factors of production. *See* Memorandum to Holly A. Kuga from David Mueller, *Titanium Sponge from Russia: Nonmarket Economy Status and Surrogate Country Selection*, October 28, 1996.

Normal Value

To determine the normal value, in accordance with section 773(c)(3) of the Act, we valued the factors of production as follows (for further discussion, *see* the analysis memorandum for these preliminary results, on file in the Central Records Unit):

- To value raw materials, we used Brazilian import data from the United Nations *Trade Commodity Statistics* (*UN Trade Statistics*) for January through December 1995. We adjusted certain factor values to reflect the actual purity used in the production of the subject merchandise. For those raw materials for which we were unable to obtain public information from Brazil, we used data provided for use in the final determination of sales at less than fair value (LTFV) for pure magnesium and alloy magnesium from the Russian Federation (magnesium from Russia) and in AVISMA's March 12, 1997 submission.
- To value truck and railcar freight, we used the rates reported by the National Confederation of Transport in Brazil for 1996, as identified by the American Consular Agency in Belo Horizonte, Brazil. These rates were provided by the distance traveled and, for truck rates, by the quantity transported.
- For energy, because there was no public information available to value the natural gas factor during the POR, we valued the factor using information from the *UN Trade Statistics*, covering the period January through December 1994. Because the value was denominated in U.S. dollars, we did not adjust for the effects of inflation. For electricity, we used the ''large industry user'' rate from Brazil's electricity tariff schedule that AVISMA would have received had it been an electricity consumer in Brazil during the POR. This decision was based on finding that AVISMA's level of electricity usage during the POR was similar to the profile of ''large industrial user'' in the final determination of sales at LTFV for magnesium from Russia. *See Magnesium* at 16446. To confirm that AVISMA would have received this rate, we divided the total number of kilowatt hours used during the POR for titanium sponge production by the number of hours in the POR, which demonstrated that AVISMA's kilowatt use was higher than the minimum necessary to receive the ''large industrial user'' rate in effect in Brazil during the POR.
- For direct labor, we used the unskilled and skilled labor rates based on information gathered by the American Consulate in Sao Paulo, Brazil. *See* Memorandum to The File from Amy S. Wei regarding Surrogate Values for Brazilian labor rates, March 6, 1997.
- For factory overhead, we used expense ratios based on elements of constructed value data reported in the antidumping duty administrative review of silicon metal from Brazil, covering the period July 1, 1995 through June 30, 1996. In order to calculate expense ratios for selling, general, and administrative (SG&A) expenses and profit, we calculated simple averages of the SG&A and profit ratios taken from the 1995 financial statements in the above-named review.
- For packing materials, we used information provided in the *UN Trade Statistics* from Brazil, covering the period of January through December 1995. We included surrogate freight costs for the delivery of packing materials to the plant reported by the National Confederation of Transport in Brazil for 1996. We valued packing labor using the same labor rates as used in direct labor above.
- We included in normal value, where appropriate, movement expenses incurred in bringing the subject merchandise from the Russian plant to the resellers' warehouses. We valued these charges using surrogate data based on Brazilian freight costs, where appropriate. *See Notice of Preliminary Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China*, August 16, 1995, 60 FR 42504, 42506.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act, based on rates certified by the Federal Reserve Bank and Dow Jones Business Information Services.

Preliminary Results

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Interlink Metals and Chemicals, Inc	8/1/95–7/31/96	0.00
TMC Trading International, Ltd	8/1/95–7/31/96	0.00
Cometals, Inc	8/1/95–7/31/96	28.31
Russia-wide rate	8/1/95–7/31/96	83.96

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department issue the final results of the administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the date of publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping dumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of titanium sponge from Russia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Interlink, TMC, Cometals, and AVISMA will be the rates established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review and have a separate rate, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) for Russian manufacturers or exporters not covered in the LTFV investigation or in this or prior administrative reviews, the cash deposit rate will continue to be the Russia-wide rate; and (4) the cash deposit rate for non-Russian exporters of subject merchandise from Russia who were not covered in the LTFV investigation or in this or prior administrative reviews will be the rate applicable to the Russian supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) 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 administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12202 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Norfolk State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 97–013. Applicant: Norfolk State University, Norfolk, VA 23504. Instrument: Q-Band ESR Spectrometer with Accessories. Manufacturer: Bruker Instruments Inc., Germany. Intended Use: See notice at 62 FR 10543, March 7, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) A 34 GHz Gunn source (Q-Band) with 80 mW power, 60 dB +/ −0.2 attenuation, 100 MHz tuning range and (2) a low temperature Q-Band resonator. A domestic spectrometer manufacturer advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–12390 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Oregon Graduate Institute of Science and Technology, et al; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–141. Applicant: Oregon Graduate Institute of Science and Technology, Portland, OR 97291–1000. Instrument: Stopped-Flow Spectrometer, Model SX.18MV. Manufacturer: Applied Photophysics, Ltd., United Kingdom. Intended Use: See notice at 62 FR 5619, February 6, 1997. Reasons: The foreign instrument provides: (1) Multimixing capability, (2) a deadtime of 1.2 ms permitting analysis of reaction rates to 1500 s^{-1} and (3) a photo-diode array detector. Advice received from: National Institutes of Health, March 19, 1997.

Docket Number: 97–017. Applicant: University of California, San Diego, La Jolla, CA 92093–0931. Instrument: Sleep Recorder, Model Vitaport 2. Manufacturer: TEMEC Instruments BV, The Netherlands. Intended Use: See notice at 62 FR 13600, March 21, 1997. Reasons: The foreign instrument provides: (1) Electronic measurements of electrophysical (e.g. EEG and EOG) and cardiorespiratory (e.g. ECG and RIP–THOR) parameters and (2) minimized weight power consumption and physical dimensions appropriate for space flight. Advice received from: National Institutes of Health, March 19, 1997.

Docket Number: 97–020. Applicant: University of Texas at Austin, Port Aransas, TX 78373. Instrument: IR Mass Spectrometer, Model DELTA^{plus}. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 62 FR 13600, March 21, 1997. Reasons: The foreign instrument provides: (1) A magnetic sector analyzer with stigmatic focusing, (2) internal precision of 0.006 (2σ) per CO_2 ion and (3) absolute sensitivity of 1500 molecules CO_2 per mass 44 ion at the collector. Advice received from: National Institutes of Health, March 19, 1997.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–12392 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 97–011. Applicant: The University of Chicago, Chicago, IL 60637. Instrument: ICP Mass Spectrometer, Model ELEMENT. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 62 FR 10543, March 7, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) A magnetic sector analyzer with inductively coupled plasma ion source, (2) sensitivity better than 50 × 10^6/second/ppm of indium and (3) a linear detection range from 0.1 ppt to 100 ppm. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–12391 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada; Preliminary Results of the Fourth Countervailing Duty Administrative Reviews for the 1995 Period of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada. For information on the net subsidy for the reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Reviews* section of this notice. If the final results remain the same as these preliminary results of administrative reviews, we will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the *Preliminary Results of Reviews* section of this notice. Interested Parties are invited to comment. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Cynthia Thirumalai, AD/CVD Enforcement, Group 1, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3464 or (202) 482–4087, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1992, the Department published in the **Federal Register** (57 FR 39392) the countervailing duty orders on pure and alloy magnesium from Canada. On August 12, 1996, the Department published a notice of ''Opportunity to Request an Administrative Review'' (61 FR 41771) of these countervailing duty orders. We received timely requests for review from NHCI on August 20, 1996 and from the Gouvernment du Québec (GOQ) on August 21, 1996 and we initiated these reviews, covering the period January 1, 1995 through December 31, 1995, on September 15, 1996 (61 FR 48882).

In accordance with 19 CFR 355.22(a), these reviews cover only the producer or exporter of the subject merchandise for which reviews were specifically requested. Accordingly, these reviews cover only NHCI. Also, these reviews cover seventeen programs.

On October 30, 1996, the Department issued questionnaires to NHCI, the Government of Canada (GOC), and the GOQ. The Department received questionnaire responses from NHCI, the GOC and the GOQ on December 3, 1996. The Department issued supplemental questionnaires to NHCI and the GOQ on April 10, 1997 and received supplemental questionnaire responses from both parties on April 24, 1997.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act.

Scope of the Reviews

The products covered by these reviews are pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Secondary and granular magnesium are not included. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and Customs purposes, our written descriptions of the scopes of these proceedings is dispositive.

Analysis of Programs

I. Programs Previously Determined to Confer Subsidies

A. Exemption from Payment of Water Bills

Pursuant to a December 15, 1988 agreement between NHCI and La Société du Parc Industriel et Portuaire de Bécancour (Industrial Park), NHCI is exempt from payment of its water bills. Except for the taxes associated with its bills, NHCI does not pay the invoiced amounts of its water bills.

In the *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada (Magnesium from Canada)* 57 FR 30948 (July 13, 1992), the Department determined that the exemption received by NHCI was limited to a specific enterprise or industry, or group of enterprises or industries because no other company receives such an exemption. In these reviews, neither the GOQ nor NHCI provided new information which would warrant reconsideration of this determination.

We preliminarily determine the countervailable benefit to be the amount NHCI would have paid absent the exemption. To calculate the benefit under this program, we divided the amount NHCI would have paid for water during the POR by NHCI's total POR sales of Canadian-manufactured products on an F.O.B. basis. We preliminarily determine that the net subsidy provided by this program is 0.50 percent *ad valorem*.

B. Article 7 Grants from the Québec Industrial Development Corporation

The Société de Développement Industriel du Québec (SDI) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance involves projects capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers, and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of ''special economic importance and value to the province.'' (*See Magnesium from Canada,* 57 FR 30949 (July 13, 1992).)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In *Magnesium from Canada,* we determined that NHCI received a disproportionately large share of assistance under Article 7. On this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries. In these reviews, neither the GOQ nor NHCI provided new information which would warrant reconsideration of this determination.

For the reasons set forth in the *Final Results of the Third Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada,* 62 FR 18749 (April 17, 1997), we preliminarily determine in these reviews that the Article 7 assistance received by NHCI was a non-recurring grant because it represented a one-time provision of funds. In these reviews, neither the GOQ nor NHCI provided new information which would warrant reconsideration of this determination.

We calculated the benefit from the grant received by NHCI using the company's cost of long-term, fixed-rate debt as the discount rate and our declining balance methodology, consistent with 19 CFR 355.49. We divided that portion of the benefit allocated to the POR by NHCI's total sales of Canadian-manufactured products on an F.O.B. basis. We preliminarily determine the net subsidy provided by this program to be 2.68 percent *ad valorem*.

II. Programs Preliminarily Found Not to be Used

We preliminarily find that NHCI did not apply for or receive benefits under the following programs during the POR:

- St. Lawrence River Environment Technology Development Program, Program for Export Market Development,
- The Export Development Corporation,
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec,
- Opportunities to Stimulate Technology Programs,
- Development Assistance Program,
- Industrial Feasibility Study Assistance Program,
- Export Promotion Assistance Program,
- Creation of Scientific Jobs in Industries,
- Business Investment Assistance Program,
- Business Financing Program,
- Research and Innovation Activities Program,
- Export Assistance Program,
- Energy Technologies Development Program,
- Transportation Research and Development Assistance Program.

Preliminary Results of Reviews

In accordance with 19 C.F.R. 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1995 through December 31, 1995, we preliminarily determine the net subsidy for NHCI to be 3.18 percent *ad valorem*. If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated above of the F.O.B. invoice price on all shipments of the subject merchandise from NHCI entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22 (g), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and Floral Trade Council v. United States, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Timminco Limited (which was excluded from the orders during the investigation), at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in *Pure and Alloy Magnesium from Canada: Final Results of the First (1992) Countervailing Duty Reviews* (62 FR 13857 (March 24, 1997)). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited (which was excluded from the orders during the original investigation).

Public Comment

Parties to these proceedings may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit an argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38, are due.

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: May 5, 1997.

Robert S. LaRussa

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12204 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–602]

Certain Stainless Steel Cooking Ware From the Republic of Korea: Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review, and Intent To Revoke Order In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review, and intent to revoke order in part.

SUMMARY: In response to a request from Peregrine Outfitters, Inc. (Peregrine), a U.S. importer, the Department of Commerce (the Department) is initiating a changed circumstances countervailing duty administrative review and issuing an intent to revoke, in part, the countervailing duty order on certain stainless steel cooking ware from the Republic of Korea. Peregrine requested that the Department revoke the order in part with regard to imports of stainless steel camping cooking ware from the Republic of Korea, as described by Peregrine. Based on the fact that Revereware, Inc. (petitioner) has expressed no interest in the importation of stainless steel camping cooking ware, as described by Peregrine, we intend to partially revoke this order.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or James Terpstra, Office 4, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the 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).

Background

On January 24, 1997, at Peregrine's request, the Department revoked in part the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea with regard to stainless steel cooking ware (62 FR 3662).

On March 31, 1997, Peregrine subsequently requested that the Department conduct a changed circumstances administrative review to determine whether to partially revoke the countervailing duty order on certain stainless steel cooking ware from the Republic of Korea with regard to stainless steel camping cooking ware (52 FR 2140, January 20, 1987). In addition, the petitioner informed the Department that it does not object to the changed circumstances review and has no interest in the importation or sale of stainless steel camping cooking ware as described by Peregrine.

Scope of Review

The merchandise covered by this changed circumstances review is stainless steel camping cooking ware from the Republic of Korea. This changed circumstances administrative review covers all manufacturers/exporters of stainless steel cooking ware meeting the following specifications of stainless steel camping cooking ware: (1) Made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consists of 1.0, 1.5, and 2.0 quart saucepans without handles and 2.5, 4.0, 5.0 quart saucepans with folding bail handles and with lids that also serve as fry pans. This camping cooking ware can be nested inside each other in order to save space when packing for camping or backpacking. The order with regard to imports of other stainless steel cooking ware is not affected by this request.

Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review, and Intent to Revoke Order In Part

Pursuant to section 751(d) of the Tariff Act of 1930, as amended (the Act), the Department may partially revoke a countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 355.25(d)(2) require that the Department conduct a changed circumstances administrative review under § 355.22(h) based upon available information, including an affirmative statement of no interest from the petitioner in the proceeding. Section 355.25(d)(1)(i) further provides that the Department may revoke an order or revoke an order in part if it determines that the order under review is no longer of interest to interested parties. In addition, in the event that the Department concludes that expedited action is warranted, § 355.22(h)(4) of the regulations permits the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with sections 751(b)(1) and 751(d) of the Act, 19 CFR 355.25(d), and 355.22(h), we are initiating this changed circumstances administrative review and have determined that expedited action is warranted. Based on an affirmative statement of no interest by petitioner with respect to stainless steel camping cooking ware as described by Peregrine, as well as the fact that we have revoked the antidumping duty order in part with regard to stainless steel camping cooking ware (62 FR 3662, January 24, 1997), we have preliminarily determined that the portion of the countervailing duty order on certain stainless steel cooking ware from the Republic of Korea concerning stainless steel camping cooking ware, as described in Peregrine's request for a changed circumstances review, no longer is of interest to domestic interested parties. We have further concluded that expedited action is warranted, and are, therefore, combining these notices of initiation and preliminary results. We are hereby notifying the public of our intent to revoke in part the countervailing duty order as to imports of this type of stainless steel camping cooking ware from the Republic of Korea.

If final revocation in part occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation and to refund, with interest, any estimated countervailing duties collected for all unliquidated entries of the subject merchandise that are not subject to a final results of administrative review. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first working day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments or briefs, limited to the issues raised in those comments, may be filed no later than 21 days after the date of publication of this notice. All written comments or briefs shall be submitted in accordance with 19 CFR 355.31(e) and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 355.31(g). Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with sections 751(b)(1) and (d) of the Act and §§ 355.22(h) and 355.25(d) of the Department's regulations.

Dated: May 5, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12203 Filed 5–9–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050697C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for a scientific research permit (P646) and modification 1 to scientific research permit 1025 (P622).

SUMMARY: Notice is hereby given that Amy Harris, a student of California State University at Sacramento, CA (CSUS) has applied in due form for a permit and the California Department of Fish and Game at Sacramento, CA (CDFG) has applied in due form for a modification to a permit providing authorization for takes of an endangered species for scientific research purposes.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before June 11, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6064).

Written comments or requests for a public hearing should be submitted to the Protected Species Division in Santa Rosa, CA.

SUPPLEMENTARY INFORMATION: Amy Harris requests a permit and CDFG requests modification 1 to permit 1025 under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Amy Harris (P646), in association with CSUS, requests a scientific research permit for a take of juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to compare the relative abundance of juvenile chinook salmon in restored shallow-water habitats with those in naturally-occurring habitats in the Sacramento-San Joaquin Delta. The success of the restoration of these two habitat types will be evaluated. Juvenile, ESA-listed, naturally-produced, winter-run chinook salmon are proposed to be captured (with an otter trawl and beach seines), anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities of juvenile, ESA-listed fish associated with the research are also requested. The permit is requested for 1997 only.

Permit 1025 authorizes CDFG annual takes of adult and juvenile, endangered, naturally-produced Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) associated with scientific research. For modification 1, CDFG requests an increase in the take of juvenile, ESA-listed fish associated with a new study to evaluate the timing and relative abundance of juvenile anadromous salmonids emigrating to the Sacramento-San Joaquin Delta. Specifically, CDFG proposes to monitor juvenile anadromous fish migration at Sutter National Wildlife Refuge and at the Colusa Weir on Butte Creek, a tributary of the Sacramento River. This information should assist in the management of Delta water export operations by providing an early warning signal of juvenile salmonids entering the Delta. Juvenile, ESA-listed fish are proposed to be captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities of juvenile, ESA-listed fish associated with the new study are also requested. Any juvenile, ESA-listed, artificially-propagated, winter-run chinook salmon taken during the study will be sacrificed, frozen, and provided to the U.S. Fish and Wildlife Service for research. Modification 1 to permit 1025 is requested for the duration of the permit. Permit 1025 expires on June 30, 2001.

Those individuals requesting a hearing should set out the specific reasons why a hearing on either of these applications would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: May 6, 1997.

Nancy Chu, Chief,

Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–12367 Filed 5-9-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Office of Admissions, HQ United States Air Force Academy (USAFA).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Considerations will be given to all comments received by July 11, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Department of the Air Force, HQ USAFA/RRED, Attn: Patricia Marinski, Academy, CO 80840.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address.

Title, Associated Form, and OMB Number: Air Force Academy Candidate Activities Record, USAFA Form 147, OMB Number 0701–0063.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's family and personal background for use in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 3,003.

Number of Respondents: 4,004.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's high school athletic, nonathletic, and extracurricular activities is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–12321 Filed 5–9–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Office of Admissions, HQ United States Air Force Academy (USAFA).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Considerations will be given to all comments received by July 11, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent: Department of the Air Force, HQ USAFA/RRED, Attn: Patricia Marinski, Academy, CO 80840.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address.

Title, Associated Form, and OMB Number: Air Force Academy Request for Secondary School Transcript, USAFA Form 148, OMB Number 0701–0066.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's family and personal background for use in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 1,743.

Number of Respondents: 3,874.

Responses per Respondent: 1.

Average Burden per Response: 27 minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 USC 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's high school academic performance is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–12338 Filed 5–9–97; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Office of Admissions, HQ United States Air Force Academy (USAFA).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Considerations will be given to all comments received by July 11, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Department of the Air Force, HQ USAFA/RRED, Attn: Patricia Marinski, Academy, CO 80840.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address.

Title, Associated Form, and OMB Number: Air Force Academy Candidate Personal Data Record, USAFA Form 146, OMB Number 0701–0064.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's family and personal background for use in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 2,088.

Number of Respondents: 4,176.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's personal and family background is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–12339 Filed 5–9–97; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–147 and EA–148]

Applications to Export Electric Energy; Aquila Power Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Aquila Power Corporation (APC), a power marketer, has submitted applications to export electric energy to Mexico and Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 11, 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 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202–586–5883 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 April 30, 1997, APC filed two applications with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico (Docket EA–147) and Canada (Docket EA–148) as a power marketer, pursuant to section 202(e) of the FPA. Specifically, APC has proposed to transmit to Mexico and Canada electric energy purchased from electric utilities and other suppliers within the U.S.

APC would arrange for the exported energy to be transmitted to Mexico over the international transmission facilities owned by San Diego Gas and Electric, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electracidad. APC would arrange for the exported energy to be transmitted to Canada over the international facilities owned by Basin Electric, 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 Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company. Each of the transmission facilities, as more fully described in these applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications 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. Comments on APC's request to export to Mexico should be clearly marked with Docket EA–147. Comments on APC's request to export to Canada should be clearly marked with Docket EA–148. Additional copies are to be filed directly with: Steve Hill, Aquila Power Corporation, P.O. Box 11739, 10700 East 350 Highway, Kansas City, MO 64138, Phone: (816) 936–8717 and Fax: (816)

936–8775 and Max J. Burbach, Martin J. Marz, Blackwell Sanders Matheny Weary & Lombardi, 8805 Indian Hills Drive, Suite 125, Omaha, Nebraska 68114–4070, Phone: (402) 384–5000 and Fax: (402) 384–5005.

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 actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on May 5, 1997.

Anthony J. Como,

Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–12355 Filed 5–9–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–146]

Application To Export Electric Energy; Utility-Trade Corporation

AGENCY: Office of Fossil Energy, DOE

AGENCY: Notice of application.

SUMMARY: Utility-Trade Corporation (UTC), 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 June 11, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 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 April 29, 1997, UTC 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, UTC has proposed to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S.

UTC 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 Cooperative, 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 authorized by a Presidential permit issued 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: James Keck, The Utility-Trade Corporation 1710, 140–4th Ave. SW., Calgary, Alberta T2P 3N3, Canada, Phone: (403) 531–2697 and Fax: (403) 531–2695.

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 May 7, 1997.

Anthony J. Como,

Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–12356 Filed 5–9–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office Notice of Solicitation for Financial Assistance Applications; Integrated Renewable/Hydrogen System

AGENCY: Department of Energy.

ACTION: Notice of solicitation for Financial Assistance Applications Number DE–PS36–97GO10227.

SUMMARY: The Department of Energy (DOE), under authority of Section 2026 of the Energy Policy Act of 1992, Public Law 102–486, and the Hydrogen Futures Act of 1996, Public Law 104–271, is interested in providing assistance for the development of renewable/hydrogen electric generation systems. The DOE will be requesting applications for industry to participate in cost-shared projects to integrate hydrogen production, storage, and utilization systems with electricity generated from existing or planned renewable sources. The goal of the solicitation is to provide DOE financial assistance for mid-term (5 to 10 years) renewable hydrogen system applications which may lead to the installation of larger-scale, privately-funded integrated systems. The development of these integrated hydrogen technologies should address the significant technical issues associated with hydrogen production, storage, and utilization technologies. Technology development plans that address key development milestones, performance goals, and specific subsystem design objectives need to be provided. Associated issues of intermittency, dispatchability, reliability, life cycle costs, and system integration of the renewable energy generation source also need to be addressed. It is expected that these systems include stand-alone or distributed electricity generation, as well as energy storage subsystems, in a deregulated utility environment. Consideration of such facilities and systems for use in remote, island, and village power applications is encouraged.

DOE will only make awards to recipients that are private-sector firms. The recipient can represent a consortium of entities. These consortia can include public entities, business partnerships, joint ventures, individual commercial firms, user groups (such as investor-owned or municipal electric utilities), or other business relationships between such organizations as profit or non-profit corporations, educational institutions, etc. All respondents must propose to cost-share at least 50% of the total project cost from non-federal sources. Awards under this solicitation will be cooperative agreements, with a term of up to five years.

The project should be conducted in two phases. Phase I will include the development of a detailed business plan, development of a conceptual system design, and performance of any required hydrogen technology validation/testing. A Go/No-Go decision will be conducted jointly by the applicant and DOE at the end of Phase I to determine the merits of proceeding to Phase II. If justified, the project will proceed to Phase II, which will include the construction, testing, and initial operation of the renewable hydrogen system.

AVAILABILITY OF THE SOLICITATION: It is anticipated that the solicitation will be issued in June, 1997, and will contain detailed information on funding, cost sharing requirements, eligibility, application preparation, DOE proposal evaluation criteria, and the proposal selection process for awards. Responses to the solicitation will be due 60 days after solicitation release. To obtain a copy of the solicitation once it is issued, submit a written request to the U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401, Attention: Mr. Matthew Barron, Contract Specialist. For convenience, requests for the solicitation may be faxed to Mr. Barron at (303) 275–4754. Solicitations may also be obtained electronically through the Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm, followed, within ten days, by written notification of receipt to Mr. Barron. All responsible sources may submit an application and all timely applications will be considered, subject to the limitations above.

SUPPLEMENTARY INFORMATION: This announcement is also intended to encourage owners and operators of existing or planned renewable energy generation facilities to consider submitting applications for integrating hydrogen systems with their facilities. It is expected that employment of these integrated systems will lead to many benefits, including operational and environmental advantages. Such systems are limited to electrolysis and generation system technologies including fuel cells or generator sets, and aqueous/non-aqueous reversible fuel cell technologies that can be integrated with hydrogen storage for load-leveling applications in conjunction with electricity buying and selling strategies.

Issued in Golden, Colorado, on May 6, 1997.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 97–12360 Filed 5–9–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet May 21–22, 1997, at the IEA's headquarters in Paris, France to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the Standing Group on the Oil Market and at a meeting of the SEQ.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(I) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(I)), the following meeting notices are provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 21, 1997, at the headquarters of the IEA, 9 rue de la Federation, Paris, France, beginning at 9:00 a.m. The purpose of the meeting is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and Standing Group on the Oil Market (SOM). The agenda for the meeting is under the control of the SEQ and SOM. It is expected that they will adopt the following agenda:

1. Current Oil Market Situation
2. Refinery Flexibility: A Hidden Source of Oil Security?
3. The Chinese Energy Situation: Oil Demand in China
4. Asian Oil Outlook: An Overview

II. A meeting of the IAB will be held on May 21 and 22, 1997, at the IEA headquarters at the above address, beginning at approximately 2:30 p.m. on May 21. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the SEQ which is scheduled for this time and location, including a prepatory encounter among company representatives on May 21 from approximately 2:15 p.m. to 2:30 p.m. The agenda for the prepatory encounter among company representatives is to elicit views on the SEQ's agenda. The agenda for the SEQ meeting is under the control of the SEQ. It is expected the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of Summary Record of the 89th Meeting
3. SEQ Work Program
   —The 1997 SEQ Work Program
   —The 1998 SEQ Work Program
4. Policy and Legislative Developments in Member Countries
   —Energy Policy and Conservation Act (EPCA)
   —Report on U.S. Department of Energy Strategic Petroleum Reserve Study
   —Other Country Developments
5. Industry Advisory Board
   —Current and Planned IAB Activities
6. Future Strategies for IEA Emergency Reserves
7. Seminar on IEA Emergency Reserve Strategy
8. Emergency Response Reviews of IEA Countries
   —Spain
   —Portugal
   —Japan
   —Austria
   —Updated Schedule of Reviews
9. Review of SEQ Work Schedules
   —Results of Survey
10. Emergency Reserve Situation of IEA Countries
   —Emergency Reserve and Net Import Situation of IEA Countries on October 1, 1996
   —Emergency Reserve and Net Import Situation of IEA Countries on January 1, 1997
11. Emergency Response Issues in IEA Candidate Countries
   —The Emergency Reserve Situation of IEA Candidate Countries
   —Report on Data Reporting by Candidate Countries
12. Emergency Data System and Related Questions
   —Based Period Final Consumption (BPFC)—Q495–Q396
   —BPFC—Q196–Q496
   —Monthly Oil Statistics (MOS) December 1996
   —MOS January 1997
   —MOS February 1997
   —Quarterly Oil Forecast—Q197–Q397
13. IEA Public Information in Oil Crises
14. Emergency Reference Guide
   —Update of Emergency Contact Points List
15. IEA Dispute Settlement Center
   —Panel of Arbitrators

16. Any Other Business
—Preparations for the IEA Governing Board Meeting at Ministerial Level
—Visit of IEA Executive Director to Saudia Arabia
—Report on Non-Member Countries Energy Security Conference of April 1997
—Use of Internet for SEQ Documents and Communications

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), these meetings are open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ and SOM and representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, SOM or the IEA.

Issued in Washington, D.C., May 6, 1997.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 97–12361 Filed 5–9–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Form No. 546]

Proposed Information Collection and Request for Comments

May 7, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted July 11, 1997.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: the information collected under the requirements of FERC Form No. –546 ‘‘Certificated Rate Filings: Gas Pipeline Rates’’ (OMB No. 1902–0155) is used by the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, Public Law 95–621) and Sections 4, 5, and 16, of the Natural Gas Act (NGA) (15 U.S.C. 717–717o, Pub. L. 75–688). These statutory provisions require natural gas pipeline companies to obtain Commission authorization for all rates and charges made, demanded, or in connection with the transportation or sale of natural gas in interstate commerce. The Commission is authorized to investigate the rates charged by natural gas pipeline companies subject to its investigation. The data filed in certificated rate filings are used to implement new or revised service proposals for the transportation or sale of natural gas and for compliance with subsequent certification orders. The distinction between FERC–546 and other rate/tariff data collections is that data collected under FERC–546 involve initial service and tariff revisions due to changes in service rather than changes in existing rates. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 154.4; .7; .202; .205–.206; .312; .601–.603.

Action: The commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
100	4	400	16,000

Estimated cost burden to respondents: 16,000 hours/2,087 hours per year × $104,350 per year = $800,000. The cost per respondent is equal to $8,000.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility and clarity of the 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, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12399 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Standards for Business Practices of Interstate Natural Gas Pipelines; Notice of Compliance Filings

[Docket No. RM96–1–004 (Order No. 587–C)]

May 6, 1997.

Take notice that on March 4, 1997, the Commission issued a Final Rule in Docket No. RM96–1–004, Order No. 587–C (62 FR 10684, March 10, 1997), to amend its regulations by incorporating by reference additional standards promulgated by the Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to publish specific information on Internet Web pages and to follow certain new and revised business practice procedures. The Commission directed pipelines to make pro forma tariff filings to implement the business practice standards by May 1, 1997.

Due to the large number of filings that were received, the filings are being noticed together. The filings are not being consolidated. *Algonquin Gas Transmission Company*, Docket No. RP97–5–006, is the lead docket under which all the filings are listed.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12303 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–5–006 et al.]

Algonquin Gas Transmission Co. et al.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1997.

In the matter of: RP97–171–004, RP97–172–003, RP97–187–004, RP97–110–002, RP97–170–003, RP97–66–004, RP97–139–002, RP97–173–003, RP97–63–003, RP97–167–003, RP97–166–003, RP97–162–002, RP97–145–002, RP97–58–004, RP97–20–005, RP97–114–003, RP97–21–004, RP97–310–001, RP97–157–003, RP97–295–001, RP97–141–003, RP97–147–002, RP97–161–004, RP97–142–003, RP97–144–002, RP97–104–002, RP97–178–003, RP97–154–003, RP97–140–003, RP97–152–002, RP97–151–002, RP97–59–004, RP97–176–002, RP97–73–004, RP97–155–002, RP97–19–005, RP97–1–007, RP97–64–005, RP97–105–002, RP97–61–004, RP97–22–006, RP97–17–005, RP97–134–004, RP97–136–002, RP97–4–007, RP97–150–003, RP97–169–002, RP97–109–004, RP97–224–004, RP97–138–003, RP97–182–003, RP97–137–003, RP97–177–002, RP97–68–003, RP97–143–002, RP97–60–004, RP97–3–006, RP97–164–002, RP97–54–003, RP97–237–003, RP97–18–006, RP97–6–006, RP97–168–002, RP97–146–002, RP97–156–003, RP97–160–002, RP97–163–002, RP97–67–003, RP97–62–003, and RP97–93–004 (Not Consolidated); Algonquin Gas Transmission Company, ANR Pipeline Company, ANR Storage Company, Arkansas Western Pipeline Company, Black Marlin Pipeline Company, Blue Lake Gas Storage Company, Canyon Creek Compression Company, Caprock Pipeline Company, Carnegie Interstate Pipeline Company, Colorado Interstate Gas Company, Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Cove Point LNG Limited Partnership, Crossroads Pipeline Company, East Tennessee Natural Gas Company, El Paso Natural Gas Company, Equitrans, Inc., Florida Gas Transmission Company, Garden Banks Gas Pipeline, LLC, Gas Transport Inc., Gasdel Pipeline System, Inc., Great Lakes Gas Transmission Limited Partnership, High Island Offshore System, Iroquois Gas Transmission System, L. P., K N Interstate Gas Transmission Co., K N Wattenberg Transmission Limited Liability Company, Kentucky West Virginia Gas Company, Kern River Gas Transmission Company, Koch Gateway Pipeline Company, Louisiana-Nevada Transit Company, Michigan Gas Storage Company, Mid Louisiana Gas Company, Midwestern Gas Transmission Company, MIGC, Inc., Mississippi River Transmission Corporation, Mobile Bay Pipeline Company, Mojave Pipeline Company, Natural Fuel Gas Supply Corporation, Natural Gas Pipeline Company of America, Nora Transmission Company, NorAm Gas Transmission Company, Northern Border Pipeline Company, Northern Natural Gas Company, Pacific Gas Transmission System, Paiute Pipeline Company, Panhandle Eastern Pipe Line Company, Richfield Gas Storage System, Riverside Pipeline Company, L.P., Sabine Pipe Line Company, Sea Robin Pipeline Company, Shell Gas Pipeline Company, South Georgia Natural Gas Company, Southern Natural Gas Company, Steuben Gas Storage Company, Stingray Pipeline Company, T C P Gathering Co., Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Texas-Ohio Pipeline, Inc., Trailblazer Pipeline Company, TransColorado Gas Transmission Company, Transwestern Pipeline Company, Truckline Gas Company, Tuscarora Gas Transmission Company, U–T Offshore System, Viking Gas Transmission Company, Western Gas Interstate Company, WestGas Interstate, Inc., Williams Natural Gas Company, Wyoming Interstate Company, Ltd., and Young Gas Storage Company, Ltd.

Take notice that the applicants referenced above tendered for filing pro forma tariff sheets to comply with the Commission's directives in Order No. 587–C, to be effective August 1, 1997 and November 1, 1997.

On March 4, 1997, the Commission issued a Final Rule in Docket No. RM96–1–004, Order No. 587–C, to amend its regulations by incorporating by reference additional standards promulgated by the Gas Industry Standards Board (GISB). These standards require interstate natural gas pipelines to publish specific information on Internet Web pages and to follow certain new and revised business practice procedures. The Commission directed pipelines to make pro forma tariff filings to implement the business practice standards by May 1, 1997.

Each applicant states that its filing complies with the Commission's Order No. 587–C in Docket No. RM96–1–004.

Each applicant states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

The above-referenced dockets are being noticed together due to the large number of filings received. The filings are not being consolidated. Any party who wishes to file a protest must file a separate protest for each docket.

Any person desiring to protest said filings should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commissions Rules and Regulations. All such protests must be filed on or before May 22, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of the filings are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12307 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2153–000]

Amerada Hess Corporation; Notice of Issuance of Order

May 7, 1997.

Amerada Hell Corporation (Amerada Hess) submitted for filing a rate schedule under which Amerada Hess will engage in wholesale electric power and energy transactions as a marketer. Amerada Hess also requested waiver of various Commission regulations. In particular, Amerada Hess requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Amerada Hess.

On May 1, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Amerada Hess 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 385.214).

Absent a request for hearing within this period, Amerada Hess is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Amerada Hess's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 2, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12400 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Canyon Creek Compression Company; Notice of Compliance Filing

[Docket No. RP97–66–005]

May 6, 1997.

Take notice that on May 2, 1997, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May 1, 1997.

Canyon states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's order issued on April 17, 1997 in Docket Nos. RP97–66–001, *et al.*, regarding compliance with Order No. 587.

Canyon states that copies of the filing have been served on its jurisdictional customers, interested state commissions, and all parties set out on the official service list at Docket No. RP97–66.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12311 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–20–006]

El Paso Natural Gas Company; Notice of Compliance Filing

May 6, 1997.

Take notice that on May 1, 1997, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance, pursuant to Subpart C of 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act and in compliance with ordering paragraph (B) of the Commission's orders issued November 15, 1996 at Docket No. RP97–20–000 and February 13, 1997 at Docket Nos. RP97–20–001, et al., tendered for filing as part of its FERC Gas Tariff, Volumes Nos. 1, 1–A, and 2, certain tariff sheets, with a proposed effective date of June 1, 1997.

El Paso states that the tariff sheets are being tendered to implement the Gas Industry Standards Board Standards which the Commission adopted to standardize business practices and procedures governing transactions between interstate gas pipelines, their customers, and others doing business with the pipelines.

El Paso states that copies of the filing were served upon all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12309 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–19–004]

Mojave Pipeline Company; Notice of Compliance Filing

May 6, 1997.

Take notice that on May 1, 1997, Mojave Pipeline Company (Mojave) tendered for filing and acceptance, pursuant to Subpart C of 154 of the Commission's Regulations Under the Natural Gas Act and in compliance with the Commission's orders issued November 15, 1996, at Docket No. RP97–19–000 and February 18, 1997, at Docket Nos. RP97–19–001, et al., the following tariff sheets to Mojave's FERC Gas Tariff, First Revised Volume No. 1, with an effective date of June 1, 1997:

First Revised Sheet No. 22
First Revised Sheet No. 29

First Revised Sheet No. 30
First Revised Sheet No. 31
Original Sheet No. 31A
First Revised Sheet No. 32
First Revised sheet No. 34
First Revised Sheet No. 35
First Revised Sheet No. 38
Original Sheet No. 38A
First Revised Sheet No. 52
First Revised Sheet No. 58
First Revised Sheet No. 63
First Revised Sheet No. 102
First Revised Sheet No. 103
Original Sheet No. 103A
First Revised Sheet No. 110
Second Revised Sheet No. 111
First Revised Sheet No. 112
First Revised Sheet No. 113
Second Revised Sheet No. 117
Original sheet No. 117A
First Revised Sheet No. 132
First Revised Sheet No. 134
First Revised Sheet No. 135

Mojave states that the tariff sheets are being tendered to implement the Gas Industry Standards Board Standards which the Commission adopted to standardize business practices and procedures governing transactions between interstate gas pipelines, their customers, and others doing business with the pipelines.

Mojave states that copies of the filing were served upon all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12308 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–441–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

May 6, 1997.

Take notice that on May 1, 1997, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP97–441–000 a request pursuant to §§ 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval and permission to operate a delivery tap for Amoco Gas Company (Amoco), an intrastate pipeline company, previously constructed and operated under Section 311(a)(1) of the Natural Gas Policy Act, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that it proposed to operate existing delivery facilities that interconnect Amoco with Natural's Old Ocean 14-inch lateral located in Brazoris County, Texas, which Natural has previously used under Subpart B or Part 284 of the Commission's Regulations for transportation services to Amoco. By this application Natural seeks authorization for jurisdictional transportation services, including services under Subpart G of Part 284 of the Commission's Regulations. Natural asserts that the total volume of natural gas to be delivered to this delivery point after the facilities are authorized to provide jurisdictional services will not exceed the total volumes available prior to such authorization. Natural states that it is currently providing firm transportation at this delivery point under Natural's Rate Schedule FTS. Natural further asserts that it has sufficient capacity to provide this service at this delivery point without detriment or disadvantage to Natural's peak day or annual delivery capability and can deliver up to approximately 1,000 MMBtu per day of natural gas to AMOCO.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12305 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–179–004]

Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1997.

Take notice that on May 1, 1997, Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of June 1, 1997.

In Order No. 587–C, the Commission amended its open-access regulations to incorporate by reference standards that require interstate natural gas pipelines to publish specified information on Internet Web pages and to follow certain new and revised business practice procedures covering nominations and flowing gas.

Ozark states that the tariff sheets submitted herewith set forth the revisions to Ozark's tariff that are necessary to comply with Order No. 587–C.

Ozark states that copies of this filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12290 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2198–000]

Poco Marketing Ltd., Notice of Issuance of Order

May 7, 1997.

Poco Marketing Ltd. (Poco Marketing) submitted for filing a rate schedule under which Poco Marketing will engage in wholesale electric power and energy transactions as a marketer. Poco Marketing also requested waiver of various Commission regulations. In particular, Poco Marketing requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Poco Marketing.

On April 25, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Poco Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Poco Marketing is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Poco Marketing's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 27, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12402 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2197–000]

Poco Petroleum, Inc.; Notice of Issuance of Order

May 7, 1997.

Poco Petroleum, Inc. (Poco Petroleum) submitted for filing a rate schedule under which Poco Petroleum will engage in wholesale electric power and energy transactions as a marketer. Poco Petroleum also requested waiver of various Commission regulations. In particular, Poco Petroleum requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Poco Petroleum.

On April 25, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Poco Petroleum 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 385.214).

Absent a request for hearing within this period, Poco Petroleum is authorized to issue securities and assume obligations or liabilities as a grantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Poco Petroleum's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 27, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12401 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–182–004]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

May 6, 1997.

Take notice that on May 2, 1997, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised Tariff sheet in compliance with the Commission's Order No. 587–B and the Commission's March 4, 1997 Order in this docket, to become effective June 1, 1997:

Eighth Revised Sheet No. 5.

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said Order. 18 CFR 284.10(b).

On December 4, 1996, South Georgia made its compliance filing submitting pro forma tariff sheets to comply with Order No. 587. On March 4, 1997, the Commission issued an order in this docket in response to South Georgia's filing. The order required South Georgia to revise and submit its compliance filing for implementation of the approved standards by June 1, 1997. South Georgia submitted its compliance filing on April 15, 1997, but requested a waiver not to implement Version 1.1 of Standard 5.3.22 on the basis that the Commission subsequently approved a revised version of the standard which matched South Georgia's current practice for calculating maximum daily reservation rates on a volumetric basis for releases of firm service. Rather than implement a change for a very short time, South Georgia proposed making a filing to implement Version 1.1 of

Standard 5.3.22 on June 1, 1997, which is earlier than the November 1, 1997 deadline. The revised sheet listed above reflects revised Standard 5.3.22.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR Section 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12289 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–137–004]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

May 6, 1997.

Take notice that on May 2, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised Tariff sheets in compliance with the Commission's Order No. 587–B and the Commission's February 13, 1997 Order in this docket, to become effective June 1, 1997:

Twenty Fifth Revised Sheet No. 14
Thirteenth Revised Sheet No. 14a
Twenty Fifth Revised Sheet No. 16
Thirteenth Revised Sheet No. 16a
Fourth Revised Sheet No. 20
Second Revised Sheet No. 20a

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said Order. 18 CFR 284.10(b). On December 2, 1996, Southern made its compliance filing submitting pro forma tariff sheets to comply with Order No. 587. On February 13, 1997, the Commission issued an order in this docket in response to Southern's filing. The order required Southern to revise and submit its compliance filing for implementation of the approved standards by June 1, 1997.

Southern submitted its compliance filing on April 7, 1997, but requested a waiver not to implement Version 1.1 of Standard 5.3.22 on the basis that the Commission subsequently approved a revised version of the standard which matched Southern's current practice for calculating maximum volumetric reservation rates for releases of firm service. Rather than implement a change for a very short time, Southern stated that it would make a filing to implement Version 1.1 of Standard 5.3.22 on June 1, 1997, which is earlier than the November 1, 1997 deadline. The revised sheets listed above reflects revised Standard 5.3.22.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12314 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–005]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

May 6, 1997.

Take notice that on May 1, 1997, Tennessee Gas Pipeline Company (Tennessee) filed Fourth Revised Sheet No. 324 in compliance with the Letter Order, dated April 16, 1997, issued by the Office of Pipeline Regulaiton—Rate Analysis Branch I in this proceeding (Letter Order). Tennessee proposes an effective date of June 1, 1997 for the revised sheet.

Tennessee submits that the revised tariff sheet reflects the changes to Tennessee's tariff required by the Letter Order. Specifically, the tariff sheet conforms Article III, Section 10 of the General Terms and Conditions (GT&C) of Tennessee's tariff to Article XXVIII, Section 5 of the GT&C with regards to the net present value evaluation of negotiated rate bids.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12306 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–54–004]

Trailblazer Pipeline Company; Notice of Compliance Filing

May 6, 1997.

Take notice that on May 2, 1997, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May 1, 1997.

Trailblazer states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's order issued on April 17, 1997, in Docket Nos. RP97–54–001, et al.

Trailblazer states that copies of the filing have been served on its jurisdictional customers, interested state commissions, and all parties set out on the official service list at Docket No. RP97–54.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12310 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–237–002]

TransColorado Gas Transmission Company, Notice of Compliance Filing

May 6, 1997.

Take notice that on May 1, 1997, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance, pursuant to Subpart C of 154 of the Federal Energy Regulatory Commission's Regulations Under the Natural Gas Act and in compliance with the Commission's letter order issued February 24, 1997 at Docket No. RP97–237–000, the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with an effective date of June 1, 1997.

Original Volume No. 1

First Revised Sheet Nos. 201–203
Original Sheet No. 203A
First Revised Sheet Nos. 204 and 205
First Revised Sheet Nos. 212–217
First Revised Sheet No. 222
Original Sheet No. 222A
First Revised Sheet Nos. 225
Original Sheet No. 225A
First Revised Sheet No. 226
First Revised Sheet Nos. 230 and 231
Original Sheet No. 231A
First Revised Sheet Nos. 232 and 233
First Revised Sheet No. 240
First Revised Sheet Nos. 248 and 249

TransColorado states that the tariff sheets are being tendered to implement the Gas Industry Standards Board Standards which the Commission adopted to standardize business practices and procedures governing transactions between interstate gas pipelines, their customers, and others doing business with the pipelines.

TransColorado states that copies of the filing were served upon all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulation. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12288 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–373–000]

Williams Natural Gas Company; Notice of Application

May 6, 1997.

Take notice that on April 23, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application with the Commission in Docket No. CP97–373–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by exchange pipeline facilities, which were authorized in Docket No. CP68–92, in Garfield County, Oklahoma, with ONG Transmission Company (ONG), all as more fully set forth in the application which is open to the public for inspection.

WNG proposes to abandon approximately 18.2 miles of 8-inch diameter lateral pipeline and appurtenant equipment to ONG in exchange for one 1,100 H.P. compressor unit and meter setting owned by ONG. WNG states that it no longer needs the 18.2 miles of pipe because WNG has sold the gathering system that the pipe served. WNG states that upon abandonment ONG would operate the pipe as part of its nonjurisdictional intrastate pipeline system.

As part of the exchange, WNG states that WNG and ONG mutually desire a bi-directional interconnection between the WNG interstate and ONG intrastate pipeline systems at an existing receipt point in Woodward County, Oklahoma. WNG also states that in order to make deliveries at the proposed interconnection, WNG proposes to acquire the 1,100 H.P. compressor and meter setting in exchange from ONG and install the equipment to compress gas to the required line pressure. Upon acquiring and installing the compressor unit and meter setting, WNG states that the equipment would become part of WNG's interstate pipeline system.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 27, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that 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 WNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12304 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–67–004]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1997.

Take notice that on May 1, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective May 1, 1997.

WNG states that this filing is being made to comply with Commission Order issued April 18, 1997, in Docket No. RP97–67–001 and 002.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12312 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–93–003]

Young Gas Storage Company Ltd.; Notice of Tariff Compliance Filing

May 6, 1997.

Take notice that on May 1, 1997, Young Gas Storage Company Ltd. (Young), tendered for filing to become part of its FERC gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 80, Substitute Original Sheet No. 80A and Substitute Original Sheet No. 111C to be effective May 1, 1997.

Young states the tariff sheets are filed in compliance with the order issued April 16, 1997 in Docket No. RP97–93–001 and RP97–93–002 as well as Section 154.203 of the Commission's regulations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12313 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–61–000, et al.]

Tapal Energy Limited, et al.; Electric Rate and Corporate Regulation Filings

May 5, 1997.

Take notice that the following filings have been made with the Commission:

1. Tapal Energy Limited

[Docket No. EG97–61–000]

On April 28, 1997, Tapal Energy Limited, a public limited company incorporated and existing under the laws of the Islamic Republic of Pakistan, having its registered office at 6th Floor, Building No. 3, Lakson Square, Sanwar Shaheed Road, Karachi, Pakistan (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

The Applicant will be engaged directly in owning an eligible facility located near Karachi, Province of Sindh, Pakistan (the Plant). The Plant will consist of a 126 MW simple-cycle power plant, fueled by heavy fuel oil.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. EPEM Marketing Company and El Paso Marketing Services Company

[Docket No. EC97–29–000]

Take notice that on April 14, 1997, EPEM Marketing Company (EPEM) and El Paso Energy Marketing Services Company (El Paso Energy Marketing)(collectively, the Applicants) filed an application for approval to transfer wholesale power agreements from El Paso Energy Marketing to EPEM.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER97–1368–001]

Take notice that on April 22, 1997, Commonwealth Edison Company (ComEd) tendered for filing the compliance filing ordered by the Commission's March 25, 1997, order in this docket.

Copies of this filing have been served on the Illinois Commerce Commission and all customers served under ComEd's PSRT–1 Tariff.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Company

[Docket No. ER97–2069–000]

Take notice that on April 14, 1997, Minnesota Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER97–2573–000]

Take notice that on April 14, 1997, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and CMS Marketing, Services and Trading Company. This Transmission Service Agreement specifies that CMS Marketing, Services and Trading Company has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and CMS Marketing, Services and Trading Company to enter into separately scheduled transactions under which NMPC will provide transmission service for CMS Marketing, Services and

Trading Company as the parties may mutually agree.

NMPC requests an effective date of April 3, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and CMS Marketing, Services and Trading Company.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–2628–000]

Take notice that on April 22, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Maine Public Service Company.

Cinergy and Maine Public Service Company are requesting an effective date of April 17, 1997.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2629–000]

Take notice that on April 22, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an amendment to Rate Schedule 122, an agreement with Niagara Mohawk Power Corporation for the sale and purchase of energy and capacity.

Con Edison states that a copy of this filing has been served by mail upon Niagara Mohawk Power Corporation.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2630–000]

Take notice that on April 22, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Delmarva Power & Light Company.

Con Edison states that a copy of this filing has been served by mail upon Delmarva Power & Light Company.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. ER97–2631–000]

Take notice that on April 22, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service establishing Equitable Power Services Company as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of March 23, 1997, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER97–2632–000]

Take notice that on April 22, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Duquesne Light Company.

Cinergy and Duquesne Light Company are requesting an effective date of April 17, 1997.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Rochester Gas and Electric Corporation

[Docket No. ER97–2633–000]

Take notice that on April 23, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the Equitable Power Services Company (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December 31, 1996, filing in Docket No. OA97–243–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of March 17, 1997, for the Equitable Power Services Company Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Rochester Gas and Electric Corporation

[Docket No. ER97–2634–000]

Take notice that on April 23, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the Morgan Stanley Capital Group, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December 31, 1996, filing in Docket No. OA97–243–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of March 17, 1997, for the Morgan Stanley Capital Group, Inc. Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER97–2635–000]

Take notice that on April 22, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed Service Agreement with AIG Trading Corporation which it had filed in unexecuted form on January 31, 1997. Also tendered for filing are executed Service Agreements with Illinova Power Marketing, Inc. and Federal Energy Sales, Inc., which it had filed in unexecuted form on February 6, 1997.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER97–2636–000]

Take notice that on April 22, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with Western Power Services, Inc., WAS Energy Services, Inc., C.G. Power Services Corporation, and The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc. under the Open Access Transmission Tariff to eligible purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation

Commission, the North Carolina Utilities Commission, and the Ohio Public Utilities Commission.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docker No. ER97–2637–000]

Take notice that on April 22, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Point-to-Point Transmission Service Tariffs. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after March 15, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. ERI Services, Inc.

[Docket No. ER97–2638–000]

Take notice that on April 22, 1997, ERI Services, Inc. (ERI Services) tendered for filing pursuant to Part 35 of the Commission's Regulations and Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than June 21, 1997.

ERI Services intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ERI Services sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. ERI Services is not in the business of generating, transmitting, or distributing electric power.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER97–2639–000]

Take notice that on April 23, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with PECO Energy under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the PECO Energy.

NUSCO requests that the Service Agreement become effective February 1, 1997.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2641–000]

Take notice that on April 22, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to CMS Marketing, Services and Trading Co.

Con Edison states that a copy of this filing has been served by mail upon CMS Marketing, Services and Trading Co.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2642–000]

Take notice that on April 22, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an amendment to Rate Schedule 192, an agreement with Williams Energy Services Company for the sale and purchase of energy and capacity.

Con Edison states that a copy of this filing has been served by mail upon Williams Energy Services Company.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Portland General Electric Company

[Docket No. ER97–2643–000]

Take notice that on April 22, 1997, Portland General Electric Company (PGE), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.15, a Notice of Termination for Rate Schedule FERC No. 159, Firm Power Sale Agreement between PGE and the Modesto Irrigation District (MID).

PGE respectfully requests the Commission to accept this filing and terminate the Agreement on or before June 20, 1997.

A copy of the filing was served upon MID as noted in the body of the filing letter.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER97–2644–000]

Take notice that on April 22, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Minnesota Power & Light Company.

Cinergy and Minnesota Power & Light Company are requesting an effective date of April 17, 1997.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. C. Lee Cox

[Docket No. ID–2995–000]

Take notice that on April 14, 1997, C. Lee Cox, Applicant, filed an application pursuant to Section 305(b) of the Federal Power Act and Part 45 of the Commission's Regulations to hold the following positions:

Director, Pacific Gas & Electric Company
Director, AirTouch Communications, Inc.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Dixie Escalante Rural Electric Association, Inc.

[Docket No. OA97–577–000]

Take notice that on April 16, 1997, Dixie Escalante Rural Electric Association, Inc. (Dixie Escalante) submitted for filing a Request for Waiver of the Application of the Requirements of Order Nos. 888 and 889, in accordance with Section 35.28(d) of the Rules of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.28(d).

Dixie Escalante states that it owns, operates, or controls only limited and discrete transmission facilities that do not constitute an integrated grid. Dixie Escalante states that it thus qualifies for a waiver of application of the requirements of Orders No. 888 and 889 to it, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Electric Power Company

[Docket No. OA97–578–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on April 21, 1997, tendered for filing revisions to its FERC Electric Tariff, Original Volume No. 7. The revisions are submitted in compliance with Order No. 888–A. Wisconsin Electric respectfully requests an effective date coincident with its filing, in order that the changes stemming from Order No.

888–A are implemented as soon as possible.

Copies of the filing have been served on all Wisconsin Electric transmission service customers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Consolidated Edison Company of New York, Inc.

[Docket No. OA97–584–000]

Take notice that on April 22, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an amendment to Rate Schedule 194, an agreement with Federal Energy Sales, Inc. for the sale and purchase of energy and capacity.

Con Edison states that a copy of this filing has been served by mail upon Federal Energy Sales, Inc.

Comment date: May 19, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12287 Filed 5–9–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act Meeting

May 7, 1997.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: May 14, 1997, 10:00 a.m.

Place: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

Status: Open.

Matters To Be Considered: Agenda.

Note.—Items listed on the agends may be deleted without further notice.

Contact Person for More Information: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 675th Meeting—May 14, 1997, Regular Meeting, (10:00 a.m.)

CAH–1.
Docket# P–1388, 008, Southern California Edison Company
CAH–2.
Docket# P–1389, 005, Southern California Edison Company
CAH–3.
Docket# P–4474, 056, Borough of Cheswick, Pennsylvania, and the Allegheny Valley Joint Council of Governments
CAH–4.
Docket# P–710, 000, Wisconsin Power and Light Company
Other#s DI96–4, 000, Wisconsin Power and Light Company
CAH–5.
Omitted

Consent Agenda—Electric

CAE–1.
Docket# ER97–2095, 000, Duke Power Company
Other#s ER97–2099, 000, Duke Power Company and Nantahala Power & Light Company
ER97–2100, 000, Duke Power Company
ER97–2211, 000, Duke Power Company
ER97–2212, 000, Duke Power Company
ER97–2213, 000, Duke Power Company
SC97–6, 000, Duke Power Company
CAE–2.
Docket# ER97–2176, 000, Energis Resources Incorporated
CAE–3.
Docket# ER97–2261, 000, Constellation Power Source, Inc.
CAE–4.
Docket# ER97–2006, 000, Niagara Mohawk Power Corporation
Other#s EL97–29, 000, Power Authority of the State of New York V. Niagara Mohawk Power Corporation
CAE–5.
Docket# ER96–3113, 000, Commonwealth Edison Company
CAE–6.
Docket# ER97–1066, 000, Potomac Edison Company
CAE–7.
Docket# OA96–38, 000, Long Island Lighting Company
CAE–8.
Docket# ER96–1196, 001, Oxbow Power Marketing, Inc.
CAE–9.
Docket# EL95–3, 000, Midamerican Energy Company (formerly Midwest Power Systems, Inc.)

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP92–137, 044, Transcontinental Gas Pipe Line Corporation
CAG–2.
Docket# RP97–55, 001, Great Lakes Gas Transmission Limited Partnership
Other#s RP97–55, 000, Great Lakes Gas Transmission Limited Partnership
RP97–55, 002, Great Lakes Gas Transmission Limited Partnership
RP97–55, 003, Great Lakes Gas Transmission Limited Partnership
RP97–55, 004, Great Lakes Gas Transmission Limited Partnership
RP97–55, 005, Great Lakes Gas Transmission Limited Partnership
CAG–3.
Docket# RP97–114, 002, Equitrans, L.P.
Other#s RP97–114, 001, Equitrans, L.P.
CAG–4.
Docket# RP97–145, 001, Crossroads Pipeline Company
CAG–5.
Omitted
CAG–6.
Docket# RP97–157, 001, Gas Transport, Inc.
Other#s RP97–157, 002, Gas Transport, Inc.
RP97–322, 000, Gas Transport, Inc.
CAG–7.
Docket# RP97–162, 001, Cove Point LNG Limited Partnership
CAG–8.
Docket# RP97–310, 000, Garden Banks Gas Pipeline, LLC
CAG–9.
Omitted
CAG–10.
Docket# RP97–134, 001, Pacific Gas Transmission Company
Other#s RP97–134, 002, Pacific Gas Transmission Company

RP97–134, 003, Pacific Gas Transmission Company
CAG–11.
Omitted
CAG–12.
Docket# RP97–169, 001, Riverside Pipeline Company, L.P.
CAG–13.
Docket# RP97–275, 001, Northern Natural Gas Company
CAG–14.
Docket# RP97–109, 001, Sabine Pipe Line Company
Other#s RP97–109, 002, Sabine Pipe Line Company
CAG–15.
Docket# RP97–137, 002, Southern Natural Gas Company
Other#s RP97–137, 001, Southern Natural Gas Company
CAG–16.
Omitted
CAG–17.
Docket# RP97–141, 002, Great Lakes Gas Transmission Limited Partnership
Other#s RP97–141, 001, Great Lakes Gas Transmission Limited Partnership
CAG–18.
Omitted
CAG–19.
Docket# RP97–150, 002, Richfield Gas Storage System
Other#s RP97–150, 001, Richfield Gas Storage System
CAG–20.
Docket# RP97–159, 002, Transcontinental Gas Pipe Line Corporation
Other#s RP97–159, 001, Transcontinental Gas Pipe Line Corporation
CAG–21.
Docket# RP97–161, 002, Iroquois Gas Transmission System, L.P.
Other#s RP97–161, 001, Iroquois Gas Transmission System, L.P.
RP97–161, 003, Iroquois Gas Transmission System, L.P.
RP97–329, 000, Iroquois Gas Transmission System, L.P.
RP97–329, 001, Iroquois Gas Transmission System, L.P.
CAG–22.
Docket# RP97–166, 001, Columbia Gulf Transmission Company
Other#s RP97–166, 002, Columbia Gulf Transmission Company
CAG–23.
Docket# RP97–167, 002, Columbia Gas Transmission Corporation
Other#s RP97–167, 001, Columbia Gas Transmission Corporation
CAG–24.
Docket# RP97–170, 002, Blue Lake Gas Storage Company
Other#s RP97–170, 001, Blue Lake Gas Storage Company
CAG–25.
Docket# RP97–171, 002, ANR Pipeline Company
Other#s RP97–171, 001, ANR Pipeline Company
RP97–171, 003, ANR Pipeline Company
RP97–311, 000, ANR Pipeline Company
CAG–26.
Docket# RP97–172, 002, ANR Storage Company
Other#s RP97–172, 001, ANR Storage Company
CAG–27.
Docket# RP97–173, 001, Carnegie Interstate Pipeline Company
Other#s RP97–173, 002, Carnegie Interstate Pipeline Company
CAG–28.
Docket# RP97–181, 002, CNG Transmission Corporation
Other#s RP97–181, 001, CNG Transmission Corporation
CAG–29.
Docket# RP97–183, 002, Texas Gas Transmission Corporation
Other#s RP97–183, 001, Texas Gas Transmission Corporation
RP97–332, 000, Texas Gas Transmission Corporation
RP97–334, 000, Texas Gas Transmission Corporation
CAG–30.
Docket# RP97–224, 002, Sea Robin Pipeline Company
Other#s RP97–224, 001, Sea Robin Pipeline Company
CAG–31.
Docket# RP93–5, 000, Northwest Pipeline Corporation
Other#s RP93–5, 025, Northwest Pipeline Corporation
RP93–96, 005, Northwest Pipeline Corporation
CAG–32.
Docket# RP96–393, 002, Koch Gateway Pipeline Company
CAG–33.
Docket# RP97–102, 002, Mississippi River Transmission Corporation
CAG–34.
Omitted
CAG–35.
Docket# RP97–129, 001, Questar Pipeline Company
CAG–36.
Docket# RP97–139, 001, Caprock Pipeline Company
CAG–37.
Docket# RP97–140, 001, Louisiana-Nevada Transit Company
Other#s RP97–140, 002, Louisiana-Nevada Transit Company
CAG–38.
Docket# RP97–142, 001, K N Interstate Gas Transmission Company
Other#s RP97–142, 002, K N Interstate Gas Transmission Company
CAG–39.
Docket# RP97–143, 001, TCP Gathering Company
CAG–40.
Docket# RP97–144, 001, K N Wattenberg Transmission Limited Liability Company
CAG–41.
Omitted
CAG–42.
Docket# RP97–154, 002, Koch Gateway Pipeline Company
Other#s RP97–154, 001, Koch Gateway Pipeline Company
CAG–43.
Omitted
CAG–44.
Docket# RP97–156, 002, Viking Gas Transmission Company
Other#s RP97–156, 001, Viking Gas Transmission Company
CAG–45.
Omitted
CAG–46.
Omitted
CAG–47.
Docket# RP97–178, 002, Kern River Gas Transmission Company
CAG–48.
Docket# RP97–179, 002, Ozark Gas Transmission System
Other#s RP97–179, 003, Ozark Gas Transmission System
CAG–49.
Omitted
CAG–50.
Docket# RP97–239, 002, Northwest Pipeline Corporation
CAG–51.
Docket# RP97–254, 000, Williams Natural Gas Company
Other#s RP97–254, 001, Williams Natural Gas Company
CAG–52.
Docket# RP92–163, 007, Williston Basin Interstate Pipeline Company
Other#s RP92–170, 007, Williston Basin Interstate Pipeline Company
RP92–236, 006, Williston Basin Interstate Pipeline Company
CAG–53.
Docket# RP97–3, 005, Texas Eastern Transmission Corporation
Other#s RP97–4, 006, Panhandle Eastern Pipe Line Company
RP97–5, 005, Algonquin Gas Transmission Company
RP97–6, 005, Trunkline Gas Company
CAG–54.
Docket# RP92–137, 043, Transcontinental Gas Pipe Line Corporation
Other#s RP93–136, 009, Transcontinental Gas Pipe Line Corporation
CAG–55.
Docket# RP92–149, 009, Transcontinental Gas Pipe Line Corporation

CAG–56.
Docket# OR97–1, 001, Rio Grande Pipeline Company
CAG–57.
Docket# RP96–234, 001, ANR Pipeline Company
CAG–58.
Docket# RP97–284, 000, Southern California Edison Company v. Southern California Gas Company
CAG–59.
Omitted
CAG–60.
Docket# CP96–213, 000, Columbia Gas Transmission Corporation
Other#s CP90–644, 003, Columbia Gas Transmission Corporation
CP90–644, 004, Columbia Gas Transmission Corporation
CP96–213, 001, Columbia Gas Transmission Corporation
CP96–213, 003, Columbia Gas Transmission Corporation
CP96–213, 004, Columbia Gas Transmission Corporation
CP96–559, 000, Texas Eastern Transmission Corporation
CP96–559, 001, Texas Eastern Transmission Corporation
CAG–61.
Omitted
CAG–62.
Docket# CP96–687, 000, Iroquois Gas Transmission System, L.P.
CAG–63.
Docket# CP96–751, 000, Panhandle Eastern Pipe Line Company
CAG–64.
Docket# CP97–144, 000, Aquila Gas Systems Corporation
CAG–65.
Docket# CP97–195, 000, Missouri Gas Energy, a Division of Southern Union Company v. Williams Natural Gas Company
CAG–66.
Docket# CP97–324, 000, Vermont Gas Systems, Inc.
CAG–67.
Docket# RP97–177, 001, Steuben Gas Storage Company
CAG–68.
Docket# RP96–302, 005, Northern Natural Gas Company
CAG–69.
Docket# RP96–173, 004, Williams Natural Gas Company
Other#s RP89–183, 064, Williams Natural Gas Company
RP89–183, 068, Williams Natural Gas Company
RP96–303, et al., 000, Williams Natural Gas Company
RP96–400, et al., 000, Williams Natural Gas Company
RP97–220, et al., 000, Williams Natural Gas Company
CAG–70.
Docket# CP94–207, 003, Southern California Gas Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket# EC95–16, 000, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
Other#s EC95–16, 001, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
ER95–1357, 000, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
ER95–1357, 001, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
ER95–1358, 000, Wisconsin Energy Company and Northern States Power Company
ER95–1358, 001, Wisconsin Energy Company and Northern States Power Company
Order and opinion on proposed merger and on proposed transmission and interchange agreements.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,
Secretary.

[FR Doc. 97–12471 Filed 5–8–97; 11:17 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of April 14 Through April 18, 1997

During the Week of April 14 through April 18, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: May 5, 1997.

George B. Breznay,
Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS, DEPARTMENT OF ENERGY

[Week of April 14 through April 18, 1997]

Date	Name and location of applicant	Case No.	Type of submission
4/14/97	John D. Kasprowicz, Bolingbrook, Illinois	VFA–0287	Appeal of an Information Request Denial. If Granted: The April 7, 1997 Freedom of Information Request Denial issued by Chicago Operations Office would be rescinded, and John D. Kasprowicz would receive access to certain DOE information.
4/14/97	Personnel Security Hearing	VSO–0153	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
4/18/97	Roderick L. Ott, Knoxville, Tennessee	VFA–0288	Appeal of an Information Request Denial. If Granted: The March 3, 1997 Freedom of Information Request Denial issued by the Office of Scientific and Technical Information would be rescinded, and Roderick L. Ott would receive access to certain DOE information.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS, DEPARTMENT OF ENERGY—Continued
[Week of April 14 through April 18, 1997]

Date	Name and location of applicant	Case No.	Type of submission
4/18/97	Sandra Clayton, Morrison, Colorado	VFA–0289	Appeal of an Information Request Denial. If Granted: The Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and Sandra Clayton would receive access to certain DOE information.

[FR Doc. 97–12359 Filed 5–9–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of April 14 Through April 18, 1997

During the week of April 14 through April 18, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: May 5, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 29; Week of April 14 Through April 18, 1997

Appeals

Information Focus on Energy, Inc., 4/17/97, VFA–0280

Information Focus on Energy, Inc. (IFE) filed an Appeal from a determination by the Assistant Inspector General for Resource Management of the Office of Inspector General (Assistant IG) of the Department of Energy (DOE). In that determination, the Assistant IG partially granted a request for information filed by IFE. In considering the Appeal, the DOE ordered the Assistant IG to search for and release documents containing titles, report numbers, and issue dates of all DOE Inspector General Reports, including inspection reports, for the years 1988 through September 1996, or provide a detailed explanation for withholding any such information.

Nancy Donaldson, 4/14/97, VFA–0271

Nancy Donaldson filed an Appeal challenging the adequacy of a search for documents conducted by the Bonneville Power Administration (BPA) in connection with a request she filed under the Freedom of Information Act (FOIA). Specifically, Ms. Donaldson claimed that she should have been provided with the results of asbestos testing that was done prior to 1985 at BPA locations, and with documents having to do with the presence of transite paneling at those locations. In considering the Appeal, the Department of Energy found that the absence of pre-1985 test data was not evidence of an inadequate search. However, the matter was remanded to the BPA so that a search for documents having to do with the presence of transite paneling at BPA locations could be performed.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Aurora Casket Company	RG272–604	4/16/97
Crude Oil Supple Ref	RB272–00101	4/17/97
Herring Farm et al	RK272–01792	4/17/97
Horn Trucking Co. et al	RK272–02263	4/17/97
Legler Farms, Inc. et al	RK272–01330	4/18/97
Minnie Dyk et al	RK272–2002	4/16/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Northern Farmers Cooperative Society	RG272–00717
OSU Motor Pool	RF272–86826
Personnel Security Hearing	VSO–0134

[FR Doc. 97–12357 Filed 5–9–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of April 21 Through April 25, 1997

During the week of April 21 through April 25, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: May 5, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 30; Week of April 21 Through April 25, 1997

Appeals

Information Focus on Energy, 4/25/97, VFA–0281

The DOE issued a decision denying in part and granting in part a Freedom of Information Act (FOIA) Appeal filed by Information Focus on Energy (IFOE). IFOE sought Internet access to records of occurrence reports contained in a DOE database. The DOE's FOIA/Privacy Act Division (HQ) denied access to the database, but released some responsive records to the requester. In its decision, the DOE found that HQ did not release all responsive records to IFOE, and granted this portion of the Appeal. However, the DOE found that HQ had no obligation to provide the responsive records on the Internet, and accordingly denied this portion of the Appeal.

Research Information Services, Inc., 04/25/97, VFA–0283

Research Information Services, Inc. (RIS) filed an Appeal from a determination issued by the Office of Arms Control and Nonproliferation (OACN). In that determination, OACN furnished RIS with lists of information that had been forwarded to other agencies and the DOE Office of Declassification. In its Appeal, the RIS contended that it was entitled to a list of information available in the FOIA Reading Room. The DOE rejected that contention, holding that it was not required to compile a list of the publicly available material. The RIS also contended that OACN had not released all responsive information. OACN determined that some information had not been released and requested that the matter be remanded to it for a new determination either justifying the withholding of that information under Exemption 4 or releasing it. Therefore, the Appeal was denied in part and granted in part.

Richard J. Levernier, 04/25/97, VFA–0282

The DOE issued a decision granting in part a Freedom of Information Act (FOIA) Appeal filed by Richard J. Levernier. Levernier sought documents concerning certain investigations by the DOE's Office of Inspector General (IG). In its decision, the DOE found that the IG's search for responsive documents was adequate and that the IG's withholdings under FOIA Exemptions 6, 7(C) and 7(D) were appropriate. However, the DOE questioned some of the IG's withholdings under Exemption 5. Accordingly, the Appeal was remanded to the IG and denied in all other aspects.

Robert B. Freeman, 04/24/97, VFA–0279

The DOE granted in part and denied in part an appeal of a determination withholding documents under Section 552a(d)(5) of the Privacy Act. The DOE found that certain records were not subject to the exemption set forth in 5 U.S.C. § 552a(d)(5), that information in these records must be released to the appellant unless it is exempt from disclosure under both the Privacy Act and Freedom of Information Act (FOIA), and that certain other records in the possession of a private physician were not subject to the provisions of the Privacy Act or FOIA.

Supplemental Order

C. Lawrence Cornett, 4/24/97, VWX–0010

This Order supplements an Initial Agency Decision, dated December 19, 1996, issued by a DOE Hearing Officer involving a ''whistleblower'' complaint filed by C. Lawrence Cornett under the DOE Contractor Employee Protection Program, 10 C.F.R. Part 708. In the December 19 Decision, the Hearing Officer recommended that Cornett be awarded back pay lost as a result of the reprisals taken against him, as well as all costs and expenses reasonably incurred by him in bringing his complaint. Subsequently, Cornett submitted documentation pertaining to his claimed back pay, attorney fees and costs. In the Supplemental Order, the Hearing Officer awarded Cornett back pay of $161,864 and interest of $33,543. With regard to attorney fees, the Hearing Officer proportionally reduced Cornett's attorney fee claim because of duplication of effort and inefficiencies of the multiple attorneys involved in the case. The Hearing Officer awarded Cornett $76,230 for attorney fees. After making reductions for costs not reasonably related to the bringing of his complaint, the Hearing Officer awarded Cornett $8,963 for costs. In total, the Hearing Officer awarded Cornett $280,600.

Refund Application

U.S. Department of Agriculture, 4/21/97, RF272–76126, RF272–78732

The DOE issued an order approving two Applications for Refund filed by the U.S. Department of Agriculture in the DOE's Subpart V crude oil refund proceeding. The DOE determined that the claimed volumes were not purchased through the Defense Logistics Agency (DLA) and, therefore, were not covered by the refund granted DLA in a separate case. The total refund granted to USDA was $127,733.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Beatrice M. Ferron et al	RK272–01603	4/24/97
Dart Trucking	RG272–43	4/22/97
Defiance Landmark et al	RG272–11	4/21/97
Lewis Coal & Coke Co., Inc. et al	RK272–03649	4/22/97

Monahan Transportation Co., Inc	RF272–97370	4/23/97
Qantas Airways Limited	RF272–93603	4/23/97
Roy Anderson Paint Co	RG272–12	4/23/97
Shippers Transports, Inc	RF272–69235	4/24/97
Township of Dover et al	RF272–86027	4/22/97
Vic Kimmel Inc. et al	RK272–02909	4/24/97
West Bldg Materials/Assoc Distributors	RR272–268	4/23/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Burbank Cooperative Creamery	RF272–895
Farmers Co-op Elevator Co	RG272–779
Grygle Cooperative Company	RG272–645
Inter-Lake Cooperative Association	RG272–697
Mesa Airlines, Inc	RF272–98792
Paramount Communications Realty Corp	RF272–98759
Personnel Security Hearing	VSO–0143

[FR Doc. 97–12358 Filed 5–9–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5824–2]

Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); In the Matter of A.E. Schnieder Scrap Yard, Chippewa Falls, WI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Settlement of CERCLA section 107 cost recovery matter.

SUMMARY: EPA is proposing to settle a cost recovery claim with a potentially responsible party (PRP) with regard to past costs at the A.E. Schnieder Scrap Yard site (the Site) in Chippewa Falls, Wisconsin. The EPA is authorized under Section 122(h) of the CERCLA to enter into this administrative settlement.

Response costs totaling $345,080 were incurred by EPA in connection with an emergency removal action at the Site. On September 4, 1996, EPA sent the PRP a demand for reimbursement of the EPA's past costs. The Settling Party has agreed to pay $300,000 to settle EPA's claim for reimbursement of response costs related to the Site. The EPA is proposing to approve this administrative settlement because it reimburses EPA, in part, for costs incurred during its response activities at this Site.

DATES: Comments on this administrative settlement must be received by no later than June 11, 1997.

ADDRESSES: Written comments relating to this settlement, Docket Number V–W–97–C–395, should be sent to Brad J. Beeson, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code: C–29A, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

ADDITIONAL INFORMATION: Copies of the Agreement and the Administrative Record for this Site are available at U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. It is strongly recommended that you telephone Ms. Mila Bensing at (312) 353–2006 before visiting the Region 5 Office.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

Dated: April 28, 1997.

William E. Muno,

Director, Superfund Division.

[FR Doc. 97–12379 Filed 5–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5824–4]

Notice of Proposed Administrative De Minimis Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act, Regarding the Scientific Chemical Processing Superfund Site, in Rutherford, Bergen County, New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. § 9622(i), the U.S. Environmental Protection Agency (''EPA''), Region II, announces a proposed administrative *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Scientific Chemical Processing Superfund Site (''Site''). The Site is located in Carlstadt, Bergen County, New Jersey and is included on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed administrative *de minimis* settlement and of the opportunity to comment. This administrative *de minimis* settlement will not be final until formal approval by the Assistant Attorney General and signature by the Regional Administrator.

DATES: Comments must be provided on or before June 11, 1997.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007–1866 and should refer to: In the Matter of Scientific Chemical Processing Superfund Site, Index No. II–CERCLA–97–0106, Attn: Damaris Urdaz Cristiano, Assistant Regional Counsel.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed administrative settlement agreement may be obtained in person or by mail from Damaris Urdaz Cristiano, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New

York 10007–1866. Telephone: (212) 637–3140.

SUPPLEMENTARY INFORMATION: The proposed administrative settlement has been memorialized in an Administrative Order on Consent between EPA and sixty settling *de minimis* Respondents. The settling *de minimis* Respondents have agreed to pay a total of $4,877,194.56. Of that amount $975,438.91 will be paid directly to EPA for partial reimbursement of its past costs. The remaining $3,901,755.65 will be placed in a trust fund for future remedial actions at the Site.

Dated: April 28, 1997.

William J. Muszynki,

Acting Regional Administrator.

[FR Doc. 97–12378 Filed 5–9–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

May 5, 1997.

SUMMARY: The Federal Communications Commissions, 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 clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 11, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: None—(3060–XXXX).

Title: Section 2.803, Market of RF Devices Prior to Equipment Authorization.

Type of Review: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 6,000.

Estimate Hour Per Response: .5 hours.

Frequency of Response: Third Party Disclosure; On Occasion.

Total Annual Burden: 3,000 hours.

Needs and Uses: Commission rules established in ET Docket 94–45, *Report and Order*, to allow all radiofrequency devices in the development, design or preproduction stages to be advertised, displayed, and offered for sale to distributors and retailers prior to a demonstration of compliance with the applicable equipment authorization procedure. The display or offer for sale must be accompanied by a conspicuously displayed or written notice to all third parties that the subject equipment is subject to, and must comply with, the FCC rules prior to delivery. The information disclosed is intended to ensure compliance of the proposed equipment with the Commissions Rules, while assisting industry efforts to introduce new products to the marketplace more promptly. This information disclosure applies to a variety of equipment that is both currently manufactured, and may be manufactured in the future, and that operates under varying technical standards. The information disclosed is essential to controlling potential interference to radio communications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–12280 Filed 5–9–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 97–115; FCC 97–124]

Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has ordered a hearing to inquire into the qualifications of MobileMedia Corporation to remain a licensee of its several thousand paging stations. The action follows a voluntary disclosure by the company that it filed more than 200 applications for paging licenses containing false information. The Order directs the Administrative Law Judge to take evidence, develop a full factual record, and issue a recommended decision.

ADDRESSES: Enforcement Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gary P. Schonman, Enforcement Division, Wireless Telecommunications Bureau, (202) 418–0569.

SUPPLEMENTARY INFORMATION: This is a summary of an Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing in WT Docket 97–115, adopted April 7, 1997, and released April 8, 1997.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch, 1919 M Street, N.W., Suite 230, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (202) 857–3800.

Summary of Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing

1. The Federal Communications Commission (''Commission'') has adopted an Order commencing an administrative hearing to inquire into the qualification of MobileMedia Corporation, its various subsidiary and associated organizations (''MobileMedia''), to remain a licensee. The Commission's action follows a voluntary disclosure by the company and a subsequent Commission staff investigation, which revealed that MobileMedia filed applications for more than 200 paging licenses containing

false information. (See Public Notice, DA 97–78 (released January 13, 1997), 12 FCC Rcd. 792). Consistent with established practices, MobileMedia may continue to operate their licensed facilities and provide service to the public during the pendency of the hearing.

2. The Hearing Designation Order adopted by the Commission on April 7, 1997, directs that MobileMedia's applications which are pending before the Commission be designated for hearing, and that MobileMedia show cause why its licenses should not be revoked, in a consolidated proceeding, upon the following issues:

(a) To determine the facts and circumstances surrounding MobileMedia's filing of FCC Forms 489 and ''40-Mile'' applications with the Commission containing false information (including, but not limited to, the identity of all officers, directors and senior management personnel who participated in, orchestrated, approved, condoned, or had knowledge of the filings; and the nature and extent of their involvement, including their intent) and whether MobileMedia knowingly made false statements, engaged in misrepresentations, lacked candor, or willfully or repeatedly violated section 1.17 of the Commission's Rules with regard to the filing of FCC Forms 489 and the filing of ''40-Mile'' applications;

(b) To determine the facts and circumstances surrounding MobileMedia's submission of its October 15, 1996, Report to the Bureau (including, but not limited to, the identity of all persons who participated in the preparation of the Report and the nature and extent of their participation, including their intent) and whether MobileMedia knowingly made false statements, engaged in misrepresentations, lacked candor, or willfully or repeatedly violated section 1.17 of the Commission's Rules with regard to the submission of the October 15, 1996, Report to the Bureau;

(c) To determine the facts and circumstances surrounding MobileMedia's construction and operation of paging facilities without valid authorizations (including, but not limited to, the identity of all officers, directors and senior management personnel who participated in, orchestrated, approved, condoned, or had knowledge of the construction and operation; and the nature and extent of their involvement, including their intent) and whether MobileMedia willfully or repeatedly violated sections 22.3 and 22.143 of the Commission's Rules by constructing and operating paging facilities without valid authorizations;

(d) To determine the facts and circumstances surrounding MobileMedia's filing of FCC Forms 489 more than 15 days after the commencement of service (including, but not limited to, the identity of all officers, directors and senior management personnel who participated in, orchestrated, approved, condoned, or had knowledge of the filings; and the nature and extent of their participation, including their intent) and whether MobileMedia willfully or repeatedly violated section 22.142 of the Commission's Rules by filing FCC Forms 489 more than 15 days after the commencement of service;

(e) To determine whether there exists any mitigating evidence indicative of MobileMedia's future ability to deal truthfully with the Commission and to comply with all pertinent provisions of the Commission's Rules and the Communications Act of 1934, as amended;

(f) To determine, in light of the evidence adduced pursuant to issues (a)–(e), whether MobileMedia is qualified to be and remain a Commission licensee;

(g) To determine, in light of the evidence adduced pursuant to issues (a)–(e), whether the pending applications filed by MobileMedia should be granted; and

(h) To determine, in light of the evidence adduced pursuant to issues (a)–(e), whether the licenses held by MobileMedia should be revoked.

3. The Order further directs the Administrative Law Judge (''ALJ'') to take evidence and develop a full factual record on issues concerning MobileMedia's filing of false forms and applications. In recognition that the public interest will be served by expediting the hearing proceeding to the fullest possible extent, the Commission directed the ALJ to issue a recommended decision within six months of the release of the order. The Order directs the ALJ to make factual findings concerning whether MobileMedia engaged in misrepresentations, lacked candor, and willfully or repeatedly violated the Commission's Rules.

4. The Commission recognized that MobileMedia voluntarily disclosed the false filings and represents that it has since taken remedial action. Therefore, MobileMedia will have the opportunity to introduce mitigating evidence of its ability to deal truthfully with the Commission and to abide by its Rules in the future.

5. The Commission directed the ALJ to make only a recommended decision in the case, rather than an initial decision. Decisions as to the conclusions of law and appropriate sanctions or disposition are reserved to the Commission.

(47 U.S.C. 309; 47 U.S.C. 312.)

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–12281 Filed 5–9–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Uniform Guideline on Internal Control for Foreign Exchange Activities in Commercial Banks; Rescission of Uniform Guideline

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of Adoption of Uniform Guideline.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), the FDIC is rescinding its adoption of the Uniform Guideline on Internal Control for Foreign Exchange Activities in Commercial Banks (Uniform Guideline). The Uniform Guideline was originally adopted by the FDIC's Board of Directors in June 13, 1980, in conjunction with the issuance of the Uniform Guideline by the member agencies of the Federal Financial Institutions Examination Council (FFIEC). The FDIC is rescinding the Uniform Guideline because it is outmoded and duplicative. In addition, this FDIC Board action supports the FFIEC's recent withdrawal of the Uniform Guideline on February 27, 1997.

EFFECTIVE DATE: This Uniform Guideline is rescinded May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Christie A. Sciacca, Assistant Director, (202/898–3671), Joseph Duffy, Senior Banking Analyst, (212/704–1323), Division of Supervision; Michael B. Phillips, Counsel, (202/898–3581), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the FDIC, the Office of the Comptroller of the Currency, and the Board of Governors of the Federal

Reserve System (Federal banking agencies), in addition to the Office of Thrift Supervision, to each streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each of the Federal banking agencies to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that the Uniform Guideline is outmoded and duplicative, and that the FDIC's written policies can be streamlined by its elimination.

Through an issuance from the FFIEC dated February 27, 1997, the Federal banking agencies stated their withdrawal of the joint FFIEC guideline entitled ''Interagency Policy Statement Regarding Uniform Guidelines on Internal Control for Foreign Exchange in Commercial Banks,'' dated May 22, 1980. (*See* 62 FR 9767 (March 4, 1997.) This document is identical to the Uniform Guideline which the FDIC Board adopted on June 13, 1980.

The FFIEC developed the Uniform Guideline to provide general supervisory guidance to insured depository institutions with respect to (i) policy documentation, (ii) internal accounting controls, and (iii) audit documentation. In addition, the Uniform Guideline sets forth minimum standards concerning the internal control for foreign exchange activities in commercial banks. Each of the Federal banking agencies adopted the Uniform Guideline, with the FDIC Board's adoption taking place on June 13, 1980. (*See* 45 FR 42376 (June 24, 1980).)

The Uniform Guideline has become outdated in view of trading activities according to specific product lines, various changes in the capital markets, and bank foreign exchange activities that have taken place subsequent to 1980, including: the scope and depth of foreign exchange trading activities in banks, new product developments, significant improvements in automated trading systems, and the management of foreign exchange trading activities according to specific product lines. Subsequent to 1980, the respective Federal banking agencies have issued policy letters and circulars to bank examiners concerning the risk management of capital market activities, including foreign exchange activities, in addition to further enhancements to their respective examination procedures. The FDIC has incorporated guidance on internal controls for foreign exchange activities into its Capital Markets Examination Handbook.

Section 303(a) of the CDRI Act also requires the Federal banking agencies to work jointly towards uniformity of guidelines implementing common supervisory policies. FFIEC through the federal banking agencies has determined that the Uniform Guideline is no longer necessary for the aforementioned reasons, and the other Federal banking agencies will also take action to rescind their adoption of the Uniform Guideline.

For the above reasons, the FDIC Board's adoption of the Uniform Guideline is rescinded.

By order of the Board of Directors.

Dated at Washington, D.C. this 29th day of April, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–12285 Filed 5–9–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:29 a.m. on Tuesday, May 6, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 7, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 97–12434 Filed 5–7–97; 4:02 pm]

BILLING CODE 6214–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the information collection outlined in 44 CFR part 71, as it pertains to application for National Flood Insurance Program (NFIP) insurance for buildings located in Coastal Barrier Resource System (CBRS) communities.

SUPPLEMENTARY INFORMATION: The Coastal Barrier Resources Act (CBRA Pub. L. 97–3480) and the Coastal Barrier Improvement Act (CBRA Pub.L. 101–591) are federal laws that were enacted on October 1, 1982, and November 16, 1990, respectively. The legislation was implemented as part of a Department of the Interior (DOI) initiative to preserve the ecological integrity of areas DOI designates as coastal barriers and otherwise protected areas. The laws provide this protection by prohibiting all federal expenditures or financial assistance including flood insurance for residential or commercial development in areas identified within the system. When an application for flood insurance is submitted for buildings located in CBRS communities, documentation must be submitted as evidence of eligibility.

Collection of Information

Title: Implementation of Coastal Barrier Resources Act.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0120.

Form Number: None.

Abstract: When an application for flood insurance is submitted for buildings located in CBRS communities, one of the following types of documentation must be submitted as evidence of eligibility:

- Certification from a community official stating the building is not located in a designated CBRS area.
- A legally valid building permit or certification from a community official stating that the building's start of construction date preceded the date that the community was identified in the system.
- Certification from the governmental body overseeing the area indicating that the building is used in a manner consistent with the purpose for which the area is protected.

Affected Public. Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Estimated Total Annual Burden Hours. 75.

No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden Hours (A×B×C)
50	once per respondent	1.5	75

Estimated Total Cost to Respondents. $500 (50 respondents × $10 per respondent). The cost to the respondent, i.e., applicant for flood insurance, is the cost, if any, to obtain the required documentation from local officials. Fees charged, if any, to the applicants, are nominal, i.e., the cost of photocopying the public record. Information of this type is frequently provided upon request free of charge by the community as a public service. The average cost to the respondent is estimated to be $10, the cost to make phone calls, mail a written request, or make a trip to a local office to obtain the document, and includes any copying fees which may be charged by the local office.

Estimated Total Cost to the Government. $199.50 (50 responses × $3.99 per response). The dollar cost to the Federal Government to process, analyze and maintain the information which is submitted by the applicant for National Flood Insurance Program insurance along with the application is minimal. The information required under this information collection is processed in conjunction with the application for NFIP insurance. The government pays the NFIP servicing contractor an annual figure of $19.93 per new policy. The dollar cost to the government to process the documentation required by this information collection is estimated to be $3.99, arrived at by allocating 20% of the amount paid to the NFIP servicing agent to process a new application.

COMMENTS: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) evaluate the accuracy of the estimated costs to respondents to provide the information to the agency; (d) enhance the quality, utility, and clarity of the information to be collected; and (e) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received by July 11, 1997.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Donald R. Beaton, Jr., Chief Underwriter, Federal Insurance Administration at (202) 646–3442 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: April 30, 1997.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 97–12373 Filed 5–9–97; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for Emergency Review and Clearance by OMB; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following request for emergency processing of a collection of information to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). OMB approval has been requested by May 2, 1997. FEMA is seeking emergency clearance to obtain data that will be used in the preparation of a report to the President and Congress by October 1, 1997, on the status of States' capabilities to respond to disaster, including a baseline summary of the Nation's emergency management capabilities.

Collection of Information

Title: Capability Assessment Tool.

Type of Review: New.

Abstract: FEMA has developed a comprehensive emergency management capability assessment process to obtain baseline data of the Nation's emergency management system. States will use the Capability Assessment Tool data collection instrument to assess and develop their emergency management capabilities. The fiscal year 1997 data collection is the first assessment and will establish the baseline of capabilities. The States will use the baseline data to negotiate with FEMA Regions Performance Partnership Agreement (PPA) and annual Cooperative Agreement (CA) submissions to FEMA. The initial assessment is the beginning of a cyclical process in which similar assessments would occur every 2 years in step with the PPA/CA cycle, identifying capability improvements over time. The initial assessments should be completed by September 1, 1997. The data will enable FEMA to: assess States' emergency management performance and readiness; strategically manage and coordinate emergency resources at all governmental levels; assure that Federal funding to State and local governments under the PPA/CA is properly managed and targeted to those areas that need improvement; and, analyze program performance as part of the PPA/CA to satisfy the Government Performance and Results Act of 1993.

Affected Public: State, local or tribal government.

Estimated Total Annual Burden Hours: 4,480.

Number of Responses: 56.

Estimated Hours Per Response: 80 hours.

Frequency: Biennial.

Estimated Annual Cost to Respondents: The estimated average single state cost is $1,640. The total estimated annual cost for 56 States and territories is $91,840.

COMMENTS: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments on the collection of information will be accepted by FEMA through August 31, 1997.

ADDRESSES: Direct comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Ms. Victoria Baecher-Wassmer, Desk Officer for the Federal Emergency Management Agency, Washington, DC 20503. Telephone number (202) 395–5871.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed collection of information, contact Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Telephone number (202) 646–2625.

Dated: April 28, 1997.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 97–12374 Filed 5–9–97; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: Technical Mapping Advisory Council.

DATES OF MEETING: May 21 and 22, 1997.

PLACES: The meeting will be held at the Pittsburgh Hilton and Towers, Gateway Center, Pittsburgh, PA.

TIMES: 2 p.m. to 5 p.m. on Wednesday and 8:30 a.m. to 4 p.m. Thursday.

PROPOSED AGENDA: Council members will provide progress reports on subgroup assignments and action items from the last meeting.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, PE, Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472; telephone (202) 646–2756 or by fax as noted above.

Dated: May 6, 1997.

Craig S. Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 97–12380 Filed 5–9–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

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 May 23, 1997.

A. Federal Reserve Bank of Cleveland (Jeffrey Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Elmo Greer*, East Bernstadt, Kentucky; to retain 14.10 percent of the voting shares of Cumberland Valley Financial Company, London, Kentucky, and thereby indirectly retain Cumberland Valley National Bank and Trust Company, London, Kentucky.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Ronald J. Lashute*, Opelousas, Louisiana; to acquire an additional 13.33 percent, for a total of 13.69 percent, of the voting shares of American Bancorp, Inc., Opelousas, Louisiana, and thereby indirectly acquire American Bank & Trust Company, Opelousas, Louisiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *William Howerton Young*, Fredonia, Kentucky; to acquire an additional 5.4 percent, for a total of 20.4 percent, of the voting shares of Fredonia Valley Bancorp, Inc., Fredonia, Kentucky, and thereby indirectly acquire Fredonia Valley Bank, Fredonia, Kentucky.

Board of Governors of the Federal Reserve System, May 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12276 Filed 5-9-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

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 May 27, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Charlie Deer, Monroeville, Alabama; to acquire an additional 14.77 percent, for a total of 24.75 percent, of the voting shares of First Citizens Bancorp, Inc., Monroeville, Alabama, and thereby indirectly acquire First Citizens Bank of Monroe County, Monroeville, Alabma.

Board of Governors of the Federal Reserve System, May 6, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12317 Filed 5-9-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. 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 June 2, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Community Bankshares Incorporated, Petersburg, Virginia; to acquire 100 percent of the voting shares of County Bank of Chesterfield, Midlothian, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Trustcorp Financial, Inc., St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Missouri State Bank and Trust Company, St. Louis, Missouri.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. The Farmers State Bank of Fort Morgan, ESOP, Fort Morgan, Colorado; to acquire an additional 7.91 percent, for a total of 33.09 percent, of the voting shares of FSB Bancorporation, Inc., Fort Morgan, Colorado, and thereby indirectly acquire Farmers State Bank, Fort Morgan, Colorado.

2. Lauritzen Corporation, Omaha, Nebraska; to acquire 3.68 percent, for a total of 24.9 percent, of the voting shares of First National of Nebraska, Inc., Omaha, Nebraska, and thereby indirectly acquire First National Bank of Kansas, Overland Park, Kansas; First National Bank and Trust Company, Columbus, Nebraska; Fremont National Bank, Fremont, Nebraska; Platte Valley State Bank, Kearney, Nebraska; First National Bank, North Platte, Nebraska; and First National Bank of Omaha, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, May 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12274 Filed 5-9-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Commerzbank Aktiengesellschaft, Frankfurt Main, Germany; to acquire Commerz Futures Corporation, Chicago, Illinois, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y. The proposed activities will be conducted worldwide.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Republic Bancshares, Inc., St. Petersburg, Florida; to acquire F.F.O. Financial Group, Inc., St. Cloud, Florida, and thereby indirectly acquire First Federal Savings and Loan Association of Osceola County, Kissimmee, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y. The proposed activities will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, May 5, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12275 Filed 5-9-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. TCF Financial Corporation; Minneapolis, Minnesota; to acquire Winthrop Resources Corporation, Minnetonka, Minnesota, and thereby engage in leasing personal property, pursuant to § 225.28(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12316 Filed 5-9-97; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Public Hearing Historic Resources Mitigation Review

The General Services Administration would like to invite public participation and solicit development alternatives and/or mitigation measures for the proposed development of the American Red Cross Chapter House site, 2025 E Street, NW, Washington, DC. Please submit suggestions to Ms. Andrea Mones by May 16, 1997 at GSA/NCR/WPT; 7th and D Streets, SW; Washington, DC 20407.

You are invited to participate in a public meeting Thursday evening, June 5, 1997 at 7 p.m. at 2025 E Street, NW, main auditorium, 2nd floor, to review any alternatives/mitigation measures which are suggested by a mail-in date of May 16, 1997.

Dated: May 7, 1997.

Arthur M. Turowski,

Director, Portfolio Management Division, WPT.

[FR Doc. 97–12381 Filed 5–9–97; 8:45 am]

BILLING CODE 6820–23–M

GENERAL SERVICES ADMINISTRATION

Changes in Notice of Intent To Prepare an Environmental Impact Statement for the Exterior Security of Federally Occupied Buildings in the Washington Metropolitan Area

In the **Federal Register** on March 6, 1997, the General Services Administration (GSA) announced its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental impacts of perimeter security near selected federally-occupied buildings in the Washington Metropolitan Area. Our goal is to enhance perimeter security in such a manner as to assist in the revitalization of the Nation's Capital. Locations selected for study have a high concentration of federal agencies, such as some areas within the District of Columbia; Prince Georges County, MD; Montgomery County, MD; Arlington County, VA and Fairfax County, VA.

The public scoping meetings are now scheduled for May 21, 1997 beginning at 7:30 p.m. and May 22, 1997 beginning at 9:00 a.m. at the Auditorium of the General Services Administration Regional Office Building located at 7th & D Streets, SW, Washington, D.C. 20407 (enter on the D Street Entrance). During the scoping process GSA will identify any additional alternatives that need to be addressed in the EIS.

At the scoping meetings there will be a brief presentation and then a public comment period. GSA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state, and local agencies and interested groups and individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. All interested parties are invited to attend these meetings or submit comments in writing as described below.

When registering, each attendee will be requested to indicate if oral comments will be delivered at the meeting. In the interest of time, each speaker will be asked to limit oral comments to five (5) minutes. Longer comments should be summarized at the public meeting and mailed to the address listed below. To be most helpful, scoping comments should clearly describe specific issues or topics that the commentor believes the EIS should address. All written statements and/or questions regarding the scoping process should be mailed no later than June 5, 1997 to Ms. Christine Kelly, General Services Adiminstration, (WPCAA), Property Development Division, Room 2634, 7th & D Streets SW, Washington, D.C. 20407, telephone (202) 708–4900, ext. 256, or E-mail *christine.kelly@gsa.gov*.

Dated: May 6, 1997.

William R. Lawson,

Assistant Regional Administrator, Public Buildings Service.

[FR Doc. 97–12385 Filed 5–9–97; 8:45 am]

BILLING CODE 6820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Executive Committee.

Times and Dates: 9:00 a.m.–5:30 p.m., June 3, 1997; 9:00 a.m.–5:30 p.m., June 4, 1997.

Place: Federal Building, 450 Golden Gate Avenue, San Francisco, CA.

Status: Open.

Purpose: Under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified administrative health care transactions to enable information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses and health care providers who choose to conduct these transactions electronically must comply with these standards. Further, the law requires DHHS to submit a report to Congress containing detailed recommendations on standards with respect to the privacy of individually identifiable health information. In preparing these reports and recommendations, the Secretary is required to consult with the NCVHS, the statutory public advisory body to HHS on health data, privacy and health information policy. The Committee is planning to submit recommendations to the Secretary during 1997.

To assist in formulating its recommendations, the NCVHS has convened a number of public meetings relating to health data standards and health information privacy and confidentiality. These meetings were held in the Washington, D.C. area and involved a broad range of representatives from the health sector, including providers, plans, insurers, electronic clearinghouses, third party administrators, health researches, representatives from public health agencies, social welfare agencies, law enforcement agencies, public and private organizations with health system oversight responsibilities, and privacy and patient interest groups.

To provide an additional opportunity for public input and to solicit additional views and advice on implementation of the administrative simplification provisions of Public Law 104–191, the Executive Subcommittee of the NCVHS, with support from the California Office of Statewide Health Planning and Development, is sponsoring a public meeting on June 3–4, 1997 in San Francisco. The meeting is open to the public and will take place from 9:00 to 5:30 p.m. at the Federal Building, 450 Golden Gate Avenue.

For the meeting, the Committee is inviting specific organizations representing consumer groups, plans, providers, insurers, researchers and the public health community, as well as other interested parties to describe their perspectives and offer advice on the implementation of the law. Presenters are being asked to respond to the questions outlined below in writing, to make a brief oral presentation, and to respond to additional questions from the Committee.

Questions To Be Addressed

1. What does your organization expect to be the impact of the administrative simplification requirements in the Health Insurance Portability and Accountability Act of 1996 (HIPAA)? These standards include: Administrative transactions, coding sets and medical classifications, privacy, confidentiality, security and unique personal health identification numbers for providers, plans, employers, and individuals for use in the health care system. Please describe how each of these issues could affect the members of your organization or the persons you represent.

2. Are any of these standards currently priority areas for your organization or members of your organization? How are you addressing or planning to address these standards?

3. Do members of your organization have any concerns about the type of transactions specified under HIPAA? For producers of the data, how available is the information that you need to report in the transactions? For organizations and individuals that use these data, is the information useful for bill payment, managing the care process, and health policy analysis and assessments? Do you have comments regarding the quality of these data?

4. How can administrative simplification best be achieved while balancing clinical and payment needs with maintaining privacy protection for individuals?

5. Recognizing the intent of the administrative simplification provisions of P.L. 104–191, what coding approach would best meet your needs? Please suggest how administrative simplification could be achieved while reducing administrative burden and obtaining clinically useful information.

6. What medical and clinical codes and classifications do you use in administrative transactions now? What do you perceive as the main strengths and weaknesses of the current methods for coding and classification of encounter and enrollment data?

7. What medical procedure classification system would you recommend as the initial standard for outpatient transactions? Is it practical to move to a single procedure classification on the schedule required for the implementation of administrative standards? Should the standards continue the current practice of requiring different procedure coding systems for the ambulatory and inpatient sectors?

8. Before the passage of HIPAA, the National Center for Health Statistics initiated the development of a clinical modification of the International Classification of Diseases, Tenth Edition (ICD–10–CM) to replace ICD–9–CM. In addition, the Health Care Financing Administration undertook the development of a new procedure coding system for inpatient services, entitled ICD–10–PCS (Procedure Classification System). A plan exists to implement these systems simultaneously in the year 2000. On the pre-HIPAA schedule, they will be released to the field for evaluation and testing by 1998. Should ICD be used for administrative transactions? If so, which version do you advocate and why?

9. Do you have any advice or recommendations for NCVHS or the U.S. Department of Health and Human Services related to the implementation of the standards and privacy provisions of the HIPAA? Do you have any concerns?

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Acting Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: http://aspe.os.dhhs.gov/ncvhs.

Dated: May 5, 1997.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 97–12270 Filed 5–9–97; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P, (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995 as amended most recently at 62 FR 5010, February 3, 1997) is amended to reflect changes in Chapter PF within Part P, Program Support Center, Department of Health and Human Services (HHS). The Information Technology Service (ITS) is realigning its functions and developing skills in new information technology service areas, primarily in the Internet/Interanet area. This organizational change will maximize ITS' ability to properly focus on this new technology area.

Program Support Center

Under *Part P, Section P–20, Functions,* change the following:

Chapter PF, Information Technology Service (PF) is amended as follows:

Under the heading *Division of Human Resources Information Management PFG),* delete the title and functional statement in its entirety.

Establish the *Division of Information Systems and Technology (PFH)* and enter the functional statement as follows:

Division of Information Systems and Technology (PFH) (1) Provides fee-for-service information technology (IT) support to HHS OPDIVs and other Government agencies. Services include providing information from the HHS personnel/payroll system and providing technological support in utilizing evolving IT areas, such as the Internet and other new IT developments; (2) provides analysis, design, development, implementation and ongoing support of information reporting in various areas, such as personnel and payroll; and (3) provides analysis, design, development, implementation and ongoing support in utilizing evolving technology, such as the Internet.

Dated: May 2, 1997.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 97–12342 Filed 5–9–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–9–97]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Childhood Lead Poisoning Prevention Program Quarterly Report (0902–0282)—Extension—Lead poisoning is the most common and societal devastating environmental disease of young children in the United States. Severe lead exposure can cause coma, convulsions, and even death. Lower levels of lead, which rarely cause symptoms, can result in decreased intelligence, developmental disabilities, and behavioral disturbances. State and community health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities. In FY 1996, CDC awarded 40 grants to fund childhood lead poisoning prevention programs. The primary purpose of these grants is for the initiation or expansion of state- and community-based childhood lead poisoning prevention programs that do the following: (1) Screen infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children with elevated blood lead levels, and (3) to provide education about childhood lead poisoning. The purpose of the quarterly report is to report data collected by CDC's grantees. The report consists of narrative and data sections. The purpose of the narrative section is to provide the following: (1) Highlights of quarterly activities, (2) discuss issues and activities that have significant impact on the program, (3) list objectives and discuss progress towards meeting those objectives. The purpose of the data section is to provide the following: (1) Screening and case confirmation activities, (2) environmental inspection and hazard remediation activities, and (3) medical case management activities. The total annual burden hours are 320.

Respondents	Number of respondents	Avg. burden/response (in hrs.)	No. of responses/respondent
Grantees	40	2	4

Dated: May 5, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–12329 Filed 5–9–97; 8:45 am]

BILLING CODE 4168–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hospital Infection Control Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hospital Infection Control Practices Advisory Committee (HICPAC).

Times and Dates: 8:30 a.m.–5 p.m., June 2, 1997; 8:30 a.m.–1:30 p.m., June 3, 1997.

Place: CDC, Building 16, Room 1111/1111A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Infectious Diseases (NCID), regarding (1) The practice of hospital infection control; (2) strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals; and (3) updating guidelines and other policy statements regarding prevention of nosocomial infections.

Matters to be Discussed: Agenda items will include recommendations for healthcare workers infected with bloodborne pathogens; a review of the fourth draft of the Guideline for Infection Control in Hospital Personnel; review of the first draft of the Guideline for Prevention of Surgical Site Infections; and a review of CDC activities of interest to the Committee.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Michele S. Pearson, M.D., Medical Epidemiologist, Investigation and Prevention Branch, Hospital Infections Program, NCID, CDC, l600 Clifton Road, NE, M/S E–69, Atlanta, Georgia 30333, telephone 404/639–6413.

Dated: May 6, 1997.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–12326 Filed 5–9–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

ICD–9–CM Coordination and Maintenance Committee Meeting

National Center for Health Statistics (NCHS), of the Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Time and Date: 9 a.m.–5 p.m., June 5, 1997.

Place: The Health Care Financing Administration Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public. (In the interest of security, non-government employees must show a photo I.D., and sign-in to gain entrance to the building.)

Purpose: The NCHS Data Policy and Standards Staff will hold the first of two meetings of the 1997 cycle for the ICD–9–CM Coordination and Maintenance (C&M) Committee. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters to be Discussed: Agenda items will include:

ICD–10–CM overview

Autonomic Dysreflexia

Injury aftercare

Neurogenic Bowel

Malignant Hypertension

Complications of peritoneal dialysis

Testing update on ICD–10 Procedure Coding System

Transmural revascularization

Minimally invasive coronary artery bypass graft

Addenda.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Amy L. Blum, NCHS, CDC, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, e-mail, alb8@nch11a.em.cdc.gov, telephone, 301/436–7050.

Dated: May 6, 1997.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–12327 Filed 5–9–97; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[ORD–099–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: March 1997

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: During the month of March, one new proposal for Medicaid demonstration project was submitted to the Department of Health and Human Services under the authority of section 1115 of the Social Security Act. There were no proposals approved, disapproved, or withdrawn during that time period.

(This notice can be accessed on the Internet at http://www.hcfa.gov/ord/sect1115.htm)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) The principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Month of March 1997

A. Comprehensive Health Reform Programs

1. New Proposals

The following comprehensive health reform proposal was received during the month of March.

Demonstration Title/State: New Jersey Managed Charity Care Demonstration.

Description: The State is proposing to incorporate aspects of managed care into the current charity care program to achieve program efficiencies, better value, and improved care and health outcomes for charity care beneficiaries. The demonstration would use the Disproportionate Share Hospital funds allocated to the charity care component and redirect these funds to a new managed charity care program.

Date Received: March 24, 1997.

State Contact: Laurie Facciarossa, Division of Medical Assistance and Health Services, CN 712, Trenton, NJ 08065, (609) 588–4518.

Federal Project Officer: Bruce Johnson, Health Care Financing Administration, Office of Research and Demonstration, Office of State Health Reform Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending, Approved, Disapproved, or Withdrawn Proposals

We did not approve or disapprove any proposals during the month of March nor were any proposals withdrawn during that month. Therefore, pending proposals for the month of January 1997 published in the **Federal Register** of March 31, 1997 (62 FR 15187) remain unchanged.

B. Other Section 1115 Demonstration Proposals

1. New, Pending, Approved, Disapproved, and Withdrawn Proposals

We did not receive any new proposals or approve or disapprove any Other Section 1115 Demonstration Proposals during the month of March nor were any proposals withdrawn during that month.

Pending proposals for the month of January 1997 found in the **Federal Register** of March 31, 1997 (62 FR 15187) remain unchanged, except for the addition of the Minnesota Long Term Care Facility Waiver (a new proposal that was received in January).

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: May 1, 1997

Barbara Cooper,

Acting Director, Office of Research and Demonstrations.

[FR Doc. 97–12272 Filed 5–9–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO–148–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances; Fourth Quarter 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published during October, November, and December of 1996 that relate to the Medicare and Medicaid programs. It also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that may be potentially covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness

of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this time frame.

FOR FURTHER INFORMATION CONTACT:

Bridget Wilhite, (410) 786–5248 (For Medicare instruction information)
Pat Prete, (410) 786–3246 (For Medicaid instruction information)
Sharon Hippler, (410) 786–4633 (For Food and Drug Administration-approved investigational device exemption information)
Cathy Johnson, (410) 786–5241 (For all other information)

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public, and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we list in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published during October through December 1996.

II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-approved investigational device exemptions published during the time frame to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I lists the publication dates of the most recent quarterly listings of program issuances.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the parts of the Code of Federal Regulations (CFR) that have changed (if applicable), the agency file code number, the title of the regulation, the ending date of the comment period (if applicable), and the effective date (if applicable).

On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. That final rule states that we will announce in this quarterly notice all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by this notice. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or
National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http//www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish Rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published Rulings in the **Federal Register**. In addition, we anticipate that Rulings, beginning with those released in 1995, will soon be available online, through the HCFA Home Page.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future, and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual, Part 2—Fiscal Administration (HCFA Pub. 13–2) transmittal entitled ''Beneficiary Services,'' use the Superintendent of Documents No. HE 22.8/6–2 and the HCFA transmittal number 408.

V. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Bureau of Program Operations, Issuances Staff, Health Care Financing Administration, N2–05–03, 7500 Security Boulevard, Baltimore, 21244–1850, Telephone (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, C4–25–02, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3246.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Bureau of Policy Development, Office of Chronic Care and Insurance Policy, Health Care Financing Administration, C4–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4633.

Questions concerning all other information may be addressed to Cathy Johnson, Bureau of Policy Development, Office of Regulations, Health Care Financing Administration, C5–12–16, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–5241.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: April 18, 1997.

Gary Kavanagh,

Acting Director, Bureau of Program Operations.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

November 15, 1995 (60 FR 57435)

April 8, 1996 (61 FR 15491)

June 26, 1996 (61 FR 33119)

December 18, 1996 (61 FR 66676)

April 21, 1997 (62 FR 19328)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[October Through December 1996]

Trans. No.		Manual/Subject/Publication No.
		Intermediary Manual Part 2—Fiscal Administration (HCFA Pub. 13–2) (Superintendent of Documents No. HE 22.8/6–2)
408	o	Beneficiary Services. Provider Services.
		Intermediary Manual Part 3—Claims Process (HCFA Pub. 13–3) (Superintendent of Documents No. HE 22.8/6)
1689	o	Outpatient Observation Services. Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers. Hospital Outpatient Partial Hospitalization Services. Billing for Hospital Outpatient Services Furnished By Clinical Social Workers.
1690	o	HCPCS for Hospital Outpatient Radiology Services and Other Diagnostic Procedures. Radiology HCPCS Codes Subject to the Payment Limit. Other Diagnostic Services HCPCS Codes Subject to the Payment Limit.
1691	o	Mammography Screening.
1692	o	Outpatient Therapeutic Services. Drugs and Biologicals.
1693	o	Rural Health Clinics—General. Federally Qualified Health Centers.
1694	o	Outpatient Therapeutic Services. Drugs and Biologicals.
1695	o	Beneficiary Address Change.
		Carriers Manual Part 2—Program Administration (HCFA Pub. 14–2) (Superintendent of Documents No. HE 22.8/7–3)
134	o	Beneficiary Services. Provider Services.
		Carriers Manual Part 3—Claims Process (HCFA Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1552	o	Paper Remittance Notice. Paper Remittance Notice Requirements. Use of Standard Codes on the Paper Remittance Notice. Paper Remittance Notice Abbreviations. Participation Program and Billing Limitations.
1553	o	Incident to Physician's Professional Services. Commonly Furnished in Physician's Offices. Services and Supplies.
1554	o	Correct Coding Initiative.
		Program Memorandum Intermediaries (HCFA Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–96–8	o	Medicare's Partial Hospitalization Benefit-Eligibility and Scope of Services
A–96–9	o	Home Health Agency Cost Limits—Correction to the Budget Neutrality Factor.
A–96–10	o	Change in Hospice Payment Rates.
A–96–11	o	Home Health Agency Cost Limits—Revised Correction to the Budget Neutrality Factor.
		Program Memorandum Carriers (HCFA Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–96–3	o	Coverage of Epoetin Alfa for HIV/AIDS and Cancer Patients Undergoing Chemotherapy.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[October Through December 1996]

Trans. No.		Manual/Subject/Publication No.
		Program Memorandum Intermediaries/Carriers (HCFA Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–96–10	o	Current Status of Medicare Program Memorandums and Letters Issued Before Calendar Year 1996.
AB–96–11	o	Nonpayment of Viral Load Testing (Roche Diagnostic Amplicor Test).
		Program Memorandum Medicaid State Agencies (HCFA Pub. 17) (Superintendent of Documents No. HE 22.8/6–5)
96–1	o	Current Status of Medicaid Program Memorandums and Action Transmittals Issued Before Calendar Year 1996.
		Peer Review Organization Manual (HCFA Pub. 19) (Superintendent of Documents No. HE 22.8/8–15)
63	o	Consumer Representative
		Hospital Manual (HCFA Pub. 10) Superintendent of Documents No. HE 22.8/2)
701	o	Outpatient Observation Services.
		Billing for Hospital Outpatient Partial Hospitalization Services.
		Billing for Hospital Outpatient Services Furnished by Clinical Social Workers.
702	o	HCPCS for Hospital Outpatient Radiology and Other Diagnostic Procedures.
		Radiology HCPCS Codes Subject to the Payment Limit.
		Other Diagnostic Services HCPCS Codes Subject to the Payment Limit.
703	o	Billing for Mammography Screening.
		Home Health Agency Manual (HCFA Pub. 11) (Superintendent of Documents No. HE 22.8/5)
281	o	Billing for Ambulance Services.
		HCPCS Reporting Requirement.
		Skilled Nursing Facility Manual (HCFA Pub. 12) (Superintendent of Documents No. HE 22.8/3)
346	o	Billing for Mammography Screening.
347	o	Billing for Ambulance Services.
		HCPCS Reporting Requirement Medicare Rural Health Clinic and Federally Qualified Health Centers Manual (HCFA Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
24	o	Billing for Mammography Screening by Rural Health Clinics and Federally Qualified Health Centers.
		Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA Pub. 9) (Superintendent of Documents No. HE 22.8/9)
128	o	Billing Instructions for Partial Hospitalization Services Provided in Community Mental Health Centers.
		Coverage Issues Manual (HCFA Pub. 6) Superintendent of Documents No. HE 22.8/14)
90	o	Antigens Prepared for Sublingual Administration.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 1996]

Trans. No.		Manual/Subject/Publication No.
		Provider Reimbursement Manual Part 1—(HCFA Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
397	o	Travel Expense.
		Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (HCFA Pub. 15–II–AC) (Superintendent of Documents No. HE 22.8/4)
4	o	Independent Rural Health Clinic/Federally Qualified Health Center Statistical Data and Certification Statement. Determination of Total Payment.
		Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (HCFA Pub. 15–II–AJ) (Superintendent of Documents No. HE 22.8/4)
1	o	Hospital and Hospital Health Care Complex Cost Report—Form HCFA 2552–96.
2	o	Form HCFA–2552–96 Worksheet.
		State Buy-In Manual (HCFA Pub. 24) (Superintendent of Documents No. HE 22.8/11)
1	o	Describe the Policies and Procedures Governing the Enrollment of Individuals in the Part A and Part B State Buy-In Program.
		State Medicaid Manual—Part 6 Payment for Services (HCFA Pub. 45–6) (Superintendent of Documents No. HE 22.8/10)
32	o	Upper Limits for Prescription Drugs.
		Medicare/Medicaid Sanction—Reinstatement Report (HCFA Pub. 69)
96–9	o	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers. Excluded/Reinstated—August 1996.
96–10	o	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers. Excluded/Reinstated—September 1996.
96–11	o	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers. Excluded/Reinstated—October 1996.
96–12	o	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers. Excluded/Reinstated—November 1996.

Medicare Coverage Issues Manual

For the Medicare Coverage Issues Manual instruction that was published during the quarter covered by this notice, we give the transmittal number, the title of the section, and a brief synopsis of the revisions. The full text of these revisions is available at the following Internet address: http://www.hcfa.gov/pubforms/pub6/pub6toc.htm

Transmittal No. 90

New Implementing Instruction—Effective Date: 11/17/96

Section 45–28, Antigens Prepared for Sublingual Administration.—This section is added to provide a national determination that antigens, which are to be administered sublingually, are not covered by Medicare.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR vol. 61 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
10/01/96	51295–51298	....	BPD–874–N	Medicare Program; Update of Ambulatory Surgical Center Payment Rates Effective for Services on or After October 1, 1996.	....	10/01/96

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR vol. 61 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
10/01/96	51217	412, 413, 489 ...	BPD–847–N	Medicare Program; Notice of Effective Date for Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates.	....	10/01/96
10/03/96	51611–51617	413	BPD–805–F	Medicare and Medicaid Programs; New Payment Methodology for Routine Extended Care Services Provided in a Swing-Bed Hospital.	....	1/04/96
10/23/96	55002–55009	....	OACT–052–N	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 1997.	....	01/01/97
11/04/96	56691–56693	....	OACT–053–N	Medicare Program; Part A Premium for 1997 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement.	....	01/01/97
11/04/96	56690–56691	....	OACT–054–N	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1997.	....	01/01/97
11/08/96	57876–57878	....	BPD–879–NC	Medicare and Medicaid Programs; Announcement of Additional Application From Hospital Requesting Waivers for Organ Procurement Service Area and Technical Correction.	01/07/97	
11/13/97	58140–58143	431	MB–092–F	Medicaid and Aid to Families With Dependent Children; Certain Provisions of the National Voter Registration Act of 1993.	....	11/13/96
11/18/96	58631	413	BPD–805–CN	Medicare and Medicaid Programs; New Payment Methodology for Routine Extended Care Services Provided in a Swing-Bed Hospital; Correction.	....	11/04/96
11/19/96	58885	....	ORD–093–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: September 1996.	....	
11/19/96	58885–58886	....	OPL–012–CN	Medicare Program; December 16, 1996 Meeting of the Practicing Physicians Advisory Council.	....	
11/21/96	59198	440	MB–102–F	Medicaid Program; Family Planning Services and Supplies for Individuals of Child-Bearing Age.	....	11/10/94
11/22/96	59490–59716	410, 415	BPD–852–FC	Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1997.	01/21/97	01/01/97
11/22/96	59717–59724	....	BPD–853–FN	Medicare Program; Physician Fee Schedule Update for Calendar Year 1997 and Physician Volume Performance Standard Rates of Increase for Federal Fiscal Year 1997.	....	10/01/96–01/01/97
12/02/96	63740–63749	401, 403, 405, 411, 413, 447, 493.	BPO–118-FC	Medicare Program; Changes Concerning Suspension of Medicare Payments, and Determinations of Allowable Interest Expenses.	01/31/97	01/02/97
12/09/96	64914–64918	....	ORD–094–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: October 1996.	....	
12/18/96	66676	....	OPL–013–N	Medicare Program; Request for Nominations for Members for the Practicing Physicians Advisory Council.	....	
12/18/96	66676–66687	....	BPO–140–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Second Quarter 1996.	....	

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR vol. 61 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
12/19/96	66919–66923	412, 413, 489 ...	BPD–847–FCN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates; Corrections.	....	10/01/96
12/19/96	67041–67047	....	BPD–849–FN	Medicare Program; Recognition of the Ambulatory Surgical Center Standards of the Joint Commission on the Accreditation of Healthcare Organizations and the Accreditation Association for Ambulatory Health Care.	....	12/19/96 through 12/19/02
12/30/96	68697–68698	....	BPD–886–N	Department of Health and Human Services, Health Care Financing Administration; Department of Labor, Pension and Welfare Benefits Administration; and Department of the Treasury, Office of Tax Policy and Internal Revenue Services (the Agencies); Health Insurance Portability.	02/03/97	
12/31/96	69034	401, 405	BPD–869–CN	Medicare Program; Waiver of Recovery of Overpayments.	....	10/21/96
12/31/96	69034–69050	417, 434	OMC–010–F	Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations.	....	01/01/97

Addendum V—Categorization of Food and Drug Administration-Approved Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G960164 A2
G960186 A2
G960190 A1
G960200 A1
G960203 A2
G960213 A1

The following information presents the device number category (in this case, B), and criterion code.

G940148 B2
G940193 B2
G950094 B1
G960065 Be
G960072 B4
G960106 B5
G960115 Be
G960134 B4
G960144 B4
G960166 Be
G960183 B2
G960187 B1
G960189 B2
G960191 Be
G960197 Be
G960198 B2
G960199 B2
G960201 Be
G960202 B4
G960204 Be
G960205 B4
G960206 B2
G960210 B4
G960211 B4
G960212 B4
G960215 B2
G960217 B4
G960219 Be
G960221 B2
G960223 B1
G960224 B2
G960225 B4
G960226 B2
G960227 B2
G960229 B1
G960232 B4
G960236 Be
G960238 B4
G960239 B1
G960242 B4Q

This quarter we are listing previously published IDE numbers that have changed reimbursement category. They are:

G870181 from A2 to B2
G880210 from A2 to B4
G890210 from A2 to B2
G900143 from A2 to B4
G900246 from A2 to B2
G910064 from A2 to B4
G910078 from A2 to B4
G910170 from A2 to B4
G910197 from A2 to B4
G910202 from A2 to B4
G920142 from B2 to B4
G920143 from A2 to B4
G930017 from B2 to A2
G930054 from A2 to B4
G930115 from A2 to B4
G930190 from A2 to B4
G930192 from A2 to B4
G940084 from A2 to B2
G940088 from A2 to B4
G950083 from A2 to B2
G950168 from A2 to B4
G950175 from A2 to B4
G960060 from A1 to A2
G960113 from A2 to B4

[FR Doc. 97–12262 Filed 5–9–97; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Household Survey on Drug Abuse: ACASI Field Test 2—New—The Substance Abuse and Mental Health Services Administration (SAMHSA) will conduct a field test in October-December, 1997, to examine alternative designs for an Audio Computer Assisted Self-Interview (ACASI) version of the National Household Survey on Drug Abuse (NHSDA) questionnaire. The experimental design will compare variations in automatic internal consistency checks, skip patterns, voice types, and simplified question wording. The basic questionnaire content will identical to the 1997 NHSDA. A standardized set of respondent debriefing questions will be also be administered. Three thousand interviews will be conducted across the nation with persons age 12 and older. Each interview will last approximately one hour. The estimated burden is 3,000 hours.

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 5, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–12332 Filed 5–9–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration Agency Information Collection Activities Under OMB Review

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–8005.

Mandatory Guidelines for Federal Workplace Drug Testing Program and Associated Forms—Extension of OMB approval will be requested for the Federal Custody and Control Form for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines, for the application and inspection forms for the National Laboratory Certification Program (NLCP), and for the reporting and recordkeeping language in the Guidelines. The Federal Custody and Control Form is used by all Federal agencies and employers regulated by the Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination. No changes are proposed to this form. Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures to allow inspectors to become familiar with a laboratory's procedures before arriving at the laboratory. The annual total burden estimates for the custody and control form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements is 1,517,935 hours, as shown below:

	Time per response	Number of responses	Total annual burden (hours)
Custody and Control Form:			
Donor	5 min	6,000,000	500,000
Collector	4 min	6,000,000	400,000
Laboratory	3 min	6,000,000	300,000
Medical Review Officer	3 min	6,000,000	300,000
Application	3 hrs	5	15
Inspection Checklist	3 hrs	140	420
Record keeping	250 hrs	70	17,500
Total			1,517,935

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 10236, Washington, D.C. 20503.

Dated: April 30, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–12335 Filed 5–9–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered and/or threatened species. This notice is provided pursuant to section 10(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1532, *et seq.*).

Permit No. PRT–826939

Applicant: Jerome Stefferud, Phoenix, Arizona.

Applicant requests authorization to take (using electrofishing, all types of nets, minnow traps, snorkeling, and other accepted techniques) voucher specimens, and to monitor fish habitats and populations of the Gila topminnow (*Poeciliopsis occidentalis*) in waters on or adjacent to the Coronado, Prescott, and Tonto National Forests, Arizona.

Permit No. PRT–827366

Applicant: Dr. Michael Powell, Alpine, Texas.

Applicant requests authorization to collect buds, flowers, fruits, seeds, spine clusters, and whole plants from the following species: bunched cory cactus (*Coryphantha ramillosa*), Sneed pincushion cactus (*Coryphantha sneedii var. sneedii*), Lee pincushion cactus (*Coryphantha sneedii var leei*) (flowers and/or fruits only), Lloyd's mariposa cactus (*Echinomastus mariposensis=Neolloydia mariposensis*), Lloyd's hedgehog cactus (*Echinocereus lloydii*), and Chisos Mountain hedgehog cactus (*Echinocereus chisoensis*).

Permit No. PRT–827367

Applicant: Levi D. Deike, Lake Havasu City, Arizona.

Applicant requests authorization to handle, measure, tag, and immediately release unharmed at the capture site, and monitor out-grow activities or razorback suckers (*Xyrauchen texanus*) and bonytail chubs (*Gila elegans*) from Lake Havasu and the Colorado River south of the Interstate 40 bridge on Havasu National Wildlife Refuge in Arizona and California.

Permit No. PRT–827368

Applicant: Dr. W.E. Briles, DeKalb, Illinois.

Applicant requests authorization to captively propagate masked bobwhites (*Colinus virginianus ridgwayi*) for the purpose of characterization of the major histocompatibility complex (a group of loci which have been implicated in disease resistance).

Permit No. PRT–827372

Applicant: Dr. William M. Block, Flagstaff, Arizona.

Applicant requests authorization to monitor populations by recording all sightings (date, time, location, activity, age, class), capture, handle, band, and attach radio transmitters and satellite transmitter units, and release unharmed at the capture sites Mexican spotted owls (*Strix occidentalis lucida*), and bald eagles (*Haliaeetus leucocephalus*) wintering on the Coconino National Forest in Arizona.

Permit No. PRT–827402

Applicant: Dennis M. Herbert, Ft. Hood, Texas.

Applicant requests authorization to capture, band, and immediately release unharmed at the capture sites golden-cheeked warblers (*Dendroica chrysoparia*) and black-capped vireos (*Vireo atricapillus*).

Permit No. PRT–827369

Applicant: John R. (Rusty) Mase, Jr., Austin, Texas.

Applicant requests authorization to survey for golden-cheeked warblers (*Dendroica chrysoparia*) in central Texas, and Houston toads (*Bufo houstonensis*) in east-central Texas.

Permit No. PRT–797127

Applicant: Lloyd S. Wagner, Albuquerque, New Mexico.

Applicant requests authorization to add the Pecos bluntnose shiner (*Notropis simus pecosensis*), and the Rio Grande silvery minnow (*Hybognathus amarus*) to his U.S. Fish and Wildlife Service Endangered Species Permit, and to take limited numbers of these species from the wild to monitor the effects of flood control projects and activities on these protected fishes.

Permit No. PRT–828234

Applicant: Steven Towers, Redding, California.

Applicant requests authorization to conduct presence/absence surveys for the Southwestern willow flycatcher (*Empidonax traillii extimus*) throughout its historic range in Arizona, New Mexico, and Texas.

Permit No. PRT–798107

Applicant: Kenneth J. Kingsley, Tucson, Arizona.

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Arizona.

Permit No. PRT–822998

Applicant: John M. McGee, Tucson, Arizona.

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Arizona.

Permit No. PRT–828640

Applicant: Dr. Lisa K. Harris, Tucson, Arizona.

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Arizona.

Permit No. PRT–828642

Applicant: Mary E. Darling, Tucson, Arizona.

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), southwestern willow flycatcher (*Empidonax traillii extimus*), and the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) in Arizona.

Permit No. PRT–828647

Applicant: Dr. Charles M. Mather, Chickasha, Oklahoma.

Applicant requests authorization to conduct presence/absence surveys for the Ouachita rock pocketbook (*Arkansia wheeleri*) in the Kiamichi, Little River, and Red River drainages in southeast Oklahoma and northeast Texas.

Permit No. PRT–828655

Applicant: Mike Ford, Albuquerque, New Mexico.

Applicant requests authorization to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*), Mexican spotted owl (*Strix occidentalis lucida*), and peregrine falcon (*Falco peregrinus*) on Bureau of Land Management lands in New Mexico.

Permit No. PRT–828723

Applicant: Dr. C. Val Grant, Logan, Utah.

Applicant requests authorization to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*), and Mexican spotted owl (*Strix occidentalis lucida*), in Las Animas and Costilla Counties, Colorado, and Colfax and Taos Counties, New Mexico.

DATES: Written comments on these permit applications must be received on or before June 11, 1997.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Ecological Services, (see address above). Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

David Yazzie,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 97–12325 Filed 5–9–97; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council (Council) established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99–294, May 12, 1986). The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for consideration.

DATES: The Council will meet from 1:00 p.m. to 5:00 p.m. on Wednesday, May 21, and from 8:00 a.m. to 10:30 a.m. on Thursday, May 22, 1997.

ADDRESSES: The meeting will be held at the Guest Haus Cafe, 612 Main Avenue, Oakes, North Dakota.

FOR FURTHER INFORMATION CONTACT: Dr. Grady Towns, ND/SD/RW, at (303) 236–8145, extension 644.

SUPPLEMENTARY INFORMATION: The Council will consider and discuss subjects such as the Kraft Slough status, acquisition and opportunities, Garrison Diversion Unit project update and wildlife budget. Garrison Diversion Conservancy District Legislative proposal, Oakes Test Area, Lonetree update, Arrowwood National Wildlife Refuge Environmental Impact Statement, and the Audubon National Wildlife Refuge and Wildlife Management Area Mitigation Plan.

Dated: May 1, 1997.

Ralph O. Morgenwech,

Regional Director, Denver, Colorado.

[FR Doc. 97–12328 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the Bureau Clearance Officer, U.S. Geological Survey, 208 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. 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 forms of information technology.

Title: Mine, Development, and Mineral Exploration Supplement.

OMB Approval Number: 1028–New.

Abstract: Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data on nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, and the general public.

Bureau Form Number: 9–3075.

Frequency: Annual.

Description of Respondents: Nonfuel Mineral Producers and Exploration Operations.

Annual Responses: 874.

Annual Burden Hours: 437.

Bureau Clearance Officer: John Cordyack, 703–648–7313.

Keith L. Harris,

Chief, Publications Services Section, Minerals Information Team.

[FR Doc. 97–12323 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

Delegation of Waivers of Erroneous Payments

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Notice.

SUMMARY: The General Accounting Office Act of 1996, Public Law 104–316, transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority under 5 U.S.C. 5584 to waive debts arising out of the erroneous payment of pay and allowances, travel, transportation, and relocation benefits made to employees of Executive Branch agencies. The OMB Director subsequently delegated the authority to waive collection of erroneous payments from civilian employees to the Executive Branch agency that made the erroneous payment. The Secretary of the Interior is delegating this authority to waive collection of erroneous payments from employees of the Department of the Interior, to the Office of Hearings and Appeals (OHA) pursuant to the regulations found at 43 CFR 4.1(b)(4). This notice announces OHA's intent to implement this new authority pursuant to the existing regulations establishing ''Special Rules Applicable to Other Appeals and Hearings'' in OHA, which are published at 43 CFR Part 4, Subpart G. Pending further notice, OHA will use the General Accounting Office's standards and procedures applicable to waiver of debts before the effective date of the transfer of authority, December 18, 1996, which are published in Title 4, CFR, Chapter I, subchapter G.

EFFECTIVE DATE: May 9, 1997.

FOR FURTHER INFORMATION CONTACT: Barry E. Hill, Director, Office of Hearings and Appeals, (703) 235–3810.

SUPPLEMENTARY INFORMATION: Pursuant to the General Accounting Office Act of 1996, some functions of the Comptroller General were transferred to the Director of OMB. See section 101, Public Law 104–316, 110 Stat. 3826. Subsequently, in a determination order dated December 17, 1996, the Director delegated to each Executive Branch agency the authority under 5 U.S.C. 5584, to approve the waiver of debts arising from the erroneous payment of pay and allowances, or travel, transportation or relocation expenses, to employees of that agency. The effect of this order is that the Department of the Interior now has the authority to waive collection of these erroneous payments. Before the effective date of the transfer, these claims were subject to the procedures prescribed by the Comptroller General at 4 CFR Chapter I, Subchapter G (1996). Until OHA announces otherwise, OHA's policy will be to apply these procedures to applications for waiver, with the exception that the Director of OHA will consider all waiver applications for amounts over $1,500 and all appeals of agency determinations on waiver requests of $1,500 or less, in place of the General Accounting Office. The Director of OHA will exercise this authority in compliance with 43 CFR Part 4, and pursuant to the rules enunciated in Subpart G.

Waiver applications for amounts of $1,500 or less should be sent to the agency out of which the erroneous payment arose. For each application for waiver of a debt exceeding $1,500, and for an appeal of an Agency's decision on a waiver involving less than $1,500, the claimant should submit the application directly to OHA in accordance with the procedures published at 43 CFR Part 4. Waiver applications for amounts over $1,500, as well as requests for review of agency determinations on waivers involving less than $1,500, may be sent to: Barry E. Hill, Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Room 1111, Arlington, Virginia 22203.

Dated: May 5, 1997.

Barry E. Hill,

Director, Office of Hearings and Appeals.

[FR Doc. 97–12291 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–79–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–01]

Upper Snake River Districts Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: 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 the review of public comments of the Healthy Rangeland Standard and Guidelines and an update on the Supplemental Draft Bennett Hills Resource Management Plan. 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 May 29th, starts at 8:00 a.m. in Federal Building Room B–23, 250 South 4th Ave, Pocatello, Idaho. Public comments from 10:00 a.m.–10:30 a.m. on May 29, 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: Contact Debra Kovar, Shoshone Resource Area Office, P.O. Box 2–B, Shoshone, ID 83352, (208) 886–7201.

Dated: May 2, 1997.

Gary Bliss,

Acting District Manager.

[FR Doc. 97–12319 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Meeting

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise to discuss a variety of district and regional issues, including the grazing allotment Analysis, Interpretation and Evaluation process, the Upper Columbia River Basin Environmental Impact Statement, and the Draft Owyhee Resource Management Plan.

DATES: June 5, 1997. The meeting will begin at 9:00 AM. A public comment period will begin at 9:30 AM.

ADDRESSES: The Lower Snake River District Office is located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Dated: May 6, 1997.

Barry Rose,

Public Affairs Specialist.

[FR Doc. 97–12333 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–74977]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–74977 for lands in San Juan County, Utah, was timely filed and required rentals accruing from January 1, 1997, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–74977, effective January 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 97–12330 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–70835]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub .L. 97–451), a petition for reinstatement of oil and gas lease UTU–70835 for lands in Emery County, Utah, was timely filed and required rentals accruing from January 1, 1997, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral

Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–70834, effective January 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 97–12331 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1430–01; WYW–122360]

Notice of Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Sublette County.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under Section 203 and Section 209 of the Federal Land Management Policy Act of 1976, 43 U.S.C. 1713, 1719.

Sixth Principal Meridian

T 30 N., R. 111 W.

Section 22, W½NE¼, NE¼SW¼, NW¼SE¼.

These lands contain 160 acres.

FOR FURTHER INFORMATION CONTACT: Leslie Theiss, Area Manager, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941, 307–367–4358.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface and mineral estates, excepting oil and gas, to Sublette County and Teton County, pursuant to Section 203 and Section 209 of the Federal Land Management Policy Act of 1976, 43 U.S.C. 1713, 1719. Sublette County and Teton County wish to acquire the lands for future landfill purposes.

The proposed direct sale to Sublette County and Teton County would be made at fair market value. Additionally, Sublette County and Teton County will be required to submit a nonrefundable application fee of $50.00 in accordance with 43 CFR Subpart 2720, for conveyance of all unreserved mineral interests in the lands.

The proposed sale is consistent with the Pinedale Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no other known public values. The planning document and environmental assessment/land report covering the proposed sale will be available for review at the Bureau of Land Management, Pinedale Resource Area Office, Pinedale, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of oil and gas to the United States.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws, upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever comes first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Rock Springs, 280 Highway 191 North, Rock Springs, Wyoming 82901. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final.

Dated: March 31, 1997.

Leslie Theiss,

Area Manager.

[FR Doc. 97–12368 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 86164]

Proposed Withdrawal and Opportunity for Public Meeting; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 175.36 acres of public land in Fergus County to protect the unique and significant geologic resources of the Crystal Cave area. This notice closes the land for up to 2 years from surface entry and mining. The land has been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by August 11, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406–255–2949.

SUPPLEMENTARY INFORMATION: On April 25, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The land is described as follows:

Principal Meridian, Montana

T. 16 N., R. 19 E.,

sec. 15, lot 15, lots 25 to 28, inclusive, NW¼SW¼, and MS 9204;

sec. 16, MS 5974.

The area described contains 175.36 acres in Fergus County.

The purpose of the proposed withdrawal is to protect the unique and significant geologic resources of Crystal Cave area for recreational purposes.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorization of a temporary nature, but only with the approval of unauthorized officer of the Bureau of Land Management.

Dated: May 2, 1997.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 97–12320 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–DP–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for noncoal reclamation, 30 CFR part 769.

DATES: Comments on the proposed information collection must be received by July 11, 1997, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR Part 769, Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations—30 CFR 769, 30 CFR part 769.

OMB Control Number: 1029–0098.

Summary: This Part establishes the minimum procedures and standards for designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision making process to approve or disapprove a request.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: People who may be adversely affected by surface mining on Federal lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 130.

Dated: May 5, 1997.

Arthur W. Abbs,

Chief, Division of Regulatory Support.

[FR Doc. 97–12261 Filed 5–9–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

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 by application dated August 16, 1996, and relevant written statements of fact dated January 17, 1997, Astra USA, Inc., Attn: Charles E. Yoa, Legal Department, 50 Otis Street, P.O. Box 4500, Westborough, Massachusetts 01581–4500, made application to the Drug Enforcement Administration to be registered as an importer of cocaine (9041) a basic class of controlled substance listed in Schedule II.

The firms plans to manufacture finished dosage pharmaceutical products.

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 to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 11, 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 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: April 10, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12292 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

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 § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 26, 1997, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application 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
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxy-amphetamine (7391).	I
4-Methyl-2,5-dimethoxy-amphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing and pharmaceutical research and development.

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 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 June 11, 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: April 24, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12293 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

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 § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 3, 1997, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

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 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 June 11, 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 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12294 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated February 7, 1997, and published in the **Federal Register** on February 21, 1997, (62 FR 8041), Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 1980, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco of Delaware, Inc. to import the listed controlled substances is consistent with the pubic 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.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12295 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated October 31, 1996, and published in the **Federal Register** on November 27, 1996, (61 FR 60305), North Pacific Trading Company, 1505 SE Gideon Street, Portland, Oregon 97202, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of marijuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of North Pacific Trading Company to import marihuana 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, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12296 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (12 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 of 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 § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 21, 1997, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, 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
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 for the manufacture of bulk pharmaceutical controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basis 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 June 11, 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: April 10, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12297 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1201.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 17, 1997, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Part, North Carolina 27709, 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
Marihuana (7360)	I
Cocaine (9041)	II

The institute will manufacture marihuana cigarettes for the National Institute on Drug Abuse (NIDA) and the cocaine will be used for reference standards, human and animal research, as dictated by NIDA.

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 July 11, 1997.

Dated: April 15, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12298 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; 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 § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 17, 1997, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, PO. Box 12194, Research Triangle Park, North Carolina 27709, 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
Marihuana (7360)	I
Cocaine (9041)	II

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, DC. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 11, 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: April 16, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12299 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; 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 § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 10, 1997, Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, New Jersey 07724, made application by renewal to the Drug Enforcement Administration to be registered as an importer of propiram (9646), a basic class of controlled substance listed in Schedule I.

The firm plans to import the propiram to manufacture in bulk for product development.

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 to the Acting Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 11, 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: April 4, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12300 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; 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 § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 17, 1997, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771, made application by renewal to the Drug Enforcement Administration to be registered as an importer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The tetrahydrocannabinols will be utilized exclusively for non-human consumption in drug of abuse detection kits.

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 to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 11, 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: April 2, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–12301 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Identification

Criminal Justice Information Service, Agency Information Collection Activities; Proposed Collection: Comment Request

AGENCY: Notice of information collection under review: Hate crime incident reports. This proposed information collection was published in the **Federal Register** on March 11, 1997 at 62 FR 11224, utilizing emergency review in addition to allowing a 60-day comment period. No comments were received by the Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Service Division. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 11, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding this notice should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: DOJ Desk Officer, Washington, DC 20503.

Overview of this information collection:

(1) Type of information collection: Extension of Current Collection.

(2) The title of the form/collection: Hate Crime Incident Report and Quarterly Hate Crime Report.

(3) The agency form number, if any, and applicable component of the Department sponsoring the collection. Form: 11–1 and 11–2. Federal Bureau of Identification, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: State and Local Law Enforcement Agencies. This collection will gather information necessary to monitor the bias motivation of selected criminal offenses. The resulting statistics are published annually.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 48,000 respondents with an average of 6 hours and 35 minutes, annually.

(6) An estimate of the total public burden (in hours) associated with the collection: 7,140 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 6, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–12334 Filed 5–9–97; 8:45 am]

BILLING CODE 4410–02–M

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities Under OMB Review Collection

AGENCY: Merit Systems Protection Board (MSPB).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Merit Systems Protection Board's request for a one-year extension of approval of its optional appeal form, Optional Form 283 (Rev. 10/94) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The appeal form is currently displayed in 5 CFR Part 1201, Appendix I, and on the MSPB Web Page at http://www.gpo.gov/mspb/index.htm.

In this regard, comments are being solicited on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (avg)	Total hours
1201 and 1209	9,000	1	9,000	.5	4,500

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses shown below. Please refer to OMB Control No. 3124–0009 in any correspondence.

DATES: Comments must be received on or before June 11, 1997.

ADDRESSES: Copies of the appeal from may be obtained form Arlin Winefordner, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419 or by calling (202) 653–7200. Comments concerning the paperwork burden should be addressed to Mr. Winefordner and to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSPB, 725 17th Street, NW., Washington, DC 20503.

Dated: May 6, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97–12273 Filed 5–9–97; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–267]

Notice of Issuance of License Amendment for the Public Service Company of Colorado Fort St. Vrain Nuclear Generating Station

SUMMARY: The U.S. Nuclear Regulatory Commission is noticing the issuance of License Amendment No. 89 for the Public Service Company's (PSC) of Colorado Fort St. Vrain (FSV) Nuclear Generating Station, located near Platteville, Colorado. License Amendment No. 89 to DPR–34 redesignated the approved Decommissioning Plan, the approved Supplement to the Environmental Report, and the approved Final Radiation Survey Plan as the License Termination Plan.

BACKGROUND: NRC initially published on March 10, 1997, a Notice of Receipt of the Public Service Company of Colorado Decommissioning/Termination Plan in the **Federal Register** (62 FR 10881), and no comments nor requests for hearing were received. In addition, on November 12, 1996, NRC published in the **Federal Register** (61 FR 58087) a Notice of a Public Meeting with the PSC to discuss the decommissioning and license termination of the FSV. The Public Meeting was held on December 3, 1996, in the vicinity of the plant, and no comments nor requests for a hearing were received.

ACTION: Consistent with NRC's revised decommissioning regulations, specifically 10 CFR 50.82(a)(9)(iii), NRC is redesignating the approved Decommissioning Plan, the approved Supplement to the Environmental Report, and the approved Final Radiation Survey Plan as the licensee's Termination Plan, and is reapproving it, as now required by NRC's regulations. *See* 10 CFR 50.82(a)(10). The NRC has made the findings required in 10 CFR 50.82(a)(10) for approval of the Termination Plan.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton L. Pittiglio, Project Manager, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–7–F27, Washington, DC 20555–0001. Telephone (301) 415–6702.

Dated at Rockville, MD this 5th day of May, 1997.

For the U.S. Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–12364 Filed 5–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–1113]

Finding of No Significant Impact and Notice of Opportunity for a Hearing; Renewal of Special Nuclear Materials License SNM–1097, General Electric Company, Wilmington, NC

The U.S. Nuclear Regulatory Commission (the NRC) is considering the Renewal of Special Nuclear Materials License SNM–1097 for the continued operation of General Electric (GE) Company's Nuclear Energy Production Facility located in Wilmington, North Carolina. The facility manufactures low-enriched uranium fuel for commercial nuclear power reactors. The NRC has determined not to prepare an environmental impact statement for the proposed action, because the renewal of License SNM–1097 will not have a significant effect on the quality of the human environment for reasons described in the environmental assessment (EA).

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of GE's Special Nuclear Materials License SNM–1097 for ten years. With this Renewal, GE will continue to operate the Wilmington, North Carolina, facility to convert low-enriched uranium hexafluoride to uranium dioxide pellets and to fabricate fuel assemblies for light water reactors. GE is authorized to possess and use up to 50,000 kg of uranium-235 (^{235}U) contained in uranium compounds enriched up to 5 weight percent in ^{235}U.

The facility converts low-enriched uranium hexafluoride (UF_6) to uranium dioxide (UO_2) powder, presses the UO_2 into pellets, loads the pellets into fuel rods, and assembles the fuel rods into fuel assemblies. The UF_6 to UO_2 conversion is currently done using an ammonium diuranate (ADU) process. However, with license renewal GE intends to begin using a new dry conversion process (DCP), which will eventually replace the ADU process. The EA considers both the impacts of continued operation of the ADU process and the impacts from the DCP, which are expected to be significantly reduced.

Need for the Proposed Action

GE performs a necessary service for the commercial nuclear power industry by fabricating fuel for light water reactors. Currently, GE is one of four producers in the United States of low-enriched uranium fuel for commercial reactors. Denial of the license renewal application is an alternative available to the NRC, but would require expansion of fuel production capacity at an existing facility or transfer of fuel fabrication activities to a new facility.

Environmental Impacts of the Proposed Action

The continued operation of the GE facility will result in the continued release of low levels of radioactive and nonradioactive materials to the environment. These include uranium, fluoride, ammonia, and nitrates. Under accident conditions, the facility could release higher concentrations over a short period of time. GE uses a number of controls to reduce the release of effluents. These effluent streams as well as the environment surrounding the facility are closely monitored. The effluent controls, monitoring program, and environmental impacts from routine and non-routine operations are discussed in detail in the EA prepared by the NRC for this licensing action.

Effluent Controls and Monitoring

The GE facility produces gaseous, liquid, and solid effluent streams. Gaseous effluents are controlled by use of high efficiency particulate air (HEPA) filtration and appropriate permitted scrubbers when necessary. Where grinding, mixing, milling, or handling of UO_2 powder exists, vented hoods and glove boxes are used. Liquid effluents are controlled by the use of treatment systems and wastewater retention basins designed to reduce the concentration of contaminants prior to discharge to the Northeast Cape Fear River, via an on-site effluent channel. Solid wastes are managed through a combination of segregation, reprocessing, off-site disposal, recycling and incineration.

Effluents are monitored at or just prior to the point of release. Gaseous stack effluents are sampled continuously under isokinetic flow conditions. Samples are analyzed on a daily or weekly basis for gross alpha activity. Several stacks are also sampled to monitor fluoride releases. Liquid effluents from operations are sampled at the outfall of the final process basins using flow proportional composite samplers. Samples are analyzed daily for uranium, weekly for gross alpha and gross beta particle activity, and semi-annually for technetium-99. Non-radiological parameters such as nitrogen, fluoride, and metals are monitored in compliance with National Pollutant Discharge Elimination System (NPDES) permits. Sanitary wastes are sampled at the sanitary outfall to the site effluent channel, also in compliance with NPDES permits. Actual sampling parameters and frequency may vary with NPDES permit or operational changes. Solid wastes are surveyed prior to treatment or off-site disposal.

Action limits, specified in the GE facility operating procedures, are set to ensure investigation of unusual concentrations and corrective actions as necessary. This monitoring program is revised as appropriate to accommodate changes in operations, the emergence of newly-acquired information, or regulatory agency permits and other authorizations. The effluent monitoring program will be expanded with the new DCP. This will include monitoring of new process off-gas and building ventilation systems.

Environmental Monitoring

GE conducts an environmental monitoring program that samples air, vegetation, surface water, sediment, and groundwater for radioactive and nonradioactive contaminants. This information is used to determine impacts to the surrounding area due to facility operations.

Continuous ambient air monitoring for gross alpha activity is conducted at six air sampling stations located in the predominant wind directions from fuel manufacturing operations, along the nearest site boundary, and in the direction of the nearest offsite residences. At the southwest and northeast ambient air sampling points, semi-annual sampling for fluoride content in forage grass is also conducted.

Surface water is monitored by sampling the Northeast Cape Fear River both upstream and downstream of the effluent channel discharge point near the GE-Wilmington dock. Monthly upstream grab samples and weekly downstream composite samples are analyzed for uranium content. In addition, non-radiological analyses are performed weekly to quarterly including pH, ammonia, nitrate, nitrite, temperature, zirconium, conductivity, BOD**5**, and fecal coliform per NPDES permit.

Sediment samples from the effluent channel are collected at three locations: at the final process basin outfall, above the effluent channel dam, and below the effluent channel dam. These samples are collected semiannually and analyzed for uranium concentration. Samples are also taken of the sediment in the storm water channel draining the controlled access fuel manufacturing area. In addition, soil samples are collected from several on-site and off-site locations and analyzed for uranium content.

To monitor the impact of the facility on groundwater, numerous wells have been installed. Shallow monitoring wells were installed in the uppermost aquifer in the immediate proximity of potential sources of contamination such as lagoons or selected waste storage areas. In addition, monitoring wells for the deeper aquifer, which is the principal water supply in the area, have been installed to provide information on the quality of this water supply. In each of these monitoring systems, particular attention is given to the presence of nitrate, which is common to the bulk of the treated effluent streams and is not as readily attenuated in the subsurface as are some of the other potential contaminants.

Impacts From Normal Operations

No measurable impacts have been observed to air, surface water, or vegetation due to releases from the GE facility. However, there have been impacts to the shallow and the principal aquifers at the site. In addition, historic discharges have contaminated soil beneath the process building and adjacent to waste water impoundments and disposal trenches for calcium fluoride.

Between 1989 and 1995, levels of gross alpha activity above background were identified on several occasions in a series of wells installed in the shallow aquifer near the final process basins. Uranium was detected in one of the wells. Measurements of nitrate, ammonia, and fluoride in these wells were at background levels. GE is currently assessing these data to determine the significance and fate of the contamination.

In addition to the wells near the final process basins, one well near the waste treatment facility, showed uranium and gross alpha activity above background levels. This well, completed in the shallow aquifer, also showed elevated levels of nitrate, ammonia, and fluoride from 1989 to 1995. It is believed that the groundwater near the well was contaminated in 1986 from ammonium fluoride waste water as a result of a leak in an overhead pipe. Corrective actions were taken and the fluoride and ammonia levels have generally decreased in the well since 1987. Although average nitrate levels decreased from 1987 to 1991, levels have begun to increase since that time. GE staff representatives indicate that assessment of these data continues.

Elevated concentrations of nitrate, fluoride, and uranium were also measured in the shallow aquifer beneath the manufacturing buildings. The contamination was due to the seepage of liquids through a seam in a concrete floor in the 1970's and 1980's. When the contamination was discovered, the floor seams were repaired and the contaminated soil was removed. In addition, a shallow horizontal groundwater collection system was installed to contain and collect localized contaminated groundwater.

Although there has been an impact to the shallow aquifer, GE has put into place measures to assess and to mitigate these impacts. There is no indication that radiological contamination has migrated offsite, and therefore, impacts to the offsite population are not expected. Remediation of this contamination may be necessary at the time of decommissioning prior to termination of the license and release of the facility.

The routine monitoring program also identified traces of organics (chlorinated solvents and 1,1,1-trichloroethylene) in the principal aquifer in 1991. The contamination was the result of activities at the site which were discontinued over a decade ago. When the contaminants were discovered, additional monitoring wells were added to both the site boundaries and the site interior for the shallow and the principal aquifer. In addition, pump and treat methods were initiated to contain the spread of contamination. The North Carolina Department of Environmental Quality regulates these monitoring and corrective action programs and maintains all documents concerning this issue.

The release of radioactive material to air and water from the GE facility represents a potential negative impact on the health and safety of the surrounding population. The primary component of this impact is an incremental increase in the risk of cancer due to low levels of radiation exposure. The impacts due to long-term releases from normal operations are summarized below.

The impact is calculated and presented in terms of committed effective dose equivalent (CEDE) and organ doses resulting from a single year of operations. For doses resulting from the inhalation or ingestion of uranium, this quantity is the total effective dose equivalent (TEDE) (or organ dose) that will accrue to an individual over a 50-year period beginning with the year the intake occurs. Doses to a hypothetical maximally exposed individual (MEI) are summarized in this section. A detailed description of the calculational methods used for the dose assessment is provided in the EA.

The radionuclide doses were estimated using the Hanford Environmental Radiation Dosimetry Software System GENII computer code. Atmospheric release exposure pathways included inhalation, ingestion of contaminated crops and resuspended dirt, and external exposure to the airborne plume and contaminated ground. Liquid release exposure pathways included ingestion of contaminated drinking water, fish, mollusks, and crustaceans.

Based on air effluent data for the past five years, the GE facility releases approximately 100 microcuries of gross alpha particle activity per year. This activity is expected to decrease by 50 percent when the DCP replaces the ADU conversion process. However, doses were conservatively calculated assuming a release of 300 microcuries of gross alpha particle activity per year. The TEDE to the MEI at the site boundary was estimated to be 0.001 mSv/yr (0.1 mrem/yr), the dose to the nearest resident, located 760 m south of the facility was estimated to be about 4E–4 mSv/yr (0.04 mrem/yr), and the dose to the population was estimated to be 0.0009 person-Sv/yr (0.09 person-rem/yr). Inhalation is the major exposure pathway contributing 99.9 percent of the dose.

Liquid effluents from the facility are released to the Northeast Cape Fear River. Measured uranium concentrations at the site dock, near the effluent outfall averaged 2.8E–9 microcuries per milliliter for 1989–1994. This river is not used as a drinking water supply for area residents. However, the maximally exposed individual was assumed to use river water and river food products at the GE Wilmington dock. The radionuclide concentration released in liquid effluent is expected to decrease when the DCP replaces the ADU process. The TEDE to the MEI was estimated to be 0.007 mSv/yr (0.7 mrem/yr) for the current ADU process, 0.001 mSv/yr (0.1 mrem/yr) for the DCP process, and 0.008 mSv/yr (0.8 mrem/yr) during the transitional period.

NRC regulations (10 CFR 20.1301) require that the Total Effective Dose Equivalent (TEDE) for members of the public not exceed 1.0 mSv (100 mrem) per year. The TEDE is the sum of the effective dose equivalent from exposure to external radiation for one year and the CEDE defined above. Estimated doses for all releases from GE are small fractions of the applicable limits.

Radiological impacts to workers at the GE facility were also considered as part of the EA. During 1994 and 1995, approximately 1000 radiation workers at the GE plant were potentially exposed to radioactive materials. The TEDE to the average worker during this time was 0.39 cSv (0.39 rem). The maximum TEDE that any worker received during these years was 2.1 cSv (2.1 rem) during 1994 and 2.4 cSv (2.4 rem) in 1995. These doses are well below the NRC limit of 5 cSv per year (5 rem/yr) in 10 CFR 20.1201. After the ADU to DCP transition period is over, it is anticipated that occupational exposures would decrease because of a less complex process, new equipment, and a better separation between the worker and the nuclear material.

Monitoring data have shown no significant impact from radiological or non-radiological releases on surface water, sediment, soil, groundwater, air quality, or biota outside the boundary of the GE facility. GE has an excellent NPDES compliance record. Although some impact on groundwater and soil has occurred, GE is addressing those issues. GE operations are expected to have little or no impact on cultural resources, and to have a positive socioeconomic impact.

Although there are some minority communities located within three miles of the facility, no high and adverse impacts are projected on these communities. Doses to individuals would be much greater at the property boundary of the site. These doses are well below NRC regulatory limits. Consequently, there are no environmental justice impacts associated with the renewal.

Impacts From Accidental Releases

Release of radioactive or hazardous materials under abnormal or accident conditions poses a potential risk to public health and safety and the environment. The potential consequences of these accidents include personal injury, health effects from acute exposures to toxic materials, non-stochastic effects from acute radiation exposure, and risk of latent cancer fatality from exposure to radioactive material. Most of these risks are to workers at the facility, rather than to members of the public.

Severity Category I and Category II accidents resulting in the release of radioactive materials were examined in the EA. Category I represents accidents that could be anticipated to occur at least once during the lifetime of the facility. Category II represents accidents that would not be expected to occur during the lifetime of the facility, but are considered credible accidents under highly unusual and unlikely conditions. These include two accidents involving the release of non-radioactive materials (hydrofluoric acid and hydrogen).

The accident analyses demonstrated that no adverse health effects would be expected to the off-site population due to the Category I accidents or to the non-radiological accidents. However, Category II accidents including a large UF_6 cylinder fire that occurs in the outside storage area at the facility, a defluorinator/calciner explosion that results in a building breach, a major criticality accident, or a major facility fire that involves a large amount of UO_2 powder could result in significant doses or toxicity effects to off-site individuals. However, the occurrence of these accidents is extremely unlikely. In addition, the licensee has developed operating and emergency procedures to control and minimize the effects of these types of accidents. Therefore, license renewal will not have a significant impact on the general population.

Conclusion

The staff concludes that the impact to the environment and to human health and safety from operations at this facility has been and is expected to remain minimal. Results of the environmental monitoring program conducted during the previous licensing period indicate no significant impact to the environment as a result of site operations. Radioactive materials in effluents released to the environment are well below regulatory limits. The total dose received by the maximally exposed individual is well below federal regulatory limits.

Alternative to the Proposed Action

An alternative to the proposed action is to deny renewal of the license. In this case, GE would shut down processing of special nuclear material to produce nuclear fuel, and would decontaminate and decommission (D&D) the site in accordance with an approved plan. With this action, release of radiological and non-radiological effluents from licensed operations would cease in the near term, as would the minimal impacts resulting from those releases. Non-renewal of the license would also result in significant socioeconomic impacts in New Hanover County and beyond. These would include loss of direct and indirect employment as well as reduction in tax revenues to surrounding jurisdictions. The environmental impacts of the D&D activities would be assessed during NRC review of a detailed D&D plan prepared by GE following a thorough site survey.

Agencies and Persons Consulted

During the preparation of the EA, NRC coordinated with various state and local agencies to inform them about NRC's ongoing review and to gather information. These contacts included the North Carolina Department of Environment, Health, and Natural Resources (NCEHN), Nongame and Endangered Species Section and the NCEHN Division of Radiation Protection for information on NPDES permit compliance and the NC Environmental Sampling Program. The NCEHN Division of Water Quality and the Division of Air Quality in Wilmington, the United States Environmental Protection Agency (USEPA) Region IV Superfund Remedial Branch, and the USEPA Toxics Management Division, Air and Radiation Technical Branch were also contacted.

Finding of No Significant Impact

The NRC has prepared an EA related to the renewal of Special Nuclear Materials License SNM–1097. On the basis of this assessment, the NRC has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a finding of no significant impact is appropriate.

The EA and the documents related to this proposed action are available for public inspection and copying at the NRC's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the renewal of this license may file a request for a hearing. Based on the EA and accompanying safety evaluation, NRC is preparing to renew License SNM–1097. Prior to renewing the license, NRC will determine that GE has satisfied the requirements of the Atomic Energy Act of 1954, *et seq.*, and NRC requirements. Any request for a hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, within 30 days of the publication of this Notice in the **Federal Register**; must be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); and on the licensee (GE Nuclear Energy Production Facility, P.O. Box 780, Wilmington, NC 28402); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation 10 CFR 2, Subpart L, ''Informal hearings Procedures for Adjudications in Materials Licensing Proceedings.''

The requestor must address the following requirements in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this Notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (e.g., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 6th day of May 1997.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 97–12365 Filed 5–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 10, 1997, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 10, 1997—12:00 Noon until 1:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 6, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–12362 Filed 5–9–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment proposed revisions of three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guides are temporarily identified as DG–1048, which is the proposed Revision 31 to Regulatory Guide 1.84, ''Design and Fabrication Code Case Acceptability, ASME Section III, Division 1''; DG–1049, which is the proposed Revision 31 to Regulatory Guide 1.85, ''Materials Code Case Acceptability, ASME Section III, Division 1''; and DG–1050, which is the proposed Revision 12 to Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' and they will be in Division 1, ''Power Reactors.'' DG–1048 and DG–1049 are being developed to provide updated guidance on ASME Code Cases that are acceptable to the NRC staff for use in light-water-cooled nuclear power plants. DG–1050 is being developed to provide updated guidance on ASME Code Cases that are acceptable to the NRC staff for use in inservice inspections of light-water-cooled nuclear power plants.

These draft guides are being issued to involve the public in the early stages of regulatory positions in these areas. The draft guides have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on the guides. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by July 21, 1997.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact Fedworld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact Fedworld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although Fedworld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards, call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov. For more information on the draft regulatory guides, contact E.O. Woolridge, telephone (301) 415–6004; e-mail EOW@nrc.gov.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of active or draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 28th day of April 1997.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 97–12363 Filed 5–9–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of an Expiring Information Collection: Federal Employees Health Benefits (FEHB) Annuitant Express Open Season Interactive Voice Response System (IVR)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management will be submitting to the Office of Management and Budget a request for review of an expiring information collection. FEHB Annuitant Express Open Season IVR (Interactive Voice Response System) is used by retirees and survivors to collect information for changing FEHB enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, requesting payment directly to the Office of Personnel Management where the FEHB payment is greater than the monthly annuity amount, or requesting a copy of the FEHB Customer Satisfaction Survey results. We are replacing the OPM 2809 EZ1 and OPM 2809 EZ2 with the IVR technology to improve our response time to our customers.

We estimate 75,000 requests will be completed annually. Each request takes approximately 10 minutes to complete. The annual estimated burden is 12,525 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before June 11, 1997.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–12346 Filed 5–9–97; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of the addition of a new routine use and modifications to an existing system of records.

SUMMARY: This document publishes notice of the addition of a new routine use and modifications to Privacy Act system of records USPS 140.020, Postage—Postage Meter Records. The new routine use clarifies that the Postal Service may make disclosures to authorized postage meter manufacturers for administering postage meter activities. The modifications expand the system location to include a centralized site and clarify the language of an existing routine use and other segments of the system description.

DATES: This proposal will become effective without further notice on June 23, 1997, unless comments received on or before that date that result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8800, Washington, DC 20260–5243. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: System of records USPS 140.020, Postage—Postage Meter Records, collects information concerning postage meter use. This notice adds a routine use consistent with existing practice and postal regulations and clarifies a routine use and other segments of the system description as explained below.

Customers who wish to pay postage using a postage meter may request authorization from the Postal Service. If authorization is granted, the customer is issued a license to use a postage meter. Postage meters are available only by lease from authorized manufacturers. Because the Postal Service holds these manufacturers responsible for the control, operation, maintenance, and replacement of customer meters, the Postal Service and the manufacturers must exchange relevant information about the meter holders. For example, if a meter manufacturer cannot locate one of its meters in service, the Postal Service requires the manufacturer to take several actions. One of those actions is to contact the local post office to verify the location of the meter holder as shown in meter records kept at that post office. In another example, the Postal Service might need to disclose to a meter manufacturer that a holder's license has been revoked so that the meter can be retrieved by the manufacturer. New routine use No. 2 makes express that the Postal Service may make such necessary disclosures to an authorized meter manufacturer, its affiliates, dealers, subsidiaries, or franchises.

Minor changes are also made to the system description. Clarifying language is added to routine use No. 1. The language does not alter its scope of authority but merely conforms to applicable regulations by stating which information a requester must provide before the Postal Service will disclose information. The system location is amended to include the site of a new centralized system for processing license applications. In addition, the descriptions of the categories of records in the system, the record source categories, and the notification procedures are strengthened. Finally, the system manager's name is changed to reflect recent changes in organizational units.

The system changes are not expected to have any effect on individual privacy rights. Most information kept within the system pertains to businesses rather than individuals. To the extent information is kept about individuals, the changes do not in any manner alter the nature or broaden the types of information already kept in the system. New routine use No. 2 supports a long-standing practice and need to disclose information to postage meter manufacturers for administering postage meter activities. Information about a meter user will be disclosed only as necessary and only to the manufacturer or its affiliates, dealers, subsidiaries, or franchises supplying the meter to that user. The integrity of information kept will be enhanced by the central tracking system. That system will monitor meter inspections by manufacturers to provide maintenance of more accurate records. Finally, the privacy protections extended to these records are not diminished in any manner. Paper records continue to be kept in secured areas of post offices, with access restricted to those individuals who have an official need. Automated records are protected by security packages and password access.

In addition to the protections imposed by the Privacy Act, the Postal Reorganization Act imposes restrictions on the disclosure of information of the type kept within system USPS 140.020. The Act does not permit the Postal Service to disclose lists of postal customers or other persons. It also does not require the Postal Service to disclose information that could cause competitive harm. The Postal Service has traditionally considered the mailing habits of a particular customer exempt from disclosure under the Postal Reorganization Act.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the new routine use has been sent to Congress and to the Office of Management and Budget for their evaluation.

The most recent description of USPS 140.020 appears at 54 FR 43701, dated October 26, 1989. It is proposed that the description be amended as follows:

USPS 140.020

SYSTEM NAME:

Postage—Postage Meter Records, 140.020.

SYSTEM LOCATIONS:

[CHANGE TO READ] Post offices and the National Customer Support Center, Memphis, TN.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

[CHANGE TO READ] Customer name and address, change of address information, corporate business customer information (CBCIS) number, business tax identification number, business profile information, estimated annual metered postage and annual percentage of metered mail by type, post office where mail is entered, license number, date of issuance, license application, and transaction documents.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

[CHANGE TO READ] General routine use statements a, b, c, d, e, f, g, h, j, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses follow:

1. The name and address of a meter user, and the name of any person applying for a permit on behalf of the user, may be disclosed to any member of the public provided that the requester at the time of request supplies the applicable meter serial number and the name or ZIP Code of the licensing post office as they

2. Records or information from this system may be disclosed to an authorized postage meter manufacturer or its affiliates, dealers, subsidiaries, or franchises for administering the postage meter program. Release will be limited to relevant information about that manufacturer's customers only.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ] CHIEF MARKETING OFFICER, SENIOR VICE PRESIDENT, UNITED STATES POSTAL SERVICE, 475 L'ENFANT PLZ. SW., WASHINGTON, DC 20260–2400.

NOTIFICATION PROCEDURE:

[CHANGE TO READ] Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to the postmaster of their licensing post office. When making this request, an individual must supply the license number and his or her name as it appears on the meter license.

* * * * *

RECORD SOURCE CATEGORIES:

[CHANGE TO READ] License applicants, licensees, postal officials administering meter licenses; and authorized manufacturers of postage meters.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–12267 Filed 5–9–97; 8:45 am]

BILLING CODE 1170–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 6a–1 and Form 1, SEC File No. 270–18; OMB Control No. 3235–0017.
Rule 6a–2 and Form 1–A; SEC File No. 270–13; OMB Control No. 3235–0022.
Rule 15Ba2–1 and Form MSD; SEC File No. 270–88; OMB Control No. 3235–0083.
Rule 17Ac2–2 and Form TA–2; SEC File No. 270–298; OMB Control No. 3235–0337.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on previously approved collections of information:

Rule 6a–1 and Form 1 states that the Commission may not grant registration to an exchange as a national securities exchange unless it finds, among other things, that the exchange is organized so that it has the capacity to carry out the purposes and to comply with the Securities Exchange Act of 1934 (''Exchange Act''). Form 1 is necessary because it requires the information needed by the Commission to determine whether granting registration to an exchange would be appropriate.

Because Form 1 is filed on a one-time basis by an exchange, it is estimated that approximately 1 respondent incurs an average of 45 burden hours annually to comply with the rule.

Rule 6a–2 requires that registered and exempted national securities exchanges file Form 1–A on an annual basis. Form 1–A is necessary because it informs the Commission of any changes to Form 1 during the exchange's preceding fiscal year.

Form 1–A is required to be filed annually by a registered or exempted exchange to update information required to be filed on Form 1 which has changed during the exchange's preceding fiscal year. Such information is elicited, pursuant to the requirements of Rule 6a–1 under the Exchange Act, on Form 1. It is estimated that approximately 9 respondents incur a total of 270 burden hours annually to comply with the rule.

Rule 15Ba2–1 provides that an application for registration by a bank municipal securities dealer must be filed on Form MSD. The information required to be disclosed on Form MSD is necessary for the Commission to determine whether or not registration as a municipal securities dealer should be granted.

It is estimated that approximately 40 respondents will utilize this application procedure annually, with a total burden of 60 hours, based upon past submissions.

Rule 17Ac2–2 requires transfer agents, who are not exempt, to file an annual report of their business activities on Form TA–2 with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

It is estimated that approximately 1,000 respondents are exempt from providing certain information contained in the annual report. An additional 400 non-exempt respondents will file an annual report. The total annual burden is 1,000 hours for exempt respondents and 2,000 hours for non-exempt respondents, based upon past submissions.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: May 6, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12353 Filed 5–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38573; File No. SR–Amex–97–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rule 170.01 Pertaining to Specialists Establishing a Position

May 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b–4 of the Act, proposes to amend Commentary .01 to Exchange Rule 170 to permit a specialist to provide liquidity to orders on the book in stabilizing transactions without the necessity of first obtaining Floor Official approval.

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 170 (''Rule''), the primary rule governing a specialist's functions, restricts a specialist's transactions in his or her specialty stock to those that are reasonably necessary to the maintenance of a fair and orderly market. Specifically, paragraph (d) of the Rule provides that a specialist is affirmatively required to engage in a course of dealings for his own account to minimize order disparities and contribute to continuity and depth in the market, and is precluded from trading for his own account unless such dealing is necessary for the maintenance of a fair and orderly market. The price trend of a security should thus be determined by incoming orders rather than the specialist's proprietary dealings.

Commentary .01 to the Rule sets forth specific requirements which are applicable when a specialist is establishing or increasing a position, and provides that a specialist should effect such transactions in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of his position to meet the immediate and reasonably anticipated needs of the market. In particular, paragraph (b) of the Rule provides that a specialist must obtain Floor Official approval prior to effecting the purchase of all or substantially all the stock offered on the book at a price equal to the last sale, when such offer represents all or substantially all the stock offered in the market. Paragraph (c) provides that he similarly must obtain Floor Official approval prior to supplying all or substantially all the stock bid for on the book at a price equal to the last sale. In addition, paragraph (a) prohibits a specialist from purchasing stock at a price above the last sale in the same trading session, without Floor Official approval. Paragraph (d) requires him to re-offer or re-bid where necessary after effecting the transactions described in paragraphs (a), (b), and (c).

The Amex states that the restrictions contained in paragraphs (b) and (c) were intended to strike a balance between protecting the auction market from unnecessary specialist trading and providing immediate liquidity to orders that come to the Floor. The Floor Official's function, at the time Rule 170 was adopted, was to operate as a control mechanism to ensure that the specialist did not trade unnecessarily.

The Amex contends that although the need to obtain Floor Official approval was reasonable in the past, before technology enabled markets to move quickly within seconds, it now has the effect, under certain circumstances, of reducing liquidity and disadvantaging orders entered with the specialist. If an order is brought to the specialist, he is free to execute it immediately without displaying it first. Under such circumstances, the specialist may purchase or sell all or substantially all the stock offered or bid for, at a price equal to the last sale, without obtaining Floor Official approval. However, if the specialist initially decides instead to display the order, providing transparency, in the hopes of either narrowing the market or generating interest on the opposite side, but thereafter determines to take the offer or hit the bid, he must obtain Floor Official approval.

Accordingly, it is proposed that Commentary .01 be amended to provide that a specialist is not required to obtain Floor Official approval with respect to the purchase, on a zero minus tick, of stock offered on the book, or the sale, on a zero plus tick, of stock bid for on the book. A specialist is the buyer and seller of last resort, and is expected to step in when there is a disparity between supply and demand. In this situation, the specialist would only be purchasing the stock offered because there is inadequate demand for the stock. The transaction in question would be stabilizing, in that he is buying on a zero minus tick, against the direction of the market, rather than directing the course of the market.

In addition, the Amex contends that with the advent of improved technology, the Exchange's surveillance systems can now provide an adequate substitute for Floor Official Approval in such circumstances. In the last few years, the Exchange has developed an automated computer program which identifies each instance in which a specialist crosses the market (i.e., buys on the offer and sells on the bid). Each of these situations can then be individually reviewed by the Exchange Trading Analysis staff to determine whether the specialist was acting appropriately. With respect to the proposed rule change, the Exchange staff would look at how large the specialist's position was prior to the transaction, whether there were imbalances in the limit orders on his book which necessitated the transaction, and whether, if the market subsequently ''turned around'' he used a reasonable amount of the inventory acquired in the transaction to offset any imbalance between supply and demand.

For example, assume that a customer enters an order to sell XYZ stock at 10⅛ (the last sale and a minus tick) when the market is quoted 10–10¼. And assume that instead of executing the order immediately, which the specialist is entitled to do, he displays it, changing the quote to 10–10⅛. Because no buy side interest develops at 10⅛, several minutes later the specialist determines that it is appropriate to take the offer. He must now locate and explain the circumstances to a Floor Official, and during this time the market may move lower, either on the Amex or on another market, so that the specialist would no longer pay 10⅛ for the stock. Had the specialist been free to take the offer without seeking Floor Official approval, the customer would have received an execution and the Exchange staff would have reviewed the circumstances surrounding the transaction to determine whether it appeared to be consistent with the specialist's affirmative and negative obligations. In appropriate cases, the specialist's actions could, of course, be referred to the Exchange's Enforcement Division for possible disciplinary action.

The Amex believes that the proposed change carves out an exception to the existing provisions, but would provide a distinct benefit to the market by permitting the specialist to satisfy a customer's order more expeditiously, while enabling him to enhance the liquidity, depth and transparency of the market as the buyer or seller of last resort.

2. Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) [3] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

[3] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 2, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12283 Filed 5–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38574; File No. SR–NYSE–97–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 104.10(5) Pertaining to Specialists Establishing a Position.

May 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. 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 NYSE, pursuant to Rule 19b–4 of the Act, proposes to amend Exchange Rule 104.10 to remove certain restrictions on specialists' stabilizing purchases and sales. The text of the proposed rule change is available at the Office of the Secretary, the NYSE and at the Office of the Secretary, the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 104 governs specialists' dealings in their specialty stocks. In particular, Rule 104.10(5)(i) describes certain types of transactions to establish or increase a specialist's position which are not to be effected unless they are ''reasonably necessary to render the specialist's position adequate to'' the needs of the market. Currently, these restrictions apply equally to transactions that are against the market trend (''stabilizing'') and those that are with the market trend (''destabilizing''). The Exchange is proposing to apply these restrictions only to destabilizing transactions.

Specifically, the revision to Rule 104.10(5)(i)(B) would prohibit the specialist from establishing or increasing his or her long position by purchasing more than 50% of the stock offered for sale in the market on a zero-plus tick (i.e., at a price equal to the last sale and above the previous different price sale). There would be no restriction on purchasing stock on a zero-minus tick to establish or increase a position, as such transactions are stabilizing in nature and are perceived as being beneficial to the market.

Paragraph (C) of Rule 104 would be deleted to permit the specialist to establish or increase his or her short position by selling stock to the bid without restriction on a zero-plus tick, as these transactions are stabilizing in nature. Prohibitions on short sales on zero-minus ticks are contained in SEC Rule 10a–1 under the Act and Exchange Rule 440B.

References to paragraph 104.(5)(i)(C) elsewhere in the rule would be removed and paragraph (D) would be renumbered as (C).

The proposed amendments are intended to enhance the specialist's ability to deal for his or her own account to provide support to the market. Under the revised rules, specialists will, to a greater degree, be able to counter the market trend in a stock through effecting proprietary transactions that are stabilizing. In today's markets, characterized by increased volatility and institutional activity, the use of dealer capital in this fashion can add liquidity in a manner beneficial to the market.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[3] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to remove impediments to, and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(5).

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 the file number in the caption above and should be submitted by June 2, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12284 Filed 5–9–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38576; File No. SR–Phlx–97–16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating To Option Quote Spread Parameters

May 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 2, 1997, the Philadelphia Stock Exchange Inc., (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. 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

Pursuant to Rule 19b–4 of the Act,[2] Phlx proposes to amend the maximum bid/ask differentials (*i.e.*, quote spread parameters) applicable to equity and index options. Specifically, the Exchange proposes to amend Rule 1014 (c)(i)(A) and Floor Procedure Advice (''Advice'') F–6, Option Quote Parameters, by eliminating the 1⁄8 maximum quote spread currently applicable to options where the bid is less than $.50. As a result, the maximum quote spread for equity and index options where the bid is less than $2.00 will be 1⁄4.

The Exchange also proposes to adopt a provision enabling the maximum quote spread in an equity option to be widened with regard to in-the-money series where the market for the underlying security is wider than the differentials set forth in the chart below. For such series, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market.

The following chart summarizes the proposed option quote spread parameters with additions italicized and deletions in brackets:

Equity option	Maximum quote spread
Less than [$.50	[1⁄8]
$.50 to less than] $2.00	1⁄4
$2.00 to less than $5.00	3⁄8
$5.00 to less than $10.00	1⁄2
$10.00 to less than $20.00	3⁄4
$20.00 and greater	1

The bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market.

The complete text of the proposed rule change is attached as Exhibit B to file No. SR–Phlx–97–16.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Quote spread parameters govern the width of market quotations, establishing a maximum width based on the option bid.[4] Currently, Rule 1014(c)(i)(A) and Advice F–6 contain the quote spread parameters applicable to equity and index options.

This proposal is intended to update the Exchange's option quote spread parameters, in view of the parameters applicable on other option exchanges. The first aspect of the proposal is to eliminate the maximum quote spread of 1⁄8, currently applicable to options where the bid is less than $.50, such that the maximum quote spread for options where the bid is less than $2.00 will be 1⁄4. This is identical to the quote spread parameters of the other options exchanges.[5]

Second, the proposal is intended to recognize that in certain market conditions, the existing parameters are too restrictive and should not apply. More specifically, for equity options only, the maximum quote spread for in-the-money series[6] where the market for the underlying security is wider, the applicable parameter may be as wide as the quotation for the underlying security on the primary market. For instance, where the market for the underlying security is 20–21, and the bid for an in-the-money series is $7, the applicable maximum quote spread should be 1⁄2, but under the proposed language, the parameter would be $1, which is the spread in the underlying security. The Exchange believes that this proposal is a reasonable response to market conditions and consistent with the rules of other exchanges.[7]

The Exchange notes that a violation of the maximum quote spread parameter may result in a fine pursuant to Options Floor Procedure Advice (''Advice'') F–6.[8] Because the Exchange is proposing to amend an Advice to which a fine pursuant to the minor rule applies, it follows that the minor rule plan will incorporate this amendment.[9] It should be noted, however, that quote spread parameters are not applicable during fast market conditions, pursuant to Floor Procedure Advice F–10, Extraordinary Market Conditions, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Complete copies of the proposed rule change and Exhibit B are available for review at the primary office of the Phlx, and in the Public Reference Room at the Commission.

[4] For example, if the maximum quote spread for an equity option is 1⁄4, then the following is an acceptable quotation: 11⁄4—11⁄2.

[5] *See e.g.,* Amex Rule 958(c)(i); and CBOE Rule 8.7(b)(iv).

[6] In-the-money series are defined as those series where, in the case of a call option, the current market price of the stock is *higher* than the strike price, or, in the case of a put, the current market price of the stock is *lower* than the strike price.

[7] *See* supra note 5.

[8] Violations of Advice F–6 may result in the issuance of a fine pursuant to the Exchange's minor rule violation enforcement and reporting plan (''minor rule plan''). For fine schedule, *see* Exhibit B of File No. SR–PHLX–97–16.

[9] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices, such as Advice F–6, with accompanying fine schedules. Exchange Act Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Exchange Act Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

different quote spread parameters are not a violation of Advice F–6.[10]

The Exchange believes that the proposed rule change is necessary in light of competitive conditions, and consistent with Section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as protect investors and the public interest.

Specifically, the Exchange believes the proposal should facilitate the market making function by adjusting the quote spread parameter to reflect the market for the underlying security and current market conditions, thereby promoting just and equitable principles of trade. Although the proposed quote spread parameters may result in wide quotes in certain circumstances, the Exchange believes that such quote spread parameters are nevertheless reasonable, in line with other options exchanges, and continue to perform a regulatory function in the options marketplace, which is consistent with the objectives of the Act, by preventing fraudulent and manipulative acts and practices and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx 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.

[10] Advice F–10 states that, in the interest of a fair and orderly market, two floor officials may declare a ''fast market,'' during which displayed quotes are not firm and the volume guarantees of Advice A–11 are not applicable; nevertheless, best efforts are required to display quotes and fill orders.

[11] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspections and copying at the principal office of Phlx. All submissions should refer to File No. SR–Phlx–97–16 and should be submitted by June 2, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12352 Filed 5–9–97; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before July 11, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''Survey of Disaster Loan Recipients''.

Type of Request: New Information Collection.

Form No.: N/A.

Description of Respondents: Disaster Loan Recipients.

Annual Responses: 3,000.

Annual Burden: 300.

Title: ''Survey of Minority Enterprise Development Program Participants''.

Type of Request: New Information Collection.

Form No: N/A.

Description of Respondents: MED Participants.

Annual Responses: 3,000.

Annual Burden: 300.

Title: ''Survey of the Service Corps of Retired Executives''.

Type of Request: New Information Collection.

Form No.: N/A.

Description of Respondents: SCORE Members.

Annual Responses: 3,000.

Annual Burden: 300.

Title: ''Survey of Small Business Development Centers''

Type of Request: New Information Collection.

Form No.: N/A.

Description of Respondents: SBDC's.

Annual Responses: 1,000.

Annual Burden: 100.

Title: ''Survey of National Advisory Council Members''.

Type of Request: New Information Collection.

Form No.: N/A.

Description of Respondents: National Advisory Council Members.

Annual Responses: 115.

Annual Burden: 11.5.

Title: ''Survey of U.S. Export Assistance Centers Customers''.

Type of Request: New Information Collection.

Form No.: N/A.

Description of Respondents: USEAC Users.

Annual Responses: 2,000.

Annual Burden: 200.

Title: ''Survey of Women-owned Businesses''.

Type of Request: New Information Collection.

Form No.: N/A.

Description of Respondents: Women Owned Businesses.

Annual Responses: 3,000.

Annual Burden: 300.

Title: ''Survey of Minority-Owned Businesses''.

Type of Request: New Information Collection.

Form No.: N/A.

Description of Respondents: Minority-Owned Businesses.

Annual Responses: 6,000.

Annual Burden: 600.

Title: ''Customer Service Comment Card''.
Type of Request: New Information Collection.
Form No.: N/A.
Description of Respondents: SBA's Service Locations.
Annual Responses: 10,000.
Annual Burden: .3333.

Title: ''Survey of SBA Loan Recipients''.
Type of Request: New Information Collection.
Form No.: N/A.
Description of Respondents: SBA Loan Recipients.
Annual Responses: 6,000.
Annual Burden: 600.

Title: ''Survey of SBA Lenders Recipients''.
Type of Request: New Information Collection.
Form No.: N/A.
Description of Respondents: Participating Guaranty Lenders.
Annual Responses: 3,000.
Annual Burden: 300.

Title: ''Survey of the SBA's Electronic Information Services''.
Type of Request: New Information Collection.
Form No.: N/A.
Description of Respondents: Users of the SBA's Homepage and Electronic Bulletin Board.
Annual Responses: 30,000.
Annual Burden: 3,000.

Title: ''Survey of Small Business Innovative Research Program Participants''.
Type of Request: New Information Collection.
Form No.: N/A.
Description of Respondents: SBIR Participants.
Annual Responses: 500.
Annual Burden: 50.

Title: ''Survey of the SBA's Publications''.
Type of Request: New Information Collection.
Form No.: N/A.
Description of Respondents: Customers that use SBA Publications.
Annual Responses: 3,000.
Annual Burden: 300.

Title: ''Survey of the SBA Office of Government Contracting's Customers''.
Type of Request: New Information Collection.
Form No.: N/A.
Description of Respondents: Recipients of Assistance from SBA Office of Government Contracting.
Annual Responses: 3,000.
Annual Burden: 300.

Title: ''Survey of the SBA Procurement Automated Source Selection System Users''.
Type of Request: New Information Collection.
Form No.: N/A.
Description of Respondents: PASS System Users.
Annual Responses: 1,000.
Annual Burden: 100.

Title: ''Survey of SBA Advocacy and Trade Group Members (NAGGL, NADCO, Women's Business Counsel, etc)''.
Type of Request: New Information Collection.
Form No.: N/A.
Description of Respondents: Trade Group Members.
Annual Responses: 3,000.
Annual Burden: 300.
Comments: Send all comments regarding this information collection to George Price, Director, Market Research, Office Marketing and Customer Service, Small Business Administration, 409 3rd Street, S.W., Suite 7600, Washington, D.C. 20416. Phone No.: 202–205–6744.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: May 5, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–12409 Filed 5–9–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Norwest Equity Partners VI, L.P. (License No. 05/05–0225); Notice of Issuance of a Small Business Investment Company License

On September 17, 1996, an application was filed by Norwest Equity Partners VI, L.P., at 2800 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, Minnesota, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05/0225 on May 2, 1997, to Norwest Equity Partners VI, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 6, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–12350 Filed 5–9–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #2951; State of Florida

Manatee County and the contiguous Counties of DeSoto, Hardee, Hillsborough, Polk, and Sarasota in the State of Florida constitute a disaster area as a result of damages caused by severe flooding which occurred on April 26, 1997. Applications for loans for physical damage may be filed until the close of business on July 1, 1997 and for economic injury until the close of business on February 2, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Iincluding Non-Profit Organizations) With Credit Available Elsewhere	7.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 295106 and for economic injury the number is 948800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 2, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–12351 Filed 5–9–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Monday and Tuesday, May 19–20, 1997, from 8:15 am to 4:15 pm, at the New Mexico Small Business Development Center, Santa Fe Community College, Santa Fe, New Mexico, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary Ann Holl, SBA, 409 3rd Street, SW, 4th Floor, Washington, DC 20416, 202/205–7302.

Dated: May 2, 1997.

Michael Novelli,

Director, National Advisory Council.

[FR Doc. 97–12348 Filed 5–9–97; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Milwaukee, Wisconsin will hold a public meeting on Monday, May 19, 1997, at 12:00 p.m. to 1:00 p.m. at the Metro Milwaukee Area Chamber (MMAC), Association of Commerce Building—Fourth Floor, in the Milwaukee Room, 756 North Milwaukee Street, Milwaukee, Wisconsin 53203.

The purpose of this meeting is to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other parties.

For further information write or call Wesley L. Scott, (414) 287–4161, Milwaukee Branch Office, 310 West Wisconsin Avenue, Suite 400, Milwaukee, Wisconsin 53203.

Michael P. Novelli,

Director, National Advisory Council.

[FR Doc. 97–12349 Filed 5–9–97; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2529]

Preparation of Second U.S. Climate Action Report

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

ACTION: Request for public comments.

SUMMARY: In June 1992, the United States signed the United Nations Framework Convention on Climate Change (UNFCCC). Pursuant to the reporting requirements under Articles 4.2 and 12 of the Convention and to proposed format guidelines later adopted by the UNFCCC Conference of the Parties (COP) at its first session, the United States submitted the U.S. Climate Action Report (USCAR) to the UNFCCC Secretariat. At its second session, the COP to the UNFCCC agreed that the second national communications from developed country Parties would be due on April 15, 1997.

However, because the Department of State wants to provide a public opportunity to comment on a draft text of the Second USCAR, we will not make our submission in the desired time frame. We have already notified the UNFCCC Secretariat that we will be tardy in submitting the final document which we anticipate doing at the July meeting of the UNFCCC Subsidiary Bodies.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the UNFCCC's reporting requirements as specified in Articles 4.2 and 12, and following reporting guidelines developed (and adopted by the UNFCCC COP at its first session), the United States prepared the U.S. Climate Action Report (USCAR) and submitted it to the UNFCCC Secretariat in October 1994.

The USCAR provided a description of the U.S. program designed to reduce emissions to 1990 levels by the year 2000. The initial USCAR incorporated much of the information contained in the first Climate Change Action Plan announced by President Clinton and Vice President Gore on October 19, 1993.

At the Second COP, the Parties requested developed country Parties to the Convention to submit to the UNFCCC Secretariat, in accordance with Articles 12.1 and 12.2 of the Convention, a second national communication by April 15, 1997. Parties that submitted first reports in 1996 are to provide an update by the 1997 deadline and Parties with economies in transition are to provide their second communication by April 15, 1998. Developing country Parties have different guidelines and due dates for their first communications.

The Parties to the UNFCCC also adopted revisions to the guidelines for the reports at their second session. Among other modifications, the revised guidelines encourage Parties to provide information on actions implemented by regional and local governments or the private sector. At its 12th Plenary meeting in September 1996, the Intergovernmental Panel on climate Change (IPCC) approved additional guidance with respect to the methodologies to inventory greenhouse gas emissions. These revised methodologies have been approved by the UNFCCC's Subsidiary Body for Scientific and Technological Advice (SBSTA) for use in preparing national communications, recognizing that the delay in their adoption could cause difficulty for Party countries in using them in plan preparation. We have followed both sets of guidelines, to the extent possible, in the preparation of the second USCAR.

The Second USCAR

The draft version of the second USCAR reviews key elements contained in the initial climate Change Action Plan including: an update on key baseline assumptions; a review and assessment of activities to date under the almost 50 actions listed in the plan; and update of the list of actions reflecting changes initiated by responsible agencies since the plan was first proposed in 1993. The document also reflects information submitted to the Council on Environmental Quality in response to a request for comments on the original Climate Change Action Plan which was published in the **Federal Register** on August 24, 1995, (60 FR 44022) and information presented at a subsequent public hearing held on September 22, 1995.

In keeping with international guidelines, the draft second USCAR provides an inventory of U.S. greenhouse gas emissions and sinks, estimated effects of mitigation measures and policies on future emissions levels, and describes U.S. involvement in international programs including associated contributions and funding efforts.

In addition, the text includes a discussion of U.S. national circumstances which affect U.S. vulnerability and responses to climate change. Information on the U.S. Global Change Research Program, the largest climate change research program in the world, and on adaptation programs is also presented.

Table of Contents of the Second USCAR

V. Research
VI. Education, Training, and Outreach
VII. Policies and Measures to Mitigate Climate Change
VIII. International Activities

Public Input Process

The Department of State published a **Federal Register** notice (citation) in December 1996 to solicit contributions and comments on all aspects of the first USCAR and in particular, on issues related to regional, local, and private sector actions to address climate change. Unfortunately, we received no responses.

In spite of the lack of response, we remain committed to providing the public with an opportunity to review the second draft and provide comments on the text. Because of time constraints, the draft is somewhat rough in terms of formatting and graphics, and is still under interagency review. We anticipate that on the basis of further input, some of the projections of the effects of measures—and of the aggregate effect of the U.S. program—might change. We also anticipate that on the basis of further input, some of the projections of the effects of measures—and of the aggregate effect of the U.S. program—might change. We also anticipate the inclusion of additional material, particularly in the sections on ''The Future'' pending the completion of internal Administration analysis.

We invite input on all aspects of the document including its substance, format, and graphics. Comments received in response to this **Federal Register** notice will be considered in the revisions to the draft of the second national communication. Interested parties may request individual chapter(s) or the entire text.

DATES: Written comments on the draft text of the second USCAR should be received on or before noon, May 23, 1997. The deadline cannot be extended because of an extremely tight timetable for the report's preparation in anticipation of the July submission date.

ADDRESSES: Comments should be submitted to: Mr. Daniel Reifsnyder, OES/EGC, Room 4330, U.S. Department of State, Washington, DC 20520–7818. Comments may also be faxed to Mr. Reifsnyder at (202) 647–0191. Copies of the draft Second National Communication may be obtained from Mr. Reifsnyder's office.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel A. Reifsnyder, Director, Office of Global Change, U.S. Department of State at (202) 647–4069.

Dated: May 2, 1997.

Rafe Pomerance,

Deputy Assistant Secretary for Environment and Development, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 97–12444 Filed 5–8–97; 10:46 am]

BILLING CODE 4710–09–M

DEPARTMENT OF STATE

[Public Notice No. 2541]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas School Advisory Council, Department of State, will hold its Annual Meeting on Thursday, June 26, 1997 at 9:30 a.m. in Conference Room 1406, Department of State Building, 2201 C Street, N.W., Washington, D.C. The Meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, SA–29, Room 245, Washington, D.C. 20522–2902, telephone 703–875–7800, prior to May 30, 1997. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: April 28, 1997.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 97–12318 Filed 5–9–97; 8:45 am]

BILLING CODE 4710–24–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of the First Round of Accelerated Tariff Eliminations Under Provisions of the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notification of articles proposed for accelerated tariff elimination under the North American Free Trade Agreement.

SUMMARY: Section 201(b) of the North American Free Trade Agreement Implementation Act of 1993 (''the Act'') grants the President, subject to the consultation and lay-over requirements of section 103(a) of the Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States, Mexico and Canada under Article 302(3) of the North American Free Trade Agreement (''the NAFTA''). This notice is intended to inform the public of those articles on which the United States, Canada and Mexico have provisionally agreed to accelerate the elimination of duties.

FOR FURTHER INFORMATION CONTACT: Office of Western Hemisphere Affairs, Office of the United States Trade Representative, Room 522, 600 17th Street, NW., Washington, DC 20508; telephone (202) 395–3412; fax: (202) 395–9675.

SUPPLEMENTARY INFORMATION: The following **Federal Register** notices provide information on the first round. Request for petitions appeared December 23, 1993 (58 FR 68186); a request for comments on list of products to be considered appeared May 23, 1994 (59 FR 26688).

Article 302 of the North American Free Trade Agreement (NAFTA) permits the Parties to consider and agree to accelerate the elimination of customs duties on goods of a Party. Pursuant to this provision, the United States, Canada and Mexico solicited requests from interested parties in early 1994. At the request of the United States Government, the Parties agreed to consider requests on an expedited basis, and for that reason also agreed to consider a short list of items in the first round.

As a result, approximately 207 8-digit tariff subheadings or parts of subheadings were considered by the three Parties. As a part of the process, USTR requested the advice of the USITC and the private sector trade advisory groups. As has been practice under tariff acceleration rounds conducted under the provisions of the United States-Canada Free Trade Agreement, the United States did not agree to provide accelerated tariff elimination for those products subject to negative advice. In a similar manner, the governments of Canada and Mexico declined to agree to acceleration for products subject to negative comments by their interested parties.

The Parties did agree to accelerated tariff elimination on the remaining products, involving all or parts of approximately 80 8-digit tariff lines for which one or more of the Parties have provisionally agreed to eliminate the duties at the conclusion of the necessary domestic procedures. Two annexes are attached listing the agreed products. Annex 1 lists the products for which the United States proposes to immediately eliminate the remaining tariffs. Annex II also shows the U.S. reductions, as well as the comparable reductions agreed to by Canada and Mexico. As a rule, eliminations are being proposed on a reciprocal basis. For products that do not show such reciprocal elimination, it is in most cases due to the fact that duties have already been eliminated. The final column of the annex indicates those few cases where a Party declined to participate in the reductions.

As noted above, the relevant private sector advisory committees were consulted throughout this process, and have expressed no objection to eliminating tariffs for the products appearing in Annex I. In addition, the ITC provided a report to USTR indicating that the proposed eliminations would have no harmful impact on the United States.

The Parties intend to implement the accelerated tariff eliminations effective July 1, 1997. A separate **Federal Register** notice will be published shortly providing information on the initiation of a second round of NAFTA Accelerated Tariff Eliminations.

Peter F. Allgeier,

Associate U.S. Trade Representative for the Western Hemisphere.

ANNEX 1.—NAFTA TARIFF ACCELERATION ROUND ONE—U.S. TARIFF REDUCTIONS

Short product description	US HS No.	Tariff reduced for	Comment
Processed Artichokes	20059080	Mexico	
Tahini	20081990	Canada	Acceleration on part of 8-digit number only.
Trimethoprim	29335922	Mexico	Acceleration on part of 8-digit number only.
Hexamethylenetetramine	29339087	Mexico	
Sulfamethoxazole	29350048	Mexico	Acceleration on part of 8-digit number only.
Polyethylene tape laminated with thermoplastic adhesive.	39219050	Canada	Acceleration on part of 8-digit number only.
Venetian blinds of wood	44219040	Canada, Mexico	Acceleration on part of 8-digit number only.
Elastomeric monofilaments of polyurethane	54041080	Mexico, Canada	Acceleration on part of 8-digit number only.
Imitations of Catgut	56049000	Canada	
Metallized yarn	56050010 56050090	Mexico	
Woven fabrics of polyethylene, coated or laminated with plastics on one side only.	59039025	Mexico	Acceleration on part of 8-digit number only.
Printed Cotton towels	63029100	Mexico	Acceleration on part of 8-digit number only.
Briquettes for gas fuel barbecues	68159940	Canada	Acceleration on part of 8-digit number only.
Briquettes for gas fuel barbecues	69149080	Canada	Acceleration on part of 8-digit number only.
Screws and bolts, whether or not with their nuts and washers, for aircraft.	731815xx	Canada, Mexico	Acceleration on parts of 6-digit number only.
Screws and bolts, whether or not with their nuts and washers, for aircraft, of nickel.	750890xx	Canada	Acceleration on part of 8-digit number only.
Casting-grade zinc, containing by weight less than 99.99% of zinc.	79011210	Canada, Mexico	
Other zinc	79011250	Canada	
Screws and bolts, whether or not with their nuts and washers, for aircraft, of titanium.	81089030	Canada	Acceleration on part of 8-digit number only.
Electric switches, other than motor starter switches	85365080	Mexico,	
Other bicycle parts	87149190	Mexico, Canada	
Appliance timers	910700	Canada	Acceleration on parts of 6-digit number only.
Parts for appliances timers	91149030 91149050	Canada	Acceleration on part of 8-digit number only.
Brushes constituting parts of machines	96035080	Canada	

All remaining duties will be eliminated immediately on these products.

ANNEX II.—NAFTA TARIFF ACCELERATION ROUND ONE—CONCORDANCE

Product description	US HS No.	Cnd HS No.	Mex HS No.	USA	Mexico	Canada	Comment
Processed Artichokes	20059080	N/A	20059099	M	US		US-Mex only.
Tahini	20081990	20081990	20081999	C	US, C	US, M	
Sodium Cyanide	28371100	28371100	28371101		US, C		
2-Ethyl-hexanol	29051600	29051600	29061602		US, C	M	
Lovastatin and simvastatin	29322950	29322900	29322999		US, C	M	
Trimethoprim	29335922	29335900	29335906	M	US, C	M	
Enalapril maleate	29339053	29339000	29339057		US, C	M	
Hexamethylenetetramine	29339087	29339000	29339035	M		M	
Sulfamethoxazole	29350048	29350000	29350028	M	US, C	M	
Sulfamerizine	29350042	29350000	29350099		US, C	M	
Vitamin C and its derivatives	29362700	29362700	29362701		US, C		
Dexamethasone	29372200	29372200	29379909		US, C		

ANNEX II.—NAFTA TARIFF ACCELERATION ROUND ONE—CONCORDANCE—Continued

Product description	US HS No.	Cnd HS No.	Mex HS No.	USA	Mexico	Canada	Comment
Tetracycline chlorohydrate	29413000	29413000	29413001		US, C	M	
Gentamycin	29419050	29419000	29419016		US, C	M	
Film without sprocket holes, of a width not exceeding 105 mm, for color photography (polychrome).	37023100	37023100	37023101		US, C		
Film without sprocket holes, of a width exceeding 610 mm and a length exceeding 200 mm, for color photography (polychrome).	37024100	37024100	37024101		US, C		
Film, for color photography (polychrome), of a width exceeding 16 mm but not exceeding 35 mm and a length not exceeding 30 m, for slides.	37025300	37025300	37025301		US, C		
Film, for color photography (polychrome), of a width exceeding 16 mm but not exceeding 35 mm and a length not exceeding 30 m, other than for slides.	37025400	37025400	37025401		US, C		
Film, for color photography (polychrome), of a width exceeding 16 mm but not exceeding 35 and of a length exceeding 30 m.	37025500	37025500	37025501		US, C		
Black and white motion picture film, of a width not exceeding 16 mm and of a length exceeding 14 m.	37029200	27029290	37029201		US, C		
Color motion picture film, of a width exceeding 16 mm but not exceeding 35 mm and of a length exceeding 30 m.	37029400	37029490	37029401		US, C		
Polyethylene tape laminated with thermoplastic adhesive.	39219050	39219090	39219008	C	US, C	US, M	
Venetian blinds of wood	44219040	44219040	44219099	C, M	US, C	US, M	
Paper of a kind for use in making masking tape.	48083000	48083090	48083002		US, C		
Elastomeric monofilaments of polyurethane	54041080	54041090	54041005	M, C	C	US, M	
Imitations of Catgut	56049000	56049000	56049003, 56049004	C		US	US-Can only.
Metallized yarn	56050010, 56050090	56050000	5605001	M	US, C	M	
Woven fabrics of polyethylene, coated or laminated with plastics on one side only.	59039025	59039020	59039002	M	US		
Printed Cotton towels	63029100	63029100	63029101	M	US		
Briquettes for gas fuel barbecues	68159940	68159991, 68159999	68159901, 68159999	C		US	
Ceramic tableware, other than of porcelain or china.	69120010, 69120020, 69120035, 69120039, 69120041, 69120044, 69120045, 69120046, 69120048, 69120059	69120000	69120001, 69120099		C	M	Mex-Can only.
Briquettes for gas fuel barbecues	69149080	69149000	69149099	C		US, M	
Screws and bolts, whether or not with their nuts and washers, for aircraft.	731815xx	73181500	73181501	C, M		US, M	
Screws and bolts, whether or not with their nuts and washers, for aircraft, of nickel.	750890xx	75089020	75089099	C	US, C	US, M	
Casting-grade zinc, containing by weight less than 99.99% of zinc.	79011210	79011200	79011201	C, M	US, C		
Other zinc	79011250			C			
Screws and bolts, whether or not with their nuts and washers, for aircraft, of titanium.	81089030	81089090	81089099	C	US, C	US, M	
Scissors & Shears—Blanks and blades	82130030, 82130060, 82130090	82130020, 82130030	82130001			US	
Tobacco drying machines	84199090	84193190	84193105		US, C		
Parts of tobacco drying machines		84199080	84199099		US, C	M	
Dishwashers	84221100	N/A	84221101		US		Mex-US only.
Parts of dishwashers	84229002, 84229004, 84220006	N/A	84229002, 84229003, 84229004		US		
Machines for cleaning by pressure	84243010, 84243090	84243000	84243001		US, C	M	

ANNEX II.—NAFTA TARIFF ACCELERATION ROUND ONE—CONCORDANCE—Continued

Product description	US HS No.	Cnd HS No.	Mex HS No.	USA	Mexico	Canada	Comment
Excavating machines	84295950	84295910, 84295920, 84295990	84295901		US, C		
Parts for excavating machines	84314100, 84214990	84314190	84314101, 84314103, 84314199		US, C	M	
Other parts for excavating machines		84314990	84314902, 84314999		US, C	M	
Clothes dryers	84512100	N/A	84512101, 84512199		US		US-Mex only.
Metal casting machines	84543000	84543010, 84543090	84543001		US, C		
Metal processing machines	84798100	84798110, 84798190	84798101		US, C		
Electric switches, other than motor starter switches.	85365080	85365010, 85365080, 85365091, 85365099	85365001, 85365010, 85365011	M			US-Mex only.
Other bicycle parts	87149190			M, C			
Bicycle Hubs, other than coaster braking hubs and hub brakes, and free-wheel sprocket-wheels.	87149305, 84719315, 84719324, 84719328, 84719335, 84719370	87149300	87149301			M	
Bicycle parts, other than of subheading No. 8714.91, 8714.92, 8714.93, 8714.94, 8714.95 or 8714.96.	87149910, 87149950, 87149960, 87149980, 87149990	87149920	87149901			M	Can-Mex only.
Appliance timers	91070040, 91070080	91070010, 91070020, 91070090	91070001	C		US, M	
Parts for appliance timers	91149030, 91149050	91149020, 91149030, 91149090	91149001, 91149099	C		US	
Brushes constituting parts of machines	96035080	96035090	96035001	C		US, M	

All remaining tariffs will be eliminated immediately. The 3rd, 4th and 5th columns show the reductions each county provides for the other NAFA parties.

[FR Doc. 97–12405 Filed 5–9–97; 8:45 am]
BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Initiation of the Second Round of Accelerated Tariff Elimination Talks Under Provisions of the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notification of an opportunity to file petitions requesting accelerated tariff elimination under the North American Free Trade Agreement.

SUMMARY: Section 201(b) of the North American Free Trade Agreement Implementation Act of 1993 (''the Act'') grants the President, subject to the consultation and lay-over requirements of section 103(a) of the Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States, Mexico and Canada under Article 302(3) of the North American Free Trade Agreement (''the NAFTA''). This notice opens the second round of consideration for accelerated tariff elimination under the NAFTA, and describes the procedure for filing petitions. The closing date for filing petitions requesting consideration is June 13, 1997. The three NAFTA governments will announce the products being provided accelerated reductions on or before December 15, 1997, with implementation planned for early 1998.

FOR FURTHER INFORMATION CONTACT: Office of Western Hemisphere Affairs, Office of the United States Trade Representative, Room 522, 600 17th Street, N.W., Washington, D.C. 20508; telephone: (202) 395–3412; fax: (202) 395–9675.

SUPPLEMENTARY INFORMATION: Annex 302.2 of the NAFTA establishes the timetable for the staged elimination of tariffs on all dutiable goods traded between Mexico and the United States and most dutiable goods traded between Mexico and Canada. Duties on goods traded between the United States and Canada remain subject to the tariff elimination timetables agreed to under the U.S-Canada Free Trade Agreement (CFTA). All goods covered by the tariff elimination provisions agreed to by the United States and Canada will be duty free as of January 1, 1998.

Article 302(3) of the NAFTA provides that, at the request of any party to the NAFTA, the parties shall consult to consider accelerating the elimination of customs duties set out in the Agreement. Section 201(b) of the Act grants the President, subject to certain consultation and layover requirements, the authority to proclaim any such agreed acceleration of the elimination of a U.S. duty. The Statement of Administrative Action (SAA) which was approved by the Congress along with the NAFTA and Sec. 201(b)(2) of the Act state that the President may not consider a request to accelerate the staging of duty reductions for an article for which the U.S. tariff phaseout period is more than 10 years if a request for acceleration with respect to such an article has been considered and denied in the preceding 3 calendar years. (That is, a request denied in 1997 cannot be reconsidered before 2001.) However, no such products were considered during the first NAFTA tariff acceleration round. No decision has been made at this time regarding a third round.

Based on the above, and on the experience gained in conducting the prior round, the following procedures will apply to the second tariff acceleration round, subject to future modifications.

I. Articles Which May Be Petitioned

Petitions for accelerated tariff elimination may be filed only for articles for which the duty is currently scheduled to be eliminated after January 1, 1998, as noted in Annex 302.2 of the NAFTA, and modified by the first tariff acceleration round and any addition tariff reductions implemented by each of the parties. Requests may be made to the United States government with respect to trade in originating products between the United States and Mexico. As noted above, all applicable trade between the United States and Canada will be duty free on January 1, 1998, that is, before the conclusion of the second tariff acceleration round. Therefore, no U.S.-Canada requests will be considered. In addition, no U.S.-Mexico requests will be considered for products with tariff elimination currently scheduled for January 1, 1998. Finally, requests for elimination of duties between Mexico and Canada can be requested through the United States government only when U.S.-Mexico duties are also subject to that request. Requests for accelerated duty elimination on trade solely between Mexico and Canada should be made to the governments of Mexico or Canada.

USTR will generally not act on a petition unless most U.S. producers of that particular product consider the request for acceleration to be non-controversial. Petitions may request acceleration of reductions by one or all of the NAFTA parties. Normally, the acceleration of the elimination of tariffs will be pursued on a reciprocal basis. Since the consultations will be trinational, petitions requesting acceleration by other than all parties must note the reasons for excluding any party.

Regarding Products Subject to Petitions Filed in 1994

(1) Products considered for, but not granted, accelerated reductions are subject to the limitations noted above. If met, petitions submitted in 1994 can be considered in this second round. However, the NAFTA parties will consider petitions on previously rejected requests only when there is evidence that conditions have changed sufficiently since the prior decision to merit reconsideration. As for any other request, petitioners must file new, complete, petitions to have such requests considered.

(2) Products subject to petitions filed in 1994 but *not* considered in the first round can be considered in the second round, if they will continue to be dutiable after January 1, 1998. However, due to the time elapsed since these petitions were received, petitioners are asked to file new petitions to confirm their continued interest and provide updated information.

II. Timetable

Petitions requesting consideration of accelerated duty elimination are due at USTR by 5:00 p.m., June 13, 1997. USTR will then published a preliminary list of the products to be presented to Mexico and request comments on this list as specified in that notice. Trinational meetings will begin shortly thereafter, with the announcement of the agreed package of accelerated tariffs to be made by December 15, 1997. Implementation under the applicable domestic procedures will then begin in each country, and should be completed in approximately 90 days. Advice from the United States International Trade Commission (USITC) and the Trade Advisory Committee will also be requested for all products on the preliminary list.

III. Format of Petitions

A model petition format and the information requested is shown in the annex to this notice. In order to be considered, petitions for accelerated tariff eliminations must conform to the model format and contain all essential data elements.

If a submission contains business confidential material, the specific material must be so identified in order to receive confidential treatment. In such cases, both a non-confidential and a business confidential version of the petition, each clearly marked as to its status, must be submitted. None of the information provided in sections A and B of the petition may be designated business confidential.

A copy of the petition format and this notice can be obtained from the Office of the Western Hemisphere, Office of the United States Trade Representative (USTR), Room 522, 600 17th Street, NW, Washington, D.C. 20508, telephone (202) 395–3412. Petitioners are encouraged to submit requests to USTR via the Internet or on a properly formatted computer disk. The form, and instructions for electronic submissions can be obtained, beginning May 20, 1997, from the USTR Internet home page: www.ustr.gov under the ‘‘What's New’’ heading.

IV. General Instructions

1. Each harmonized tariff system (HTS) number must have a separate petition; that is, each petition may request accelerated tariff elimination for a single product only. All information contained in a petition must pertain solely to the single product that is the subject of the petition. A single petition requesting acceleration on more than one product cannot be considered.

2. Product description (number 5). Petitions for acceleration of an entire 8-digit tariff subheading must provide the HTS descriptions for the United States and Mexico, and for Canada when relevant. Whenever possible, petitions should be for the entire 8-digit tariff line. However, petitions for acceleration for only certain products classified within an 8-digit subheading can be considered when necessary. Such petitions must provide the following additional information in Section C:

a. A full and complete description of the article;

b. The article's principal use in the United States;

c. The reason the full tariff line should not be considered;

d. The article's commercial, common or technical name or designation; and, as appropriate:

(1) Illustrative literature;

(2) The relative quantity by weight of each component materials for articles composed of two or more materials;

(3) Chemical analysis, flow charts, CAS number, etc.;

e. Any other information that may assist in determining the appropriate tariff classification of the article;

f. A statement of the reason(s) the petitioner believes that the article is classified in the 8-digit tariff subheading which the petitioner has entered in number 7 of the petition (e.g., outstanding classification by Customs or a classification by Customs on liquidated entries of the article in question) and;

g. A copy of any rulings issued by the U.S. Customs Service or the appropriate authorities in the Government of Mexico specifying the classification of the petitioned product in the Harmonized Tariff Schedule of the United States, and the Tariff Schedule of Mexico.

h. A statement of the reasons why accelerated duty elimination should be considered for only a portion of the 8-digit tariff subheading. Petitions for products within an 8-digit which do not provide the above information cannot be considered. Brand names or trademarks are not acceptable as product descriptions for this purpose and their use may result in rejection of the petition.

3. 8-digit tariff subheading (number 6). Petitions for acceleration of tariff elimination under the 1997 U.S. and Mexican tariff schedules must provide the correct applicable 8-digit tariff subheading number for each of the tariff schedules. As noted above, not more than one 8-digit subheading in each tariff schedule must be listed in a petition. The tariff subheading is requested for Canada in the event Mexico and Canada consider acceleration. Commodity numbers contained in Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States, cannot be substituted for the number of the 8-digit tariff subheading in the United States, Mexican or Canadian tariff schedules. Petitions using Schedule B commodity numbers for this purpose cannot be considered. Petitioners are responsible for assuring that the products of interest are classified in the tariff subheading being petitioned. We recommend that petitions include the information described in paragraph 3 above on representative products for which the petitioner is seeking accelerated tariff elimination.

4. Petitioner/product relationship (number 7). At least one item must be checked. If item ''e'', ''j'' or ''o'' is checked, specify the relationship or interest that the petitioner has in the product.

5. Supplemental information (Section C). This section of the petition should be used to provide information supplementing that provided in numbers 1 through 11 (specify the relevant number(s) being supplemented), or any other relevant information that may assist in consideration of the petition.

6. Submission of petitions.

a. Electronic submissions: USTR prefers that petitions be submitted in electronic form, either interactively via the Internet, or by submission of floppy disk. If disks are being submitted, one hard copy of each petition should also be enclosed; if multiple requests are being filed, they may be submitted on a single disk, with a hard copy list of all the petitions by HTS number included. The form, and instructions for electronic submissions can be obtained, beginning May 20, 1997, from the USTR Internet home page: www.ustr.gov under the ''What's New'' heading. Technical questions regarding electronic submission may be made after May 20 by contacting the USTR computer operations office at (202) 395–3417 during business hours.

b. Paper submissions: Petitions must be type-written and submitted in 10 copies, in English, at the earliest possible date, but not later than June 13, 1997 to: Office of the Western Hemisphere, Office of the United States Trade Representative, Room 501, 600 17th Street, NW, Washington, D.C. 20508, ATTN: NAFTA Tariff Acceleration desk. Petitions received after the deadline cannot be considered.

V. Consideration of Petitions

All petitions received by June 13, 1997, and containing complete and correct information as required in this notice will be reviewed and a decision made as to which articles will be proposed to the Government of Mexico for possible accelerated tariff elimination. As noted above, petitions for articles on which the duty is currently scheduled for elimination on or before January 1, 1998 in Annex 302.2 of the NAFTA, as modified, cannot be considered.

Petitions not containing complete and accurate information required in numbers 1 through 11 of sections A and B cannot be considered.

Petitions not containing complete and accurate information required in numbers 1 through 11 of sections A and B cannot be considered.

Petitions for products previously considered for acceleration under the NAFTA will be considered only if USTR determines that circumstances have sufficiently changed to warrant reconsideration at this time. Such petitions should include information in Section C of the petition documenting such a change. Products considered in the first NAFTA rounds are listed in the **Federal Register** notice May 23, 1994, Volume 59, Number 98, at pages 26688 through 26690. Information on whether a product was considered in the first NAFTA product round may also be obtained from: The Office of the U.S. Trade Representative, NAFTA Acceleration Help Desk (202) 395–3412, or The U.S. Department of Commerce, Office of NAFTA (202) 482–0305.

Normally, the accelerated elimination of tariffs between the United States and Mexico will be pursued on a reciprocal basis. Petitions containing requests for the accelerated elimination of Mexican tariffs will be treated as applying equally to corresponding U.S. tariff treatment, and vice versa. Petitions requesting other than reciprocal acceleration must note the reasons for the exclusion of the other party.

Peter F. Allgeier,

Associate U.S. Trade Representative for the Western Hemisphere.

Model Petition To Accelerate the Removal of Tariffs Under the North American Free Trade Agreement

1997 Round Form for U.S. Petitioners

Section A. Petitioner Identification

1. Petitioner: ____________________________
2. Address: ______________________________
3. Contact Person: _________________________
4. Telephone Number: (______) ___________

Section B. Product Identification and Tariff Information

5. Product Description: ___________________
____

(Important: See paragraph IV.3 of General Instructions. Supplement in Section C, if necessary.)

6. The product is classified in the following 8-digit tariff subheading:
   a. _________ in the 1997 Harmonized Tariff Schedule of the United States
   b. _________ in the 1997 Tariff Schedule of Mexico
   c. _________ in the 1997 Customs Tariff of Canada

(Note: petitions cannot be accepted without this information.)

7. Petitioner/Product Relationship (check all that apply):
   a. __ Producer in the United States
   b. __ Importer in the United States
   c. __ Exporter in the United States
   d. __ Consumer in the United States
   e. __ Other, in the United States
   Specify: __________
   f. __ Producer in Mexico
   g. __ Importer in Mexico
   h. __ Exporter in Mexico
   i. __ Consumer in Mexico
   j. __ Other, in Mexico
   Specify: __________
   k. __ Producer in Canada
   l. __ Importer in Canada
   m. __ Exporter in Canada
   n. __ Consumer in Canada
   o. __ Other, in Canada
   Specify: __________
8. This petition:
   a. __—covers all products in the U.S. 8-digit tariff subheading
   b. __—does not cover all products in the U.S. 8-digit tariff subheading
   c. __—covers all products in the Mexican 8-digit tariff subheading
   d. __—does not cover all products in the Mexican 8-digit tariff subheading
   e. __—covers all products in the Canadian 8-digit tariff subheading
   f. __—does not cover all products in the Canadian 8-digit tariff subheading

(Important: If items ''b'', ''d'' or ''f'' are checked, the information required in paragraph 3 of the General Instructions for product descriptions of single products within an 8-digit subheading must be provided with this petition.)

9. Under the NAFTA, the duty is currently scheduled to be eliminated on January 1:
   For U.S. imports: __1999 __2000 __2001 __2002 __2003 __2004 __2005 __2006 __2007
   For Mexico imports: __1999 __2000 __2001 __2002 __2003 __2004 __2005 __2006 __2007
10. Accelerated removal is requested for:
   a. __ the United States duty on Mexico
   b. __ the Mexican duty on the U.S.

(Note: if the request is not made for both Parties, note reason for exclusion, such as current duty-free status.)

11. The petitioner requests elimination of the tariff/s:
   a. __ immediately without further staging
   b. __ with accelerated staging
   Specify: __________

Section C. Supplemental Information

(Use additional pages as necessary.)

Signature of person filing the petition: ______

____

Title or position: ________________________

Date: ______________________________

[FR Doc. 97–12406 Filed 5–9–97; 8:45 am]

BILLING CODE 3190–01–M

Corrections

Federal Register
Vol. 62, No. 91
Monday, May 12, 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 DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

Correction

In notice document 97–9736, beginning on page 18590, in the issue of Wednesday, April 16, 1997, make the following corrections:

1. On page 18590, in the second column, under **ADDRESSES:**, in the sixth line, ‘‘20350092000’’ should read ‘‘20350–2000’’.

2. On the same page, in the same column, under **FOR FURTHUR INFORMATION CONTACT:**, in the second line, ‘‘685096545’’ should read ‘‘685–6545’’.

3. On the same page, in the same column, under **FOR FURTHUR INFORMATION CONTACT:**, in the third line, ‘‘325096545’’ should read ‘‘325–6545’’.

4. On the same page, in the same column, in the second paragraph under **SUPPLEMENTARY INFORMATION:**, in the tenth line, ‘‘Circular No. A09130’’ should read ‘‘Circular No. A–130’’.

5. On the same page, in the same column, the heading, ‘‘**N05520095**’’ should read ‘‘**N05520–5**’’.

6. On the same page, in the third column, in the second paragraph under **SYSTEM LOCATION:**, in the fifth line, ‘‘21090092902’’ should read ‘‘21090–2902’’.

7. On the same page, in the same column, in the fifth paragraph, in the tenth line, ‘‘20395095720’’ should read ‘‘20395–5720’’.

8. On the same page, in the same column, in the sixth paragraph, in the eighth line, ‘‘70149097800’’ should read ‘‘70149–7800’’.

9. On page 18592, in the first column, in the ninth line ‘‘P0952390926’’ should read ‘‘P–5239–26’’.

10. On the same page in the same column, the heading ‘‘**N05520095’’ should read ‘‘N05520–5**’’.

11. On page 18593, in the second column, in the first paragraph, in the second line from the bottom, ‘‘P0952390926’’ should read ‘‘P–5239–26’’.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4200-N-59]

Notice of Proposed Information Collection for Public Comment

Correction

In notice document 97–11533 beginning on page 24499 in the issue of Monday, May 5, 1997, make the following correction:

On page 24499, in the second column, in the **DATES** section, ‘‘June 7, 1997’’ should read ‘‘July 7, 1997’’.

BILLING CODE 1505-01-D

Monday
May 12, 1997

Part II

Environmental Protection Agency

40 CFR Part 148, et al.

Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions; Final Rule

Second Supplemental Proposal on Treatment Standards for Metal Wastes and Mineral Processing Wastes, Mineral Processing and Bevill Exclusion Issues, and the Use of Hazardous Waste as Fill; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, and 271

RIN 2050 AE05

[FRL 5816–5]

Land Disposal Restrictions—Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions

AGENCY: Environmental Protection Agency (EPA, the Agency).

ACTION: Final rule.

SUMMARY: The Agency is finalizing treatment standards for hazardous wastes generated from wood preserving operations, and is making a conforming amendment to the standard for wastes from production of chlorinated aliphatics which carry the F024 hazardous waste code. These treatment standards will minimize threats to human health and the environment posed by these wastes. In addition, this final rule revises the land disposal restrictions (LDR) program to significantly reduce paperwork requirements by 1.6 million hours. This rule also finalizes both the decision to employ polymerization as an alternative method of treatment for certain ignitable wastes as well as the decision not to ban certain wastes from biological treatment because there is no need to classify these wastes as ''nonamenable.'' It also clarifies an exception from LDR requirements for de minimis amounts of characteristic wastewaters. Finally, this rule excludes processed circuit boards and scrap metal from RCRA regulation which is intended to promote the goal of safe recycling.

EFFECTIVE DATE: This final rule is effective on August 11, 1997 except §§ 148.18(b) and 268.30(b), which are effective on May 12, 1999.

ADDRESSES: The public docket for this rulemaking is available for public inspection at EPA's RCRA Docket, located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The regulatory docket for this final rule contains a number of background materials. To obtain a list of these items, contact the RCRA Docket at 703–603–9230 and request the list of references in EPA Docket #F–97–PH4F–FFFFF.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline between 9:00 a.m.–6:00 p.m. EST, toll-free, at 800–424–9346; (703) 412–9810 from Government phones or if in the Washington, DC local calling area; or 800–553–7672 for the hearing impaired. For more detailed information on specific aspects of the rulemaking, contact the Waste Treatment Branch (5302W), Office of Solid Waste (OSW), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; phone (703) 308–8434. For technical information on the treatment standards for wood preserving wastes, ask for Nick Vizzone; for information on paperwork reduction and clean-up of Part 268, call Rhonda Minnick at (703) 308–8771 or Nick Vizzone at (703) 308–8460. Contact Kristina Meson at (703) 308–8488 for information on the exclusions for scrap metal and shredded circuit boards. Call Pan Lee at (703) 308–8478 for information on the capacity analyses. For questions on the regulatory impact analyses, contact Paul Borst at (703) 308–0481. For other questions, call Sue Slotnick at (703) 308–8434.

SUPPLEMENTARY INFORMATION:

Availability of Rule on Internet

This rule is available on the Internet. Please follow these instructions to access the rule electronically: From the World Wide Web (WWW), type http://www.epa.gov/rules and regulations. In addition, several technical background documents contained in the docket supporting this rule will be available on the Internet at http://www.epa.gov/offices and regions/oswer.

Table of Contents

I. Background

In the 1984 Hazardous and Solid Waste Amendments (HSWA) of the Resource Conservation and Recovery Act (RCRA), Congress specified that land disposal of hazardous waste is prohibited unless the waste meets treatment standards established by EPA. HSWA requires that treatment standards must substantially diminish the toxicity or mobility of hazardous waste, so that short and long term threats to human health and the environment are minimized. The treatment standards are part of the Land Disposal Restrictions Program.

Today's final rule is one part of the collection of land disposal restrictions (LDR) rules known as ''Phase IV.'' They are the latest in a series of LDR rules that establish treatment standards for newly listed and identified wastes, and that resolve other hazardous waste matters.

EPA proposed the Phase IV rule in two proposed rules (60 FR 43654, August 22, 1995; and 61 FR 2338, January 25, 1996), and subsequently issued a Notice of Data Availability on Phase IV issues (61 FR 21418, May 10, 1996). The attached rule finalizes portions of those earlier proposals. Other proposed revisions are in a second supplemental proposed rule elsewhere in this **Federal Register**.

EPA estimates that the directly measurable benefits associated with the land disposal restrictions treatment standards in this rule are limited relative to the costs that may be incurred. Therefore, the relative priority of addressing these risks could be questioned. However, we do not believe, for this specific action, that a simple cost effectiveness measure alone provides a sufficient basis for decision-making. As discussed below, the preference for permanent treatment of hazardous wastes is part of the basic policy structure which Congress enacted when it amended RCRA in 1984, and reflects concern over the technological uncertainties regarding risks and long term protectiveness of land disposal and the intent to assure that waste management practices are protective for future generations.

The whole premise of the LDR legislation is that risks posed by land disposal of hazardous wastes are inherently uncertain to evaluate and that land-based units are incapable of long term containment. Land disposal units (such as landfills, surface impoundments, and waste piles) are engineered units that can and have failed in the past with significant consequences to human health and the environment. For this reason, Congress required that hazardous wastes be pretreated before disposal by ''treatment [which] should be the best that has been demonstrated to be achievable.'' Congressional Record of July 25, 1984 (S9178). The technology-based approach of the land disposal restrictions provides a measure of insurance against the potential for failure in these land based units.

Given these facts, and evident Congressional intent, EPA continues to believe that the LDR prohibitions and treatment standards are justified in many instances. EPA sets treatment standards that reduce toxicity and mobility of hazardous constituents (or require recycling), and EPA also requires that the treated wastes be placed in reasonably secure land disposal units. However, EPA does believe that, in some situations, the current LDR rules may not provide the optimum regulatory approach. In those situations, EPA will look to other mechanisms to address those relatively low risk scenarios.

II. Potentially Regulated Entities

Entities potentially regulated by this final rule vary according to the section of the rule. The following table breaks down the categories industries that may be regulated according to each major section. The table is not intended to be exhaustive, but rather to provide 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.

TABLE OF ENTITIES—POTENTIALLY AFFECTED BY THE PHASE IV FINAL RULE

Section of the rule	Category	Examples of entities potentially affected
Addition to 40 CFR § 268.40—Treatment standards for wood preserving wastes.	Wood Preserving Hazardous Waste Generators.	Any person that generates over 100kg of F032, F034, or F035.
	Hazardous Waste Treatment Facilities ..	Facilities that treat F032, F034, or F035.
Modifications to 40 CFR § 268.7—Waste Analysis and Recordkeeping.	Hazardous Waste Generators	Any person who generates over 100kg of prohibited hazardous waste, or over 1 kg of acute hazardous waste in a calendar month.
	Hazardous Waste Treatment Facilities ..	Facilities permitted under 40 CFR Part 270 for incinerators, surface impoundments, and/or land treatment facilities.
	Hazardous Waste Disposal Facilities	Facilities permitted under 40 CFR Part 270 for landfills, and/or injection wells.
Addition of §§ 261.4(a)(12) and 261.4(a)(13)—Exclusion from the definition of solid waste for excluded scrap metal and shredded circuit boards.	Scrap Metal and/or Circuit Board Generators.	Persons who generate scrap metal, as defined under 40 CFR § 261.1(c)(6) (e.g., Die Casters, Metal Stampers, Machining Parts).
	Scrap Metal Salvage and Storage Yards.	Facilities that store scrap metal, but do not generate or recycle.

TABLE OF ENTITIES—POTENTIALLY AFFECTED BY THE PHASE IV FINAL RULE—Continued

Section of the rule	Category	Examples of entities potentially affected
	Scrap Metal Recyclers	Facilities that process scrap metal as defined in 40 CFR § 261.1(c)(10).
	Circuit Board Shredders	Facilities that shred circuit boards.
Point of generation; Decision not to ban nonamenable wastes.	Hazardous Waste Generators	Any person who generates over 100kg of prohibited hazardous waste, or over 1 kg of acute hazardous waste in a calendar month.
	Hazardous Waste Treatment Facilities	Facilities that perform biological treatment in surface impoundments.

III. New Land Disposal Restrictions Treatment Standards for Wastes From Wood Preserving (Waste Codes F032, F034, and F035) and Revised Treatment Standard for Chlorinated Aliphatics Waste (F024)

A. Summary

EPA is promulgating UTS limits as the treatment standards for the hazardous constituents in wood preserving wastes F032, F034, and F035, as proposed. (See 60 FR 43654, August 24, 1995; 60 FR 546451, October 25, 1995; and 61 FR 21417, May 10, 1996.) In addition, EPA is establishing a compliance alternative for dioxin and furan (D/F) constituents in nonwastewater and wastewater forms of F032, namely allowing use of a method of treatment—combustion—for these constituents. Thus, if this method of treatment is utilized, combustion residues would not have to be analyzed for D/F constituents. The alternative is only available for F032 residues from units subject to the standards in Part 264 subpart O or Part 266 subpart H, or from interim status incinerators which have made a specific demonstration that they operate in a manner equivalent to a Part 264 or Part 266 combustion unit. EPA also is amending the treatment standard previously established for F024 wastes. EPA is adopting the alternative compliance standard for F032 as the standard for F024. The practical effect of this change will be to limit somewhat the type of facilities that can combust F024.

B. Determination of BDAT

1. General

EPA has determined that combustion (CMBST) represents BDAT for organics in nonwastewater forms of F032 and F034 (i.e., the treatment standards are based on the performance of combustion technology). For organics in wastewater forms of F032 and F034, EPA has determined that a single treatment technology or a normal wastewater treatment train can meet the treatment standards promulgated today. As explained in the *Final Best Demonstrated Available Technology Background Document for Wood Preserving Wastes—F032, F034, and F035* (Wood Preserving Background Document for this rule), EPA has determined that wastewater treatment technologies such as biological treatment, steam stripping, carbon adsorption, or combinations of these technologies can treat organics regulated in F032 and F034 to the concentration levels promulgated today. These wastewater treatment technologies are available to, or in use at, existing wood preserving facilities.

For metals in nonwastewater forms of F032, F034, and F035, EPA has determined that the promulgated treatment standards can be based on (slag) vitrification for arsenic and on stabilization for chromium (total). The treatment standard for arsenic also can be achieved using stabilization treatment (see the Wood Preserving Background Document). For wastewater forms of F032, F034, and F035, EPA has determined that treatment levels can be achieved by lime addition followed by sedimentation and filtration for arsenic, and by chemical precipitation followed by sedimentation for chromium. (Of course, since no method of treatment is required to be used under the promulgated treatment standards, any type of treatment other than impermissible dilution may be used to achieve these concentration levels.)

2. F032 Wastewaters

Some commenters felt that the limits proposed for D/F in F032 wastewaters, namely the existing UTS limits, were not achievable. Commenters felt that EPA's own wastewater characterization data showed that the D/F concentrations in untreated F032 wastewaters were orders of magnitude higher than the untreated concentrations in the wastewater samples used in establishing the UTS limits. They also emphasized that biological treatment normally removes D/F constituents in the order of 78% of influent pollutants and thus, may yield an effluent with higher concentrations than those proposed by EPA.

EPA has examined the available data on the characterization of F032, prevailing management practices for wastewaters as difficult to treat as F032, and for wastewaters managed by biological treatment systems. EPA acknowledges that the concentrations of D/F in F032 wastewaters, as generated, are much higher than those treated by the biological treatment system supporting the existing UTS limits for D/F. However, based on the available data on wastewater treatment practices at wood preserving facilities, EPA believes that prevailing wastewater treatment practices can be optimized or upgraded to meet the D/F limits promulgated for F032 wastewaters. As explained in the BDAT Background Document, pretreatment steps can be, and are, used to reduce influent concentrations to biotreatment units to levels comparable to those on which the treatment standards are based, and EPA believes the same level of performance is achievable for wood preservers. (See the wood preserving background document and the BDAT response to comments document for additional discussion on EPA's rationale and data review.)

Another commenter asked EPA to withdraw its proposal for the regulation of D/F constituents in F032 wastewaters. The commenter believes that the regulation of PCP and polynuclear aromatic hydrocarbons (PAH) can ensure the reduction of D/F in F032 wastewaters. The commenter also submitted data with regard to concentrations of D/F, PCP, and PAH analytes in two effluent F032 wastewaters treated by activated carbon adsorption. These data appear to support the commenter's statement that monitoring of PCP and PAHs may serve as a surrogate candidate for the reduction of D/F levels in these particular effluent wastewaters. However, EPA lacks data to determine if the alternative surrogate constituents proposed for regulation can also serve as surrogates for monitoring the treatment of D/F in wastewater treatment effluents resulting from other treatment technology trains that may achieve the proposed UTS, and has therefore chosen not to adopt this suggestion.

3. F034 Wastes

Some commenters objected to EPA's proposed regulation of arsenic and chromium in F034 wastes, but their arguments were not persuasive. One argument was that F034 wastes typically do not contain arsenic and chromium and that they should only be regulated if chromated copper arsenate (CCA) is used at the facility generating F034 at concentrations exceeding treatment standards. EPA's data supporting the listing of F034 wastes in fact show that arsenic and chromium are frequently present in F034. (See *Background Document Supporting the Final Listing for Wastes from Wood Preserving Processes,* November, 1990.) Further, EPA determined that these two metal constituents are toxic and that their concentrations in untreated F034 wastes also supported the listing of these wastes as RCRA hazardous waste F034. (See *Background Document Supporting the Final Listing for Wood Preserving Wastes from Wood Preserving,* November, 1990; 55 FR 50458–59, December 6, 1990; and 53 FR 53299–300, Table 13, December 30, 1988.) Because treatment of organic constituents in F034 may not reduce the mobility of these metals, EPA is promulgating treatment standards that will assure that the mobility of these metal constituents is reduced prior to disposal, consistent with a core LDR requirement to develop treatment standards which ''substantially reduce the likelihood of migration of hazardous constituents from the waste * * *''. RCRA section 3004(m)(1). Furthermore, EPA points out that treaters of this waste can address the monitoring of these metal constituents in their permit Waste Analysis Plans (WAP). See 55 FR at 22669, June 1, 1990; *Chemical Waste Management* v. *EPA,* 976 F.2d 2, 31 (D.C. Cir. 1992); cert. denied 113 S.Ct. 1961 (1993).

4. F035 Wastes

Other commenters were concerned with the achievability of arsenic limits in wastewater and nonwastewater forms of F035. One commenter was concerned that EPA was mandating the use of vitrification as opposed to setting a numerical limit. Other commenters felt that vitrification is an inappropriate technology for setting arsenic treatment limits and that EPA should set, instead, UTS limits that are based on the performance of stabilization technologies.

None of these commenters have submitted treatment performance data supporting their inability to meet the proposed UTS limits, nor have they documented that their waste will behave differently when treated by stabilization or vitrification practices. The treatment technology supporting numerical limits for arsenic in nonwastewater forms of F032 is vitrification. However, EPA believes that arsenic limits can also be achieved via stabilization based on treatment data supporting the promulgation of the UTS limit for arsenic (see *Final Best Demonstrated Available Technology (BDAT) Background Document for Universal Standards Volume A: Universal Standards for Nonwastewater Forms of Listed Hazardous Wastes*). In addition, today's promulgated treatment levels do not preclude the use of other treatment alternatives such as stabilization, as long as such alternatives do not constitute land disposal or impermissible dilution. As a result, EPA is promulgating treatment limits for arsenic as proposed.

C. Alternative Combustion Treatment Standard for Dioxins and Furans in F032

1. Today's Action

This notice establishes combustion (defined at 40 CFR 268.42, Table 1, CMBST) as an alternative compliance treatment standard option for D/F in F032. Combustion is the basis for the D/F numerical limits, and properly conducted combustion should effectively destroy D/F constituents, If this method of treatment is used to treat F032 in certain specified combustion devices, there is no need to monitor compliance with the D/F numerical limits established for D/F constituents. However, all other organic and metal constituents will require monitoring prior to disposal. This approach is patterned after EPA's promulgation of a similar alternative treatment standard for D/F in F024 (wastes from production of chlorinated aliphatics). See 55 FR 22580–81, June 1, 1990. EPA discussed this approach in detail in a Notice of Data Availability (NODA) that appeared in the **Federal Register** on May 10, 1996 (61 FR 21418).

In general, EPA is providing a method of treatment as an alternative to actual D/F measurement that will be equally protective, and will assure availability of effective treatment for these wastes. The alternative, namely not providing the alternative treatment standard, leaves open the real possibility of these wastes being refused treatment, an environmentally worse result. EPA also notes that its experience with F024 waste treatment, for which there is a parallel treatment regime, has been satisfactory: these wastes are effectively treated by combustion technology, and sufficient treatment capacity has remained available once EPA promulgated the alternative treatment standard which did not require analysis of D/F in treatment residues.

2. Background

EPA proposed numerical treatment standards for F032 constituents on August 22, 1995. Several members of the regulated community expressed concern that EPA's proposal to regulate D/F constituents in F032 may result in problems finding treatment facilities willing to accept the waste. D/F are very controversial hazardous waste constituents that often trigger public opposition if documented at any concentrations regardless of the estimated risks presented. D/F monitoring also adds significantly to monitoring costs. See generally, 55 FR at 22580–81. Commenters emphasized that owners and operators of combustion devices had informed them that their combustion facilities will not accept F032 if EPA requires the monitoring of D/F in combustion residues. Further, commenters noted that if combustion is conducted properly, analysis of D/F is unnecessary.

The American Wood Preservers Institute (AWPI) and the Penta Task Force asked EPA to consider establishing an alternative treatment standard that sets a method of treatment as an alternative to the numerical limits for D/F in F032.

The Penta Task Force submitted data to show that the concentrations of D/F in F032 are substantially lower than those EPA reported in the F032 Listing Background Document. They stated their belief, along with AWPI, that D/F in F032 should be regulated like D/F in F024.

3. Summary of Phase IV NODA for F032

EPA examined these new data and concerns and proposed in the NODA to codify combustion (CMBST) as an alternative method of treatment for D/F in F032. EPA also requested comments on potential regulatory controls on combustion devices to assure that D/F destruction is conducted only in well-designed and well-operated combustion devices. EPA proposed three regulatory suboptions for implementing a CMBST standard. One suboption was to merely apply the existing F024 alternative combustion treatment standard to F032 with applicable regulatory controls in Part 264, 265, or 266. The second suboption was to revise the alternative D/F standard for F024, and establish for F024 and F032, a CMBST standard alternative, that would limit the combustion of F032 and F024 to RCRA permitted or interim status combustion devices which have demonstrated the ability to achieve a dioxin toxicity equivalent (TEQ) air emission discharge limit of 0.2 ng/dscm. The third suboption was to revise the F024 standard, and to establish an alternative standard for F024 and F032 that limits the combustion of F024 and F032 to RCRA permitted combustion devices. (In all of these options, and in today's final rule, the restriction on types of devices applies only to facilities opting to comply with the D/F standard without analyzing treatment residues.)

4. Review of Major Comments on Phase IV NODA and Promulgation of A Modified Version of Suboption Three

The majority of commenters supported the proposed compliance alternative setting CMBST as a method of treatment for D/F. In addition, the majority of commenters preferred suboption 1 (i.e., allow combustion in a RCRA interim status or permitted device) to ensure that combustion is conducted in well-designed and well-operated devices. A significant number of commenters also were concerned that adoption of suboption 3 may have excluded the use of well-designed and well-operated interim status combustion devices operated under the Part 266 rules applicable to boilers and industrial furnaces.

The majority of commenters argued that it would be premature for the Agency to adopt suboption 2 whereby a D/F emission limit of 0.2 ng/dscm TEQ would be established given that the Agency has only recently proposed such an emission standard for hazardous waste burning incinerators, cement, and lightweight aggregate kilns under the maximum achievable control technology (MACT) rule. See 61 FR 17358 (April 19, 1996).[1] The Agency believes that this concern is warranted given that EPA has received substantial comments on whether that standard is appropriate for those devices and has not made a final decision as to an appropriate standard.

The Agency believes that suboption 3 (i.e., allow combustion of FO24 and FO32 only in RCRA-permitted devices), as proposed, was too restrictive. EPA agrees with the commenters that interim status boilers and industrial furnaces operated under Part 266 should qualify for the proposed alternative CMBST compliance standard as well. These devices are subject to interim status combustion controls which limit carbon monoxide (CO) or total hydrocarbon levels (THC) in combustion gases, thus ensuring that the devices operate under good combustion conditions. The standards also can include explicit control of D/F under specified conditions (see section 266.103 (c)(1)). Although these controls do not provide the explicit demonstration of destruction of toxic organics in the waste feed that the DRE (Destruction and Removal Efficiency) for permitted combustion devices standard provides, the Agency believes that they establish good combustion, and may, in some cases, provide even better assurance of operations under good combustion conditions than the bare DRE standard.

Accordingly, the Agency believes that it is not necessary to restrict burning to RCRA-permitted devices because boilers and industrial furnaces operating under interim status are required to operate under good combustion conditions which should ensure destruction of toxic organic compounds in the waste feed.

The Agency acknowledges that ensuring that the combustion device operates under good combustion conditions (i.e., either under a DRE standard or by limiting carbon monoxide (CO) and total hydrocarbon levels (THC) in stack gas) may not necessarily ensure control of D/F emissions. This is because D/F can be formed in the post-combustion zone of the device—in the duct work and particulate matter control devices that operate at temperatures above 350°F. Boilers and industrial furnaces operating under these conditions must comply with specific D/F emission standards. (See 40 CFR 266.103(c)(1) and 266.104(e).) In addition, under existing Omnibus permit authority, permit writers have the authority, if the permitting authority demonstrates that it is necessary to protect human health and the environment (RCRA section 3005(c)(3)), to impose operating requirements more stringent than those authorized by regulations. This authority could be invoked (assuming the requisite showing is made) to justify controls on permitted hazardous waste incinerators.

EPA currently lacks similar Omnibus permit authorities for incinerators regulated under Part 265, Subpart O. In addition, unlike the standards for interim status boilers and industrial furnaces, the interim status standards for hazardous waste incinerators do not contain controls on good combustion (i.e., CO or THC controls), a DRE requirement, or explicit standards for D/F. EPA is concerned, therefore, that the combustion of F032 and F024 in Part 265 incinerators may not consistently achieve the treatment objectives sought by the alternative combustion compliance treatment standard. As a result, EPA cannot support the promulgation of suboption 1 for incinerators operated under Part 265. (See also 265.352(a), forbidding combustion of the acutely hazardous D/F-containing wastes in interim status hazardous waste incinerators.)

Although EPA's finding here is that the interim status incinerator standards may be inadequate for qualifying for a CMBST treatment standard for D/F, EPA believes that on an ad-hoc basis, a site-specific determination can be made pursuant to 40 CFR Part 268.42(b) to extend the availability of a ''CMBST'' treatment standard to an individual interim status incinerator. The availability of a CMBST treatment standard to a facility combusting F032 or F024 in a Part 265 incinerator will require the accomplishment of a two-step process. One step is for the facility to demonstrate to a regional or state official that the combustion of D/F in F032 (or F024, if applicable) at the facility uses controls to assure good combustion and control of D/F. These would typically be the CO/THC standards and D/F standards found in Part 266. The second step is that the facility solicits from EPA's Headquarters an equivalent treatment determination under Part 268.42(b). (EPA believes both steps are necessary because normally some type of direct interaction with the Region or State with the facility is needed to evaluate performance of the combustion process, and the treatment equivalency administrative process remains an EPA Headquarters task.)

5. Revised Treatment Standard for F024 Wastes

The current F024 treatment standard requires CMBST as a method of treatment, which, under the definition at 268.42, Table 1, allows combustion in Part 265 Subpart O interim status incinerator (along with other types of combustion devices). Today's rule makes the treatment standard for F024 identical to today's alternative combustion standard for F032. The existing standard allows combustion in permitted units or interim status incinerators (Part 265 subpart O). The new standard would require that an interim status incinerator receive a

[1] Also available via Internet: ''http://www.epa.gov/epaoswer/cmbust.htm''.

determination of equivalent treatment under 268.42(b), as described for the F032 standard above. As described above, this restricts the burning to facilities with combustion controls that ensure proper destruction of D/F.

D. Soil and Debris Contaminated With Wood Preserving Wastes

1. Summary of Comments

Several commenters asked EPA to revise its policy that media contaminated with hazardous listed wastes is subject to the treatment standard for the contaminated waste, and to set instead risk-based treatment levels. They asked EPA to delay the applicability of the Phase IV final rule until the Hazardous Waste Identification Rule for contaminated hazardous media is promulgated in order to lessen potential disruptions to ongoing remediation activities. In addition, other commenters argued that the proposed treatment standards for organics and D/F were unachievable by remediation technologies.

2. LDR Requirements Do Apply to Contaminated Media

Commenters stated that hazardous media should be exempt from LDR requirements until EPA finalizes HWIR for contaminated media. This issue was settled in the Phase II final rule (50 FR at 47986–7, September 19, 1994) if not before, and it is not being reopened in this final rule.

3. Technology-versus Risk-based Treatment Limits

The principal objection to the proposed treatment standards was that the values do not reflect risk, that is, the standards are based on performance of a treatment technology rather than on assessment of risks to the human health and the environment posed by the waste. The question of technology-versus risk-based treatment standards has been raised throughout the development of the land disposal restrictions program. The Agency is not reopening this issue in this final rule. See, instead discussion in the Phase II final rule (59 FR at 47986, September 19, 1994). EPA does specifically find, however, that the treatment standards for these contaminated media are not established below levels at which threats to human health and the environment are minimized. In part, this finding turns on the Agency's present inability to quantify this level. In addition, for these wastes, the presence of extremely toxic hazardous constituents (arsenic, D/F, PCP), plus the widespread contamination already caused by past land disposal of these wastes (see, e.g. the background documents to the Listing rules for F032, F034, and F035) warrant treatment which effectively destroys, removes, or immobilizes hazardous constituents to the promulgated levels.

4. UTS Limits and the Performance of Remedial Treatment Technologies

The third issue raised by the commenters is whether or not the UTS limits promulgated for organics can be achieved by all remediation technologies currently being used at wood preserving facilities. The UTS limits promulgated for organics and D/F regulated in nonwastewater forms of wood preserving wastes are based on the performance of (and are routinely achievable by) combustion technologies. EPA does not have to set treatment standards that are achievable by all, or even several, treatment technologies. The treatment limits promulgated for D/F constituents in nonwastewater forms of F032 are based on the combustion of solids, liquids, and soils contaminated with D/F constituents, namely acutely hazardous wastes F020, F022, F023, F026, and F027 (see 51 FR 1733, January 14, 1986). EPA's existing technical guidance documents describing technological options for treating contaminants found at wood preserving facilities often recommend incineration as a viable technology for cleaning up ''hot spots'' of organics and D/F contaminants. These guidance documents also emphasize that incineration is usually able to treat below cleanup levels and LDR treatment limits. (See *Presumptive Remedies for Soils, Sediments, and Sludges at Wood Treater Sites,* Directive 9200.5–162, NTIS #PB–95–963410; *Technology Selection Guide for Wood Treater Sites,* EPA 540–F–93–020 or Pub.9360.0–46FS; and *Contaminants and Remedial Options at Wood Preserving Sites,* EPA/600/R–92/182.)

Available data on the performance of noncombustion technologies such as thermal desorption and chemical dehalogenation also do not necessarily support the commenters' claim that other remedial technologies will fail to meet the treatment limits promulgated today. Based on the available information, EPA believes that chemical dehalogenation (for D/F and chlorinated organic constituents) and thermal desorption (for organics and D/F constituents) generally can be optimized to meet the UTS limits promulgated today. (See Wood Preserving Background Document and Technical Guidance documents cited above.) Furthermore, it may be necessary to use two or more treatment technologies to achieve the limits, as EPA's Technical Guidance documents point out. This is, however, a site-specific determination, and the ability of a treatment train to meet or fail UTS or cleanup limits can only be assessed through the findings of a feasibility study.

IV. Improvements to the Land Disposal Restrictions Program

A. Significant Reduction in LDR Paperwork

Summary: The LDR regulations heretofore required hazardous waste handlers to include LDR notifications with each shipment of waste sent to treaters or disposers. Today EPA is amending the rule to require only a one-time notification, rather than with each shipment of hazardous waste. The one-time notification would apply to shipments of all restricted hazardous wastes, and so would include lab packs. No new notification would be required unless there were a change in the waste, process, or receiving facility. This amendment will save approximately 1,630,000 hours spent by the private sector on paperwork. EPA is also promulgating other paperwork reduction actions, as proposed.

1. Background

In January 1995, EPA announced a goal to reduce the reporting and record keeping burden imposed by its regulations by 25 percent by June 30, 1996. This announcement initiated implementation of one of the reinvention projects set forth in the President's March 16, 1995, report, ''Reinventing Environmental Regulations.'' The baseline from which the 25 percent reduction was to be calculated was the reporting and record keeping burden hours as described in the Information Collection Request (ICR) documentation as of January 1, 1995.

2. Discussion of Specific Paperwork Changes

The LDR program imposes a significant reporting and record keeping burden that is being decreased significantly by changes being made in today's rule. It is estimated that the changes being made today result in a reduction of over 1.6 million hours per year of paperwork burden. Furthermore, these changes are not likely to compromise the protectiveness or enforceability of the LDR regulations.

Most commenters on this issue supported the proposed paperwork changes. Almost all commenters addressing this issue agreed that the proposed changes made sense, and that it would be beneficial to the regulated community to reduce the paperwork burden. A few commenters expressed concern that the reductions in LDR paperwork could be an incentive for mismanagement of hazardous wastes. The Agency acknowledges that although the potential for mismanagement is real, inspection and enforcement efforts have been, and will continue to be, a disincentive to facilities to provide false or misleading information about the hazardous wastes at their sites. This disincentive is believed to be far more important than the frequency with which the regulated community must create notification and certifications. The Agency, therefore, is promulgating the paperwork reductions despite this concern.

Much of the language specifying what must be included on LDR notifications has been rewritten to include reductions in paperwork burden and to make it easier for the regulated community to understand the requirements to which it must adhere. Rewriting this section has resulted in the renumbering of the regulatory paragraphs. The new numbering for this section is used in this discussion. Also, the generator paperwork requirements are consolidated into a table at § 268.7(a)(4).

Under the requirements of § 268.7(a), generators managing restricted hazardous wastes must determine whether their wastes meet the applicable treatment standards at the point of generation, or are otherwise exempt from those standards. Generators then must notify, in writing, either the treatment or disposal facility about their waste. The Agency is changing the notification requirement under § 268.7(a)(2) from one requiring a notice accompany each waste shipment to one allowing an one-time notification that would accompany the first waste shipment and would also be placed in the generator's files. If a generator repeatedly generates wastes which do not meet the applicable treatment standards, but the composition of these wastes, or the process generating the wastes, or the treatment facility receiving the wastes does not change, then the generator is only required to submit a one-time notification to the receiving treatment facility and to place a copy in their files. If the waste, process, or the receiving treatment facility changes, the generator is required to send a new notice to the receiving facility, and place a copy of this new notice in their files. One commenter stated that the concept of what constituted a change in one's waste was vague and should be clarified so that a new notification would be required only when a change in the waste affects the determination of which treatment standards apply. The Agency agrees that only when a change in the waste affects the determination of which treatment standards apply must the generator create a new LDR notification.

The Agency proposed that the one-time notification requirement would not apply to lab packs. Under the LDR program, a generator of a lab pack can either meet the treatment standards and paperwork requirements for all the hazardous wastes included in the lab pack, or meet the streamlined lab pack requirements of § 268.42 and the paperwork requirements of § 268.7(a)(9) (old § 268.7(a)(8)). Several commenters disagreed with the proposed approach, stating that while lab packs can be highly variable in hazardous waste content, there are instances where routine and consistent lab packs are shipped by generators on a regular basis. It was also pointed out that if the lab pack generator decided to meet the treatment standards of each waste in the lab pack rather than the § 268.42 alternative lab pack standards, it would be allowable to produce a one-time notification for each waste the lab pack contained. Therefore, it did not seem equitable to make a lab pack generator that chose to use the alternative lab pack standards produce a notification for each shipment, while a lab pack generator meeting the treatment standards for each hazardous waste in the lab pack could produce one-time notifications for each waste, so long as their waste, process or receiving facility did not change. Therefore, EPA has decided to change its proposed approach, and is including generators of lab packs in the one-time notification provisions of this final rule.

Furthermore, the lab pack notification requirements of § 268.7(a)(8) are streamlined in today's rule to include only the requirements of §§ 268.7(a)(2), 268.7(a)(6), and 268.7(a)(7). This is possible because the alternative treatment standard for lab packs specifies a method of treatment rather than concentration levels that would have to be monitored after treatment. There is, therefore, no need to know whether the wastes in the lab packs are wastewaters or nonwastewaters or are hazardous debris (these are the data items being deleted from the lab pack notification).

In § 268.7(a)(3), the Agency is changing the notification requirement so that a generator whose waste meets the appropriate treatment standards as generated is only required to submit a one-time notification and certification to the receiving facility. The requirements for this one-time notification and certification are much the same as those discussed above.

In § 268.7(a)(5), EPA is removing the requirement that generators treating on-site in tanks or containers have to submit waste analysis plans to States and Regions. Instead, the plans must merely be kept in their on-site files, as proposed.

The Agency is changing the record retention time period in § 268.7(a)(8) from five to three years, in order to make LDR requirements consistent with other RCRA record retention periods.

Under § 268.7(b)(4), the treatment facility is only required to submit a one-time notification and certification to the receiving facility, rather than submit one with each shipment of waste. A copy of the notification and certification must be kept in the treatment facility's files. If the waste, treatment system, or the receiving land disposal facility changes, the treatment facility must send a new notification and certification to the land disposal facility, and place a copy of these records in their files. Furthermore, the treatment facility notification requirements have been consolidated into a table at § 268.7(b)(4).

Finally, the Agency wishes to clarify that any records kept in connection with the LDR program may be stored electronically, eliminating the need to actually maintain paper copies. EPA wants to encourage electronic storage of LDR notifications. However, because of the complex issues involved in electronic data interchange (EDI), EPA cannot at this time include standards for electronic storage of LDR notifications in this final rule. The Agency may develop those standards at a future date. Until such general standards for allowing electronic storage of information are developed, EPA would note that it has, on one occasion, confirmed that the use of an image scanning system developed by Safety Kleen Corporation was sufficient to meet hazardous waste manifest recordkeeping requirements (see attachment to the letter to Catherine A. McCord in the docket). This system was used to scan, store, and retrieve images of original hazardous waste manifests with handwritten signatures. Although the letter confirmed only that Safety Kleen's system met these requirements, the Agency noted that similar systems used by others might also be able to meet RCRA requirements.

B. Clean-up of LDR Requirements in 40 CFR 268

EPA is rewriting portions of the LDR regulations to help the regulated community understand better what they are required to do to comply with today's rule. Clean-up tasks such as removing extraneous cross references, eliminating unneeded language, removing unneeded appendices, and other similar actions have been taken to eliminate confusion for the regulated community. A noteworthy change is the elimination of the California List requirements that were promulgated in 1987, because they have been superseded by more specific treatment standards. In addition, a clarification has been made at 40 CFR 268.1(e) that the *de minimis* provision applies to characteristic wastes as well as commercial chemical products and intermediates.

1. Section 268.1

Section 268.1(e)(4) is clarified so that the *de minimis* provision applies to minor losses of characteristic wastes as well as to minor releases of commercial chemical products and intermediates. EPA actually made this clarification already in the Phase III final rule (see 61 FR at 15597), but inadvertently omitted it from the Phase III withdrawal notice (see 61 FR 15662). The withdrawal notice should have removed paragraph 268.1(e)(4)(ii) only, because it dealt with the special *de minimis* provisions for characteristic wastes being injected into Class I injection wells (and thus, subject to the Land Disposal Program Flexibility Act of 1996, the impetus for the withdrawal notice. See 61 FR 15661). A typographical error made it appear that the entire paragraph (e) was being withdrawn, which was not the intention of the Agency. Therefore, today's regulatory language contains the text of 268.1(e) in its entirety, and clarifies that the *de minimis* provision applies to characteristic wastes.

2. Section 268.4

Section 268.4(a)(2)(iv) is changed to read, ''Recordkeeping. The sampling, analysis, and recordkeeping provisions of §§ 264.13 and 265.13 apply.'' Referencing the §§ 264.13 and 265.13 requirements in § 268.4 clarifies that there are no additional recordkeeping requirements at § 268.4; the general facility recordkeeping requirements apply, thus the LDR program does not add additional burden.

3. Section 268.5

The Agency proposed to amend § 268.5(e) so that an applicant could apply for and be granted additional time (up to one year) when first applying for a case-by-case extension of the effective date. Commenters argued, however, that it would be inappropriate for EPA to grant what would be, in effect, a ''two-year'' case-by-case capacity variance. Some commenters stated that the proposed change would hinder necessary treatment capacity from being brought on-line expeditiously, and that requiring a renewal application for a second-year extension allows the Agency to evaluate whether the applicant has made a good-faith effort to develop or locate hazardous waste treatment capacity. The Agency is persuaded by the commenter's concerns and is, therefore, not making the proposed change to § 268.5. As has always been the case in the LDR program, case-by-case extension applicants must make a separate application for a renewal of their case-by-case extension if the initial one-year period is not sufficient to develop treatment capacity.

4. Section 268.7

In section 268.7(c)(2), the sentence, ''* * * test method described in appendix I of this part or using any methods required by generators under § 268.32 of this part * * *'' is changed to read, ''* * * test method described in 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,' EPA Publication SW–846.'' Specific reference to EPA Publication SW–846 for the Toxicity Characteristic Leaching Procedure gives the regulated community a more direct reference for details of the test method.

5. Section 268.9

In § 268.9, paragraph (a) has been clarified to better describe how wastes should be identified for purposes of the LDR program when they are both listed and characteristic hazardous wastes.

In § 268.9(d)(1)(ii), the language has been edited to clarify that if all underlying hazardous constituents reasonably expected to be present in a characteristic waste will be monitored, then the generator need not list any of them on the LDR notification. If, on the other hand, a subset of all underlying hazardous constituents will be monitored, they must be included on the LDR notification.

6. References to Section 268.32

References to § 268.32 and RCRA 3004(d), California List wastes, are removed, because the treatment standards for the these wastes have been superseded by subsequent treatment standards. See generally 55 FR at 22675 (June 1, 1990) noting the general principle that California list prohibitions no longer apply once a more specific treatment standard applies, and noting the handful of situations where California list prohibitions would continue to apply. With the advent of the requirement to treat for underlying hazardous constituents reasonably expected to be present in characteristic wastes, there no longer are any situations where California list prohibitions could create an exclusive treatment standard. Consequently, there is no need to retain any reference to California list prohibitions in the regulations.

7. Sections 268.34–268.37

The information about the dates of waste prohibition provided in §§ 268.34–268.37 is removed because the treatment standards for the wastes are all now in effect, eliminating any need to retain the dates.

8. References to Sections 268.41–268.43

References in Part 268 to LDR treatment standards that have previously been found in tables in §§ 268.41, 268.42, and 268.43, are changed to refer to the consolidated table in 268.40.

9. Appendices

Appendix I is removed and reserved because the TCLP test method reference to SW–846 will be incorporated into the text of the regulatory language.

Appendix II to Part 268 is also removed and reserved because it incorrectly refers to treatment standards in §§ 268.41, 268.42, and 268.43 (they are now in § 268.40); furthermore, there is no longer a need for a reference to the solvent treatment standards.

Appendix III is removed and reserved because the California List treatment standards have been superseded by Universal Treatment Standards plus the requirement to treat underlying hazardous constituents in characteristic hazardous wastes. Thus, there is no need for a listing of halogenated organic compounds under the California List.

Appendix VI is amended to clarify that land disposed characteristic wastes that also contain underlying hazardous constituents must be treated not only by a ''deactivating'' technology to remove the characteristic, but also treated to achieve the Universal Treatment Standard for underlying hazardous constituents.

Appendix VII has been updated to include all the effective dates of all surface disposed hazardous wastes for which there are treatment standards. Likewise, Appendix VIII has been updated.

Appendix X is removed and reserved because it summarized paperwork requirements that are clarified in tables in today's rule at sections 268.7(a) and (b).

The Agency is committed to identifying new ways the LDR program can be simplified, and will continue to seek additional opportunities for such streamlining efforts in the future.

C. Clarifications of Point of Generation

Summary: EPA is identifying the point of generation of wastes from boiler cleanout and for certain ignitable wastes treated in tanks. The significance of this action is to define the point at which a determination is made as to whether or not the LDR prohibitions attach to the wastes generated from these activities. In some cases, the broader question of whether a hazardous waste is even generated also can be presented. A waste which is not identified or listed as hazardous at the point LDR prohibitions would attach, the so-called ''point of generation'' is not prohibited from land disposal. Conversely, if a waste is hazardous (i.e. identified or listed) at that point, LDR prohibitions typically do attach notwithstanding that the waste may no longer be ''hazardous'' at the point it is land disposed. EPA is not finalizing options discussed in the Phase III LDR rule (60 FR 11715, March 2, 1995) which discussed more far-reaching alternatives for defining the point at which LDR prohibitions can attach, but is issuing interpretations applicable to several discrete fact situations involving questions implicating this issue.

1. General Discussion

Since November 1986, EPA has required determinations as to whether LDR prohibitions attach to be made at the point when hazardous wastes are generated (51 FR 40620). This issue took on critical import in the so-called Third Third rule when EPA addressed the issue of treatment standards for wastes that exhibit a hazardous waste characteristic, and whether LDR prohibitions could apply to wastes that initially exhibit a characteristic but no longer do so (i.e. are ''non-hazardous'' in that they are no longer identified or listed as hazardous) at the point they are land disposed. By adhering to the principle that LDR prohibitions attach at the point of waste generation, EPA maintained that these de-characterized wastes must still be treated to satisfy EPA-established treatment standards, notwithstanding that the wastes are no longer identified as hazardous. 55 FR at 22651–52. The D.C. Circuit sustained this interpretation as permissible in *Chemical Waste Management* v. *EPA,* 976 F.2d 2, 13–14 (D.C. Cir. 1992) cert. denied 113 S. Ct. 1961 (1993).

In the Phase III LDR rule, EPA solicited comment on the issue of possibly redefining the point at which LDR prohibitions attach. EPA presented three options: (1) when there are similar wastewater streams generated by similar processes; (2) when there are waste streams from a single process; and (3) at a point of aggregation called ''battery limits.'' 60 FR 11715–717.

EPA considered these options because of the potential reach of the *Chemical Waste Management* opinion on generally successful wastewater management operations carried out pursuant to the Clean Water Act (i.e. treatment of aggregated wastewaters, some of which at one time exhibited a hazardous waste characteristic, pursuant to the National Pollutant Discharge Elimination System regulations for direct dischargers and pretreatment regulations for indirect dischargers) and the Safe Drinking Water Act (injection of decharacterized wastewaters into Class I non-hazardous injection wells under the Underground Injection Control program). However, on March 26, 1996, President Clinton signed into law the Land Disposal Program Flexibility Act of 1996. This Act provided, among other things, that decharacterized wastes managed in the types of wastewater management systems described above are no longer prohibited from land disposal so long as they are not hazardous wastes at the point they are land disposed. See generally 61 FR 61660 (April 8, 1996). As a result, EPA no longer believes there is any need to fundamentally reexamine the issue of where LDR prohibitions attach, and is not acting on these parts of the Phase III proposal.

However, the Agency has identified specific issues which may be considered ''point of generation'' issues, and which were not addressed by the Land Disposal Program Flexibility Act of 1996. In today's rule, EPA is addressing these specific issues. In each case discussed below, the Agency believes that the existing regulatory language is adequate, but clarification is necessary to prevent inappropriate interpretations. In making these interpretations, EPA is in some cases clarifying not only LDR applicability, but also generally where the determination as to whether a waste is hazardous must be made.

2. Boiler Cleanout

Power plant boilers are generally taken out of service and cleaned out once every 3 years (an average of one unit every year per facility). The cleaning process generally consists of an initial rinse of an acid cleaning solution and one or two rinses of water, generating an average of several hundred thousand gallons of acid wash/rinse water during each cleaning. The initial rinsate stream frequently is characteristically hazardous, exhibiting the TC for lead and chromium plus the characteristic of corrosivity.

The rinsate from this process is combined in a tank (or potentially, several tanks), usually temporary tanks brought on-site for the cleaning process, and then either discharged to surface impoundments prior to NPDES discharge (which commingled wastes would normally be exempt from RCRA Subtitle C by virtue of the Bevill Amendment) or directly fed to the boilers (a practice typically raising no issues of LDR applicability since no land disposal is involved). The issue in question is whether waste is considered generated after each rinse (acid and water) or at the end of the cleaning of the boiler when the rinsates have been combined; in other words, whether a determination is made for each rinse or for combined rinses. If the latter, then the rinsate would be hazardous waste (and as one consequence, potentially prohibited from land disposal) only if the combined rinsates exhibit a characteristic. Note that this is not strictly an LDR issue but presents the issue of whether a unit is regulated, in this case the tank that receives the rinsate.

The Agency is today clarifying that, specific to power plant boiler cleanout (and potentially, to other sporadic cleaning activities involving multiple rinses), generation is at the completion of the entire cleanout process. EPA believes that the mass loading of hazardous constituents from the process to the environment will not be affected by this determination, since a given amount of cleanout fluid and water is needed to complete the task in every case. Cf. 60 FR at 11716 noting that in such situations the underlying policy of the prohibition on dilution is not implicated. The agency views the cleanout of the boilers as one process and therefore does not consider the mixing of acid rinse and water rinse as impermissible dilution but as a single waste rinsate resulting from the single cleanout process. This waste is subject to regulation if it exhibits a characteristic, and subject to LDR prohibitions if it exhibits a characteristic and is going to be land disposed.

Today's clarification of the point of generation for boiler cleanout is limited to the situation in which the entire quantity of boiler cleanout rinses are contained in a single container so that hazardous waste and LDR determinations can be made based upon the commingling of all the rinses together. If, for example, a temporary tank is brought on-site but does not have sufficient capacity to handle the estimated several hundred thousand gallons of rinsate at once, the waste will likely have to be managed in separate loads. In such instances, the generator will still be required to make hazardous waste and LDR determinations for each separate load.

In adopting today's interpretation, EPA emphasizes that this type of cleaning is a batch operation occurring at widely-spaced intervals and involving temporary storage units (i.e. units that are removed from the premises after receiving the rinsate). Thus, the interpretation does not ever apply where a surface impoundment receives rinsate (see, e.g., *Chemical Waste Management* v. *EPA*, 976 F. 2d at 20 n. 4 (placement of any amount of characteristic waste in a surface impoundment makes the unit a regulated unit even if diluted to non-characteristic levels afterwards)). The interpretation also does not apply where there are permanent storage units involved. EPA also notes the evident point that if commingled rinses still exhibit a hazardous waste characteristic, the receiving tank is a regulated unit. Persons owning or operating such tanks have the same obligations as other generators to determine whether the waste exhibits a characteristic. See 262.11.

3. Sludge From High TOC (Total Organic Carbon) D001 Treated in Tank Based Systems

Many generators introduce waste into tank-based wastewater treatment systems where the resulting effluent is discharged to a POTW or to navigable waters, and the resulting wastewater treatment sludge is land disposed. At times, the waste that is placed in the tank-based system exhibits the ignitable characteristic. If the organic content of the wastewater is sufficiently high, the liquid waste—when first released—can meet the definition of nonwastewater found in 40 CFR Part 268.2(d).

The fact situation of concern can involve releases of high TOC ignitable wastes (which have a designated method of treatment), raising a question of whether that treatment standard for high TOC waste still applies to sludge generated from the wastewater treatment, even if the sludge is not itself high TOC ignitable waste.

It is EPA's view that the sludge in this situation should be viewed as a new treatability group. Put another way, the change of treatability group principle applies to situations where liquid wastes which are technically nonwastewaters are inadvertently placed in wastewater treatment systems in small quantities, for legitimate wastewater treatment, thereupon becoming wastewaters (as defined in 268.2(f) of the rules), and subsequently generating a sludge. See 58 FR 29871, May 24, 1993 (''In the Third Third final rule, EPA stated that for characteristic wastes, each change of treatability group in a treatment train marked a new point of generation for determining if a characteristic waste was prohibited from land disposal''). Consequently, because the sludge generated from the tank-based wastewater treatment system is a different treatability group from the wastewater from which it is generated, it would be considered to be a newly generated waste that should be evaluated at its point of generation to determine if it is hazardous, and if so, to then determine the appropriate LDR standard. (Also, please note that elsewhere in today's notice the Agency clarifies that the LDR *de minimis* exemption applies to small, inadvertent, releases of characteristic waste into wastewater treatment systems. As a practical matter, the *de minimis* exemption probably makes the question moot, because larger releases would not typically occur since they would likely interfere with wastewater treatment systems operation.)

4. Tank Rinsate

An issue arises when high-TOC ignitable wastes are stored in tanks, and some residue from these wastes remains in the tanks after the tanks are emptied and rinsed. The initial high-TOC ignitable waste is considered a nonwastewater with the treatment standard of CMBST (combustion) or RORG (recovery of organics). However, it is EPA's view that the rinsate from an empty tank (see 47 FR 1250, January 11, 1982, for guidance on empty waste tanks) is a newly generated wastewater and the high-TOC ignitable waste treatment standards do not attach. The rinsate must be evaluated at its point of generation, i.e., after the complete rinsing of the empty tank, and, if it exhibits a characteristic (or for some reason is listed independently) it is subject to treatment standards for that characteristic (or listed waste), rather than to the form of the waste from which it originated. This determination also applies to tanks that are used to collect wastewaters that are listed solely because they exhibit a characteristic (i.e., ignitability, corrosivity, or reactivity). EPA has stated that the existing rule, which provides that the dilution prohibition does not apply to wastewaters listed solely because they exhibit a characteristic, remains in effect. See 61 FR 15662.

D. POLYM Method of Treatment for High-TOC (Total Organic Carbon) Ignitable D001 Wastes

Summary: Today's rule establishes an alternative treatment standard of POLYM (polymerization) for high-TOC D001 wastes originally intended as chemical components in the commercial manufacture of plastics. In the polymerization treatment process (POLYM), the wastes are reacted to produce a chemically stable plastic in the same manner that commercial plastics are formed.

Discussion: The National Marine Manufacturer's Association contacted EPA with concerns that the May 1993 Interim Final Rule prohibited the practice of polymerizing excess polyester/styrene waste left over from the manufacture of modular shower stalls and recreational boats, among other things. EPA proposed to add polymerization (POLYM) to the set of required methods of treatment designated as BDAT for high-TOC ignitable (D001) wastes resulting from commercial polymerization processes. (60 FR 43679, August 22, 1995.) In these manufacturing processes, polyester/styrene reacts with methyl ethyl ketone (MEK) peroxide in a mold to form fiberglass. The ignitable waste polyester/styrene and MEK peroxide are the wastes of concern.

Small quantities of polyester/styrene monomers and MEK peroxide wastes can be reacted together to create fiberglass scraps. The scraps are inert and do not exhibit the hazardous waste characteristics of toxicity, ignitability, corrosivity, or reactivity. It is this practice that is referred to as polymerization for the purposes of this rule. The waste polyester/styrene monomers and MEK peroxide are currently regulated as high-TOC ignitable wastes (40 CFR 268.9) for which the current standard is treatment by CMBST (combustion) or by RORGS (recovery of organics) before land disposal. Neither CMBST nor RORGS allows for polymerization (as an exclusive treatment method) of high-TOC ignitable wastes. The Agency believes that the practice of polymerizing high-TOC ignitable waste polymers and monomers which are chemical components in the manufacture of plastics to a noncharacteristic inert mass adequately minimizes threats posed by disposal of the waste.

Today EPA is establishing POLYM as an alternative to CMBST or RORGS only for those high-TOC D001 wastes originally intended as chemical components in the commercial manufacture of plastics. POLYM requires the addition of the same polymerizing component or catalyst to the deactivated high-TOC D001 monomer stream intended for land disposal. POLYM is defined as ''formation of complex high-molecular weight solids through polymerization of monomers with high-TOC D001 nonwastewaters which are chemical components in the manufacture of plastics.''

EPA acknowledges that POLYM is not as effective at destroying all of the hazardous constituents of the materials as CMBST, the specified treatment standard for high-TOC D001 nonwastewaters. However, as defined, POLYM is the same process that is used in the actual manufacturing of plastic products such as water pipe and watercraft. To allow materials and a process to be used to construct water pipe and boat hulls, but prohibit the same process to be used to treat excess materials from those same processes does not make sense. In addition, the treatment of these chemical components using POLYM does convert an ignitable waste into a non-ignitable solid prior to disposal. Treatment occurs as the organic materials react to form a hard, inert material. Data submitted by the Composites Institute (see CI Memo 20 DEC 96) show that of the Appendix VIII constituents that are present in scrap uncured polyester resins, greater than 50% of the constituents are chemically converted by the polymerization process to form a part of the solid polymer. The remaining constituents are physically bound in the solid polymer matrix. The Agency believes that the low quantities of Appendix VIII constituents are sufficiently bound in the polymer matrix so as to minimize the threats posed by disposal of the noncharacteristic inert mass of scrap material. Below is a table showing the Appendix VIII constituents typically found in scrap uncured polyester resins:

Appendix VIII constituents	Maximum % in uncured resin
Methyl methacrylate	10.0
Antimony trioxide	3.0
Dibutyl phthalate	1.8
Butyl benzyl phthalate	1.05
Dimethyl phthalate	1.05
Methyl ethyl ketone peroxide	1.05
Dioctyl phthalate	0.75
Methyl ethyl ketone	0.09
P-benzoquinone	0.05
Maleic anhydride	(1)
phthalic acid esters NOS	(1)
phthalic anhydride	(1)

1 Trace.

Of the constituents listed in the table above, methyl methacrylate (a monomer) and methyl ethyl ketone peroxide (a catalyst), are chemically converted by the polymerization process and form part of the solid polymer.

EPA has decided to promulgate POLYM as a treatment standard rather than dealing with this issue on an individual basis via Determination of Equivalent Treatment (DET) petitions. As defined, equivalency need not remove every single molecule of constituents as the comparison technology to be considered equivalent. A similar issue involving high-TOC ignitable waste was addressed in a Determination of Equivalent Treatment (see DET IBM Essex Junction, VT). In that determination, the high-TOC waste was being treated to a slightly lower level than combustion. EPA did so, in part, because the treatment process was achieving very substantial destruction of hazardous constituents, and otherwise assuring that the special concerns regarding treatment of high-TOC ignitable wastes, such as interference with wastewater treatment systems, were not present. Similarly, in this instance, POLYM will destroy most of the hazardous constituents present and substantially immobilize those that remain. In addition, there is no possibility that this treatment method will interfere with wastewater treatment. Finally, EPA notes that the POLYM process appears to be as efficient as the other type of allowable treatment method for high-TOC ignitable wastes, namely RORGS (recovery of organics). Thus, EPA believes that the POLYM process evaluated here, along with CMBST and REORG, satisfies the section 3004(m) requirement that threats be minimized by treatment, and also could satisfy the equivalency standard in 268.42(b).

A number of commenters have solicited EPA to expand the definition of POLYM to include other types of polymerization processes. EPA appreciates the suggestions of the commenters. However, the Agency does not currently have enough data to evaluate the effects of expanding the definition. The Agency will consider the idea of expanding the definition of POLYM and solicits any data that commenters may have regarding additional methods of polymerization. Further, under 268.42(b), persons may petition the Agency for a determination of equivalent treatment for their specific polymerization process, if it is not included in today's rule.

Finally, in response to inquiries, EPA notes that POLYM treatment (or for that matter, most types of treatment) can occur at the site of generation without having to obtain a RCRA permit, provided treatment occurs in tanks, containers or containment buildings and these units comply with the substantive standards set out in 40 CFR 262.34 (standards for so-called 90-day generator tanks, containers, and containment buildings). See 51 FR at 10168 (March 24, 1986). EPA notes further that these standards for 90-day units may include compliance with the RCRA air emission standards set out in subparts AA, BB, and CC of part 265 (assuming the waste satisfies the applicability criteria set out in these rules). See generally, 61 FR at 59934–35 (Nov. 25, 1996) and 59 FR 62896 (Dec. 6, 1994). In addition, POLYM treatment occurring in units requiring a permit could be subject to the corresponding standards for air emissions found in Part 264 subparts AA, BB and CC.

E. Decision To Retain Current Treatment Standard for Multi-Source Leachate (Waste Code F039)

In the Phase IV proposed rule, EPA suggested that with the promulgation of the Universal Treatment Standards (UTS), there was no longer a need for the separate list of constituents for multisource leachate (F039) in the Treatment Standards for Hazardous Wastes table at 40 CFR 268.40. EPA proposed that F039 would be treated to meet all the UTS for the constituents at § 268.48, with the exceptions of fluoride, vanadium, and zinc, which are not underlying hazardous constituents.

Several commenters, however, pointed out that such an action would be more than a simplification of existing treatment standards. Rather, it would add several constituents to those for which EPA has set treatment standards in F039, without notice and an opportunity for comment. The Agency has reexamined the F039 list of constituents and agrees with commenters that changing F039 to cross reference the UTS constituents at § 268.48 would add regulated constituents to F039. This was not the intent of the proposed change. Therefore, the Agency is not promulgating any change to F039 in this final rule. The treatment standard levels for the hazardous constituents in F039 are identical to the UTS for those constituents, so retaining the current treatment standard constituent list for F039 does not decrease environmental protection in comparison with changing the standard.

V. Status of Proposed Provisions on Leaks, Sludges, and Air Emissions From RCRA-Equivalent Treatment of Decharacterized Wastewaters in Clean Water Act Surface Impoundments

In the August 22, 1995 Phase IV proposal, EPA discussed three options for ensuring that underlying hazardous constituents in decharacterized wastes were not released to the environment via leaks, sludges, and air emissions from surface impoundments in systems regulated by the Clean Water Act or Safe Drinking Water Act (60 FR 43655). (Decharacterized wastes are wastes which initially exhibited a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity when generated but are no longer characteristic). On March 16, 1996, the President signed the Land Disposal Program Flexibility Act of 1996, which provides that the wastes in question are no longer prohibited from land disposal once rendered nonhazardous. As a result, on April 8, 1996, EPA withdrew its treatment standards for these wastes (61 FR 15660). Today EPA announces that it will not finalize, at this time, the provisions for leaks, sludges, and air emissions that EPA proposed on August 22, 1995 (60 FR 43655–43677). Furthermore, the treatment standards for TC metal wastes discussed in the proposal accompanying today's rule do not apply to TC metal wastes if the characteristic is removed and the wastes are subsequently treated in a unit whose discharge is regulated by the Clean Water Act or, for underground injection wells, the Safe Drinking Water Act.

However, the Land Disposal Flexibility Act does mandate EPA to undertake a study to determine any potential risks posed by cross-media transfer of hazardous constituents from these surface impoundments. The findings of this study, begun by the Agency in April, 1996, may result in proposed regulations for these units, if risks are in fact found that would warrant such regulation.

VI. Decision Not To Ban Nonamenable Wastes From Biological Treatment

EPA is not prohibiting certain decharacterized wastes from land-based wastewater treatment systems on the basis of whether the constituents in those wastes are ''amenable'' to biological treatment. As is discussed in the April 8, 1996 partial withdrawal notice to the LDR Phase III final rule (61 FR 15660), the Land Disposal Program Flexibility Act of 1996, signed by the President on March 26, 1996, provides that the wastes in question are no longer prohibited from land disposal once rendered nonhazardous. Because they are decharacterized before they enter the impoundment, these wastes are no longer prohibited wastes under RCRA.

VII. Capacity Determinations for Wood Preserving Wastes

A. Introduction

This section summarizes the results of the capacity analysis for the wastes covered by this rule. For background information on data sources, methodology, and details of the capacity analysis for each group of wastes covered in this rule, see ''Background Document for Capacity Analysis for Land Disposal Restrictions, Phase IV—Wood Preserving Wastes (Final Rule).''

In general, EPA's capacity analysis focuses on the amount of waste to be restricted from land disposal that is currently managed in land-based units and that will require alternative treatment as a result of the LDRs. The quantity of wastes that are not managed in land-based units (e.g., wastewater managed only in RCRA exempt tanks, with direct discharge to a Publicly Owned Treatment Works (POTW)) is not included in the quantities requiring alternative treatment as a result of the LDRs. Also, wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate treatment technology) are not included in these quantity estimates.

EPA's decisions on whether to grant a national capacity variance are based on the availability of alternative treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantities of waste that will require either commercial treatment or the construction of new on-site treatment as a result of the LDRs. EPA attempts to subtract from the required capacity estimates the quantities of waste that will be treated adequately either on site in existing systems or off site by facilities owned by the same company as the generator (i.e., captive facilities).

B. Available Capacity

Available capacity was estimated for the three treatment technology categories: combustion, stabilization, and wastewater treatment that are expected to be used for the wastes in today's rule. (Numerous other types of treatment also can meet the treatment standards for much of these wastes, although the Agency did not find it necessary to estimate the available capacity of these treatments. See the Background Document for further information.)

1. Thermal Treatment

EPA estimates that there are less than 50,000 tons per year of soil combustion capacity, approximately 144,000 tons per year of commercial sludge/solid combustion capacity, and 886,000 tons per year of commercial liquid combustion capacity available for Phase IV Wood Preserving Wastes. This accounts for treatment facilities without updated permits for the newly listed wastes or that likely will not wish to accept the wastes for other reasons (e.g. dioxin/furan monitoring requirements, low BTU, or other undesirable waste characteristics).

2. Stabilization

EPA estimates that there are approximately 1.1 million tons of available stabilization capacity, with most of it able to meet the treatment requirements for the newly listed wood preserving wastes.

3. Wastewater Treatment

EPA estimates that there are approximately 37 to 47 million tons per year of available wastewater treatment capacity. The various treatment technologies that form the basis of this capacity are routinely able to meet the treatment standards of the wood preserving wastewaters.

C. Required Capacity and Comparison With Available Capacity

EPA estimates that very small quantities of wood preserving wastewater (approximately 440 tons of organic wastewater and 13,000 tons of inorganic wastewater) will require alternative treatment capacity in order to comply with the LDRs. EPA estimates that less than 10,000 tons of nonwastewaters (8,700 tons of organic nonwastewaters and 1,300 tons of inorganic nonwastewaters) will require alternative treatment as a result of the LDRs.

EPA believes that combustion, combustion followed by stabilization, or stabilization will meet the treatment standards for nonwastewaters of wood preserving wastes. For wastes with arsenic, although the basis of the treatment for arsenic is vitrification, EPA believes that the standard can also be met by stabilization. Also, in general, chemical precipitation will meet the treatment standards for the inorganic wastewater. EPA identified specific wastewater treatment technologies that support UTS for these wastes and concluded that the wastewater treatment practices at the wood preserving facilities can be optimized to meet the proposed limits. (Please see BDAT Background Document for details.) There is sufficient liquid and sludge/solid combustion capacity for both the organic wood preserving wastewaters and nonwastewaters. In addition, EPA believes that there is sufficient chemical precipitation capacity for the inorganic wastewater. Finally, ample stabilization capacity exists for the inorganic nonwastewaters. Therefore, EPA is not granting a variance for the newly listed wood preserving wastes.

Some commenters provided data on soil and debris contaminated with wood preserving wastes. The regulated communities are quite concerned about the availability of treatment capacity using established technologies as well as the potential for innovative technologies to provide additional treatment capacity. EPA has examined the available data and information submitted by commenters and from other sources such as Superfund Record of Decisions. The Agency estimated that combustion capacity available to treat soils and debris contaminated with newly listed wood preserving wastes is less than 50,000 tons per year. In contrast, EPA estimates that well over 100,000 tons per year of soil and debris may require additional combustion capacity. Furthermore, logistics issues may severely hamper the ability of site managers to obtain adequate alternative treatment in the near term. Therefore, given the lack of available capacity and other issues associated with soil and debris contaminated with F032, F034, and F035 wood preserving wastes, EPA is granting a two-year extension of the effective date for these wastes.

D. Mixed Radioactive Wastes

Despite the uncertainty about quantities of mixed radioactive wastes that will require treatment as a result of today's rule, any new commercial capacity that becomes available will be needed for mixed radioactive wastes that were regulated in previous LDR rulemakings and whose capacity extensions have already expired. Thus, EPA has determined that sufficient alternative treatment capacity is not available, and is granting a two-year national capacity extension of the effective date for radioactive wastes mixed with RCRA wastes for which standards are being promulgated today, including soil and debris.

E. Phase IV Wood Preserving Wastes Injected Into Underground Injection Control (UIC) Class I Wells Injected Into Class I Wells

EPA estimated the volume of waste regulated in today's rule that is currently injected into UIC wells. This volume is a conservative estimate based on highly complex non-segregable waste stream mixtures, and it may be that the actual volume injected is less. A very small volume of newly listed wood preserving wastes (F032, F034 and F035) may be injected into Class I Wells. These wastes are either injected at wells located at the site of generation, or are sent off-site for injection in commercial Class I wells.

These wells have existing no-migration determinations. However, even if an injection well has received a no-migration petition, it can inject a newly prohibited waste only if the waste is similar to wastes included in the initial no-migration petition. The new wastes must behave hydraulically and chemically in a similar manner to those already included in the initial petition demonstration such that they will not interfere with the containment capability of the injection zone and the location of the waste plume will not significantly differ from the initial demonstration. (See 40 CFR 148.20 (f) , and UIC Guidance No. 74.) Based on these principles, EPA has investigated whether the no-migration determination for the wells injecting these wood preserving wastes allow continued injection. If injection is not presently allowed due to the need to amend a petition, the well would not be providing any capacity, because none of these facilities operate treatment processes capable of achieving the treatment standard for these wastes.

EPA has determined that at least six commercial injection well facilities with no-migration petitions would be allowed to inject wood preserving wastewaters without needing to amend their petitions. The rationale for this determination is located in the RCRA docket. EPA has further determined that these wells have unused injection capacity exceeding the amount of wood preserving waste generated annually (EPA Regional communications in the RCRA docket). Thus, even if all wood preserving wastewaters presently injected would have to find new capacity, sufficient capacity exists. In addition, there is commercial wastewater treatment capacity that could accommodate some of this volume.

Based on this information, the Agency has reassessed its position since the proposed rule and decided not to grant a two-year national capacity extension of the effective date for wood preserving waste being injected at Class I facilities. As discussed above, there appears to be sufficient protective disposal capacity (i.e. approved no-migration disposal capacity) which can accommodate all of the currently-injected wood preserving wastewaters, even if all this wastewater will be diverted from injection wells currently used.

EPA notes further that commenters did not claim that there was insufficient capacity to manage these wastes. However, it should be noted that RCRA section 3004(h)(3) provides individual facilities opportunity to demonstrate that inadequate protective treatment or disposal capacity is available. Substantive standards are set out in 40 CFR § 268.5 and in UIC Guidance No. 69.

F. Summary of Variance Determinations

Table 1 lists each category of RCRA wastes for which EPA is today setting LDR standards. For each category, this table indicates whether EPA is granting a national capacity extension of the effective date for land-disposed wastes or injected wastes managed by UIC Class I injection wells.

TABLE 1.—NATIONAL CAPACITY EXTENSIONS OF THE EFFECTIVE DATE FOR NEWLY LISTED AND IDENTIFIED WASTES

Waste description	Surface-disposed wastes	Deep well-injected wastes
Newly Listed Wood Preserving Wastes (F032, F034, F035)	No.	No.
Soil and Debris Contaminated with Newly Listed Wood Preserving Wastes	Two-year.	N/A
Mixed Wood Preserving and Radioactive Wastes, Including Soil and Debris	Two-year	Two-year

VIII. Changes to Definition of Solid Waste to Exclude Processed Scrap Metal and Shredded Circuit Boards From RCRA Jurisdiction

Summary: As proposed on January 25, 1995 (FR 61 2338), EPA is today amending the definition of solid waste to exclude from RCRA jurisdiction two types of materials: processed scrap metal and containerized shredded circuit boards.

A. Processed Scrap Metal

1. Summary of Proposal

The Agency proposed the exclusion of processed scrap metal and shredded circuit boards being recycled from the Definition of Solid Waste in the January 25, 1996 proposed Phase IV LDR supplemental rulemaking. Currently, scrap metal being reclaimed is a solid waste, but completely exempt from RCRA Subtitle C regulations. The proposal would have amended the definition of solid waste to exclude processed scrap metal and containerized shredded circuit boards that are being recycled from RCRA jurisdiction. In the proposal, the Agency did not propose to make changes to the current definition of scrap metal: ''bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that are combined together with bolts and soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.''

The proposal defined processed scrap metal as ''scrap metal which has been manually or mechanically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes but is not limited to scrap metal which has been bailed, shredded, sheared, melted, agglomerated (for fines, drosses and related materials which are not scrap metal prior to agglomeration) or separated by metal type.'' The Agency believes that processed scrap metal being recycled is distinct from other secondary materials defined as wastes when recycled due to established markets for the material's utilization, inherent positive economic value of the material, the physical form of the material, and absence of damage incidents attributable to the material, and is therefore sufficiently product-like that maintaining RCRA regulatory jurisdiction over this material is not necessary. A summary of the proposed exclusion from the definition of solid waste for shredded circuit boards being recycled follows the discussion of the exclusion from the definition of solid waste for processed scrap metal being recycled.

2. Modifications to the Proposal

The Agency received approximately twenty-five comments concerning the proposed scrap metal and shredded circuit board exclusions. The comments were generally supportive of the exclusions. A background document, the major comments received, and Agency responses on the proposed processed scrap metal exclusion can be found in the docket for this rulemaking. Comments on the shredded circuit board exclusion can also be found in this background document.

In response to comment on the proposed exclusion to the definition of solid waste for processed scrap metal being recycled, the Agency has made several modifications to the exclusion in the final rule. First, the Agency has expanded the exclusion to cover unprocessed home and unprocessed prompt scrap metal being recycled. Home scrap is scrap metal generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings. Prompt scrap, also known as industrial or new scrap metal, is generated by the metal working/ fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. These categories of scrap metal do not fit the definition of processed scrap metal found in the proposal because they often do not require a processing step before being sent for recycling. The Agency evaluated unprocessed home scrap and prompt scrap metal and found that these categories of scrap metal are substantially similar to processed scrap metal due to established markets for the material's utilization, inherent positive economic value of the material, the physical form of the material, and absence of damage incidents attributable to the material. Based on this analysis, the Agency has expanded scope of the exclusion to include both unprocessed home and unprocessed prompt scrap metal. In the final rule, the term ''excluded scrap metal'' will be used to reflect this decision. Commenters also suggested the Agency evaluate obsolete scrap metal (scrap which is composed of worn out metal or a metal product that has outlived it original use, such as automobile hulks, railroad cars, aluminum beverage cans, steel beams from torn down buildings, and household appliances) using the same factors. The Agency has not found sufficient data to fully evaluate unprocessed obsolete scrap metal. Therefore, in today's final rule the Agency is not expanding the scope of the exclusion from the definition of solid waste to include obsolete scrap metal. Providing an exclusion from the definition of solid waste for obsolete scrap metal at this time would be premature and is better addressed in the Definition of Solid Waste rulemaking, due to be proposed in the near future.

Second, the Agency clarifies that the exclusion for processed scrap metal being recycled applies to scrap metal that has undergone a processing step (as defined in the preamble to the proposed rule) regardless of who does the processing. In other words, a processing step may be performed by the generator, an intermediate scrap handler (e.g. broker, scrap processor), or a scrap recycler. Once the scrap metal has undergone a processing step, it may qualify for today's exclusion.

Third, the Agency has added chopping, crushing, flattening, cutting and sorting, processes typically used in the processing of scrap metal for recycling, to the definition of processed scrap metal in today's final rule. In today's final rule, the definition of processing reads: ''manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Additionally, to avoid confusion, the definition of processed scrap metal has been reworded to clarify the status of agglomerated fines, drosses and other related materials. Therefore, in today's final rule, the category of processed scrap metal now includes but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated.'' Note that circuit boards that are shredded and being sent for recycling are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (261.4(a)(13)) see discussion following) and are not covered under the definition of excluded scrap metal.

B. Shredded Circuit Boards

1. The Proposal

In the proposed rule, EPA proposed to exclude shredded circuit boards being reclaimed from the definition of solid waste in order to facilitate their recovery. 61 F.R. 2339, 2361. The proposed exclusion was conditioned on the storage of the shredded circuit boards in containers prior to recovery that would be adequate to prevent a release of the boards to the environment. This condition was specified as a performance standard rather than a design standard to allow the handler maximum flexibility in selecting the method of containment. Today, EPA is finalizing this exclusion as proposed with an additional limitation that shredded circuit boards excluded from RCRA jurisdiction be free of mercury switches, mercury relays, nickel-cadmium batteries and lithium batteries.

2. Exclusion for Shredded Circuit Boards Conditioned on Containerized Storage Prior to Recovery

EPA explained in the proposal that shredded circuit boards merit exclusion from RCRA regulation in order to facilitate their recovery when they are properly stored in containers to prevent their release to the environment. As presented in the proposal, the necessity for the proposed exclusion for shredded circuit boards is that the process of shredding the circuit boards causes the boards to lose the scrap metal exemption (see 40 CFR § 261.6(a)(3)(ii)) that currently applies to used whole circuit boards. This scrap metal exemption allows used whole circuit boards being recycled to be shipped in commerce without being subject to RCRA regulation including generator manifesting and export requirements. The process of shredding the boards produces small fines from the whole board which are dispersible and do not meet the RCRA regulatory definition of scrap metal. The application of RCRA regulatory provisions to shredded boards may present serious disincentives to their recovery. As explained in the proposal, generator manifesting and export requirements may result in significant delays in shipments of shredded boards to recovery operations such as smelters. Many intermediate precious metal reclaimers, e.g. shredders, operate on a short cash flow and depend on prompt payment for shipments of shredded circuit boards in order to pay the generators of the used circuit boards for supplying them to the intermediate reclaimers.

For the following reasons, EPA believes that shredded circuit boards destined for reclamation when properly containerized and free of mercury switches, mercury relays, nickel-cadmium batteries and lithium batteries are an appropriate secondary material to be excluded from RCRA regulation. As discussed in the proposal, shredding is beneficial to the recovery process. Shredding improves the recovery of the boards by improving handling of shredded boards through increasing the bulk density of the boards in the container during shipment. Shredding also improves the assaying of the shipment for base metal and precious metal content by homogenizing the load thus assuring a representative sample is taken for the assay. Shredding also destroys proprietary information from generators or manufacturers of the boards thus better assuring confidentiality to the generator or manufacturer when making a decision to recycle. Some generators may be concerned about proprietary information contained in used whole circuit boards being transferred to competitors once the boards are out of the generator's control.

Second, shredded boards have qualities which are similar to primary materials such as virgin mineral concentrates that are processed and refined for base metal and precious metal values. These qualities satisfy the criteria EPA considers when evaluating whether a partially-reclaimed solid waste is commodity-like and is not part of the waste management problem and thus is appropriate to exclude from RCRA subtitle C jurisdiction through issuance of a variance. EPA believes that these criteria are relevant in determining whether a general exclusion is justified. See 40 CFR 261.30(c)& 261.31(c). These criteria are: (1) The degree of processing the material has undergone and the degree of further processing that is required, (2) the value of the material after it has been reclaimed, (3) the degree to which the reclaimed material is like an analogous raw material, (4) the extent to which an end market for the reclaimed material is guaranteed, (5) the extent to which a material is managed to minimize loss and (6) other relevant factors (such as the presence of cyanide or other foreign materials).

Regarding the first criterion, shredded circuit boards have been processed through shredders, hammer mills and similar devices to decrease their size. Value is added to the boards, as indicated above, because the boards are easier to handle, assay and ship without concerns of generator confidentiality that might exist if the boards were shipped to the smelters as whole boards. Further processing for the shredded boards includes both smelting and refining to extract base metals such as copper and precious metals such as gold, silver and platinum group metals. And while a substantial amount of further processing remains, EPA believes that shredded circuit boards can be thought of as secondary feedstocks similar to primary ore concentrates that have undergone beneficiation and are destined for primary mineral processing and refining.

Regarding the second criterion of the value of the material after it has been reclaimed, shredded circuit boards generally have positive economic value (i.e., the smelter pays the shredder for the assayed base and precious metal value of the shipment). The typical price range for shredded circuit boards is between a negative $0.25 per lb. and $5 per lb. One recycling company reported an annual average price of shredded circuit boards of $1.50 per pound which is greater than the current market price for refined copper metal.

Regarding the third criterion of how the partially reclaimed material compares to the analogous raw material, recyclers have indicated that shredded circuit boards typically have assays of that average 10 percent copper, between one-half and one-third that of primary copper concentrates. Shredded circuit board copper assays reported in literature evaluated in completion of this rule ranged between 11 percent and 18 percent copper. Shredded circuit boards also frequently contain precious metal values such as gold, silver or platinum that enhance the economic value of the material. Moreover, the reported recycling efficiency for copper, gold, silver and platinum exceeds 90 percent for this type of material.

Although toxic metal content for primary copper concentrates is variable depending on the ore body it comes from, reported assays for circuit boards are comparable in lead and lower in arsenic content than reported primary copper concentrate assays. Although shredded circuit boards are comparatively dispersible in comparison to primary copper concentrates, the conditional requirement for the exclusion stipulates that the shredded circuit boards must be stored in containers sufficient to prevent a release to the environment prior to recovery reduces any greater likelihood of release from shredded boards in comparison to primary copper concentrates.

The fourth criterion EPA uses to evaluate partially-reclaimed secondary materials is the extent to which an end market is guaranteed for the material. Continuous demand from primary smelters for base metals and precious metals from shredded circuit boards should result from the positive economic value of the boards, the relative ease of handling and assaying of the boards and the diminishing quantities of primary copper ore concentrates. According to the Bureau of Mines Mineral Commodity Summaries 1994, reported and apparent consumption for copper, silver and platinum group metals has either remained constant or increased between 1989 and 1993. Reported consumption of gold decreased slightly between 1989 and 1993 from 115 metric tons and 100 metric tons. Secondary gold production decreased slightly over the same period from 158 metric tons to 130 metric tons. The price of gold declined over the same period from $382 per troy ounce to $355 per troy ounce. By 1996, the price of gold has increased to over $380 per troy ounce.

The fifth criterion EPA uses to evaluate partially-reclaimed materials is the extent to which the material is managed to minimize loss. The proposed exclusion is conditioned on the proper storage of shredded circuit boards in containers prior to recovery. As mentioned in the proposal, the shredded boards are usually stored in super sacks (sacks that are reinforced woven resin and designed to accommodate bulk shipments), gaylord containers (also known as tri-wall boxes composed of three layers of cardboard with two layers of corrugation) and 55 gallon drums. Open bulk shipments of board by rail, truck or barge are not within the scope of this exclusion. In addition to the storage requirement, the economic value of the boards also provides an incentive for handlers to prevent releases to the environment. At an average market value of $1.50 per pound for one recycler, the incentive to prevent releases is substantial. The Agency notes that containerization in and of itself was not the only reason the Agency concluded that shredded circuit boards should be excluded from the definition of solid waste. The other five factors supported this determination as well.

Finally, EPA considers other relevant factors when evaluating the exclusion of partially-reclaimed materials from RCRA jurisdiction through the variance. In the context of shredded circuit boards, other relevant factors include: (1) The presence of both materials possibly attached to printed circuit boards that are ordinarily outside of the definition of scrap metal such as mercury switches, mercury relays, nickel-cadmium batteries and lithium batteries, and (2) the frequency of foreign materials mixed with but not part of the circuit board itself. EPA's concern about these materials is discussed below.

3. Limitation on Mercury Switches, Mercury Relays, Nickel-Cadmium Batteries and Lithium Batteries

Printed circuit boards may contain or be incorporated into electronic products which contain mercury switches, mercury relays, nickel-cadmium batteries, and lithium batteries. EPA is concerned about the potential environmental impact of these materials that are associated with printed circuit board production and management after the boards are spent. Ordinarily, commercial printed circuit board recyclers, both intermediate processors (e.g. shredders) and smelters, do not want mercury switches, mercury relays, nickel-cadmium batteries and lithium batteries in shipments of shredded boards sent from the intermediate processor to the smelter. However, because these items may be very small, they may, on occasion, escape visual inspection and become shredded along with printed circuit boards. When this happens, EPA is concerned about the potential release of mercury or cadmium to the environment. For this reason, EPA is limiting the scope of the exclusion for shredded boards to shipments that are free of mercury switches, mercury relays, nickel-cadmium batteries or lithium batteries. Free of these materials means that mercury switches, mercury relays, nickel-cadmium batteries and lithium batteries are not or have not been part of the batch of circuit boards shredded to add value. In addition, EPA reiterates that in enforcement actions that it is the respondent in the action who bears the burden of proof in documenting that a material for which an exclusion is claimed from the definition of solid waste meets the appropriate regulatory definition or exclusion. 40 CFR 261.2(f). Shredded circuit boards that are not free of mercury switches, mercury relays, nickel-cadmium batteries, and lithium batteries when reclaimed are solid wastes. This is so because these used shredded circuit boards are spent materials. Spent materials being reclaimed are solid wastes that, when they exhibit a characteristic or are listed, are also hazardous wastes. 40 CFR 261.1(b)(1), 261.2(c)(3). As stated in the proposal, EPA established in 1992 that whole used circuit boards could be considered scrap metal. The whole used circuit boards are therefore exempt from RCRA regulation. See 40 CFR 261.6(a)(3)(ii) stating scrap metal being recycled is exempt from RCRA regulation. (Please note that whole used circuit boards which contain mercury switches, mercury relays, nickel-cadmium batteries, or lithium batteries also do not meet the definition of scrap metal because mercury (being a liquid metal) and batteries are not within the scope of the definition of scrap metal. See 50 F.R. 614, 624 (January 4, 1985).) As stated in the proposal shredded circuit boards do not meet the definition of scrap metal because the shredded material contains fines which are too small to qualify as scrap metal. Shredded circuit boards that are not free of mercury switches, mercury relays, nickel-cadmium batteries, and lithium batteries would be subject to applicable parts of RCRA regulation, 40 CFR Parts 260 through 266, Part 268, Part 270, Part 273 and Part 124. Shredded circuit boards with economically recoverable quantities of precious metals are still eligible for conditional exemption from regulation under 40 CFR Part 266 Subpart F. This provision allows recyclable materials containing an economically recoverable amount of precious metals to be exempt from many RCRA regulatory provisions. However, these materials are still subject to manifesting, export and speculative accumulation requirements. 40 CFR 266.70.

4. Clarification of Regulatory Status of Secondary Materials Associated With the Generation or Management of Circuit Boards

Several commenters requested clarification in today's rule about the current regulatory status of secondary materials associated with the generation or management of printed circuit boards. These materials include: spent solder baths (pot dumps), sweeps, baghouse dust, and solder dross. These commenters also requested exclusion of these materials from RCRA jurisdiction in today's rule.

Spent solder baths, also known as pot dumps, are solidified pieces of tin-lead solder baths used in the production of printed circuit boards. Prior to 1993, EPA had classified spent solder baths as spent materials, which, absent the scrap metal designation, would be fully regulated under RCRA hazardous waste regulation. In 1993, EPA issued a letter to the Lead Industries Association stating that spent solder baths meet the definition of scrap metal and are therefore exempt from RCRA regulation under the regulatory exemption for scrap metal being recycled. This interpretation continues to be the Agency view.

Sweeps refer alternatively to a powdered material that is a residue of thermal recovery of precious metal-bearing secondary material (often ash that is crushed into particulate form in a ball mill or similar device) or particulate material that is collected from firms handling precious metals such as jewelers and metal finishers. Sweeps have been previously classified by EPA as a by-product.[2] As such, when sent for reclamation, sweeps are not solid waste and are excluded from RCRA jurisdiction regulation when considered hazardous solely by exhibiting a characteristic. Characteristic by-products are not solid wastes when reclaimed. 40 CFR 261.2(c)(3). In contrast, when sweeps are derived from source material that meets the description of a listed hazardous waste, the sweeps are solid wastes that are also hazardous wastes and are regulated under the appropriate RCRA regulation provisions. 40 CFR 261.2(c)(3). For example, often combustible material such as a rag, filter or paper is used to clean up a secondary material such as a spent solvent that may: (1) contain precious metals and (2) meets one of the F001 through F005 listing descriptions for solvents. The rag, filter or paper will be burned to an ash that it homogenized in order to assay its precious metal content. The ash when crushed is turned into a sweep. The sweep carries the F-listed hazardous waste code that was associated with the original source material (i.e., solvent). Listed by-products, in contrast to characteristic by-products, are solid and hazardous wastes when reclaimed.

EPA has classified baghouse dust from precious metal recovery furnaces as a sludge.[3] As with the by-product classification for sweeps, baghouse dust is not a solid and hazardous waste when it would be considered hazardous only for exhibiting a characteristic such as toxicity. However, if the source material to the furnace contained a listed hazardous waste, then the baghouse dust would be considered a solid and hazardous waste due to its classification as a listed sludge being reclaimed. Also as with the sweeps, even if the baghouse dust is a listed sludge, it may still be conditionally exempt from RCRA regulation under 40 CFR Part 266 Subpart F if it contains economically recoverable levels of precious metals.

Finally, EPA currently classifies solder dross as a characteristic by-product when reclaimed. As such, this material is already excluded from the definition of solid waste and not regulated under the RCRA regulations. Therefore, including solder dross in today's final rule would be duplicative.

[2] August 26, 1992 memorandum from Sylvia K. Lowrance, Director, U.S.E.P.A., Office of Solid Waste to Waste Management Division Directors U.S.E.P.A., Regions I–X on the Regulatory Status of Printed Circuit Boards.

[3] *Ibid.*

IX. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Today's treatment standards for wood preserving wastes are being promulgated pursuant to sections 3004 (d) through (k), and 3004(m), of RCRA (42 U.S.C. 6924 (d) through (k), and 6924(m)). Therefore, the Agency is adding today's rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also modified to indicate that this rule is a self-implementing provision of HSWA.

B. Abbreviated Authorization Procedures

In the August 22, 1995, LDR Phase IV proposed rule, EPA proposed a set of streamlined authorization procedures that would apply to new rules that were minor or routine in nature. This procedure was designed to expedite the authorization process by reducing the scope of a State's submittal, for authorization, to a State certification and copies of applicable regulations and statutes. EPA would then conduct a short review of the State's request, primarily consisting of a completeness check (see 60 FR 43686 for a full description of the proposed procedures). In the HWIR-Media proposed rule, EPA proposed another set of abbreviated authorization procedures for more significant rulemakings, called Category 2 (see 61 FR 18780, April 29, 1996). In this latter proposal, EPA designated the procedures outlined in the Phase IV proposal as Category 1. In that proposal, EPA also presented an expanded discussion on the need for and the intent of the streamlined procedures. EPA also proposed a set of modified Category 1 procedures for the authorization of a proposed rule for mineral processing wastes on January 25, 1996 (see 62 FR 2338).

Although EPA is firmly committed to streamlining the RCRA State authorization procedures, the Agency has decided not to finalize the proposed Category 1 authorization procedures in today's notice. EPA believes that public comments from the August 22, 1995, and January 25, 1996, proposals and comments submitted for the recent HWIR-contaminated media proposal should all be considered before finalizing new procedures for authorization. This full consideration will enable EPA to make the best decision regarding how the authorization process should work. EPA intends to address all significant public comments for all three notices and finalize streamlined authorization procedures when the HWIR-Media rule is promulgated.

C. Effect on State Authorization

Because today's Phase IV LDR rule is being promulgated under HSWA authority, those sections of today's rule that expand the coverage of the LDR program (e.g., to newly listed wood preserving wastes) would be implemented by EPA on the effective date of today's rule in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. These new treatment standards also result in a more stringent Federal program than before. Therefore States are required to adopt them in accordance with the requirements below.

Because today's rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24 and 57 FR 60132, December 18, 1992.)

Section 271.21(e)(2) requires that States with final authorization must modify their programs to reflect Federal program changes and to subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in section 271.21(e). This deadline can be extended in certain cases (see section 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In most cases, EPA expects that it will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations may, but are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a State must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

D. Less Stringent Requirements

Section 3009 of RCRA allows States to impose standards that are more stringent than the Federal program (see 40 CFR 270.1(i)). Thus, for those Federal changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. EPA views the parts of today's rule other than the new treatment standards for newly listed wood preserving wastes to be less stringent. However, since these other parts of today's final rule make significant improvements to the LDR program, EPA strongly encourages States to adopt and become authorized for them.

X. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''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 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; 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 Agency estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. The analysis considered compliance cost and economic impacts for newly listed and identified wastes affected by this rule. This rule covers three wood preserving wastes (F032, F034, and F035). EPA has determined that this rule is significant according to the definition in Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget.

Detailed discussions of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's final rule, followed by a presentation of the cost, economic impact and benefit results may be found in the background document, ''Regulatory Impact Analysis of the Final Phase IV Land Disposal Restrictions Rule,'' which was placed in the docket for today's final rule.

1. Methodology Section

The Agency estimated the volumes of waste affected by today's rule to determine the national level incremental costs (for both the baseline and post-regulatory scenarios), economic impacts (defined as the difference between the industrial activity under post-regulatory conditions and the industrial activity in the absence of regulation), and benefits (including estimation of pollutant loadings reductions, estimation of reductions in exceedences of health-based levels, and qualitative description of the potential benefits.) The procedure for estimating the volumes of newly listed wood preserving wastes affected by today's final rule is detailed in the background document ''Regulatory Impact Analysis of the Final Phase IV Land Disposal Restrictions Rule for Wood Preserving Wastes, F032, F034 and F035,'' which was placed in the docket for today's final rule.

2. Volume Results

The Agency has estimated that 469 active facilities generate an estimated range of 3,860 tons to 18,808 tons annually of newly listed wood preserving wastes including F032, F034, and F035 nonwastewaters. The Agency has estimated that active 469 facilities generate an estimated range of 3,860 tons to 18,808 tons annually of newly listed wood preserving wastes including F032, F034, and F035 nonwastewaters. In addition the Agency has estimated that there are approximately 1000 inactive or abandoned wood preserving sites that have contaminated soil and debris that may require some type of remediation. One Agency estimate for the total volume of wood preserving contaminated soil and debris requiring either in-situ or ex-situ treatment is 37 million tons based on an extrapolation of the average quantity of excavated soils from wood preserving Superfund sites. For purposes of the capacity analysis in today's rule, the Agency is using an alternate estimate of over 100,000 tons as the basis of setting the national capacity variance for wood preserving soil and debris.

3. Cost Results

EPA estimated the incremental treatment cost attributable to Phase IV LDRs to total between $3.1 million and $17.7 million per year for generators of newly listed wood preserving wastes. In addition, EPA has estimated that administrative requirements for reporting and record keeping from today's rule will result in a cost of $0.2 million per year for owners and operators of inactive and abandoned wood preserving sites. This estimate is based on the costs of thermal destruction and stabilization of F032 and F034 non-wastewaters; the costs of stabilization of F035 non-wastewaters; and the incremental cost of disposing of the residuals from the treatment of the 3,860–18,808 tons of waste.

Today's final rule provides a two year capacity variance during which cleanups of these sites may continue without being affected by the Land Disposal Restriction treatment standards promulgated in today's rule. This provision will reduce the costs of managing media contaminated by these listed wastes to the extent that facility operators and site managers take advantage of it. Also, many sites are using in-situ remedies where no soil is excavated at the site. This type of remediation does not trigger any of the requirements promulgated in today's rule.

Prospectively, future rulemakings such as the Hazardous Waste Indentification Final Rule for contaminated media may result in quantities of contaminated soil being removed from RCRA jurisdiction or subject to less rigorous cleanup levels than the current universal treatment standards. Inactive and abandoned wood preserving sites may avail themselves of exemptions from today's promulgated treatment standards such as a no-migration petition (40 CFR Part 268.6) or site specific treatability variances (40 CFR Part 268.44(h)). Further reductions in treatment cost will accrue to the extent that (1) EPA acts to remove media contaminated with these listed wastes from RCRA jurisdiction and (2) facility operators and site managers petition for, and EPA grants, these no-migration petitions and treatability variances. For the foregoing reasons, EPA does not believe that incremental treatment costs will accrue to contaminated media cleanups at inactive or abandoned wood preserving sites. Accordingly, EPA has not estimated incremental treatment costs that would result from the selection of a more expensive remedy in order to avoid triggering LDR treatment requirements. Although EPA believes that this scenario is unlikely, such costs are possible.

With respect to media contaminated with listed wood preserving wastes, EPA's estimate of the costs of today's final rule includes only the administrative costs of applying for treatability variances which the Agency has the discretion to grant subsequent to this action. EPA estimates that there are 35 million tons of such contaminated media that incur administrative costs for treatability variances, waste analysis plans, and other RCRA activities. The Agency will estimate the volume and cost of remediating contaminated media as affected by the HWIR Contaminated Media final rule. This will include the evaluation of all soils and sludges that would otherwise have been treated in-situ whose management and treatment costs could change, either because of provisions of the HWIR Contaminated Media final rule; changes in relative prices for alternative treatment technologies; or increases in market prices of treatment resulting from such shifts in demand. EPA will use the same baseline for estimating these costs that the Agency uses to estimate cost savings.

4. Economic Impact Results

The Agency has estimated the economic impacts of today's final rule to be small. EPA conducted an initial screening analysis of the impacts of the Phase IV LDR rule on small wood preserving facilities. Results of the initial screening analysis indicate that the cost of compliance for the majority of active wood preserving facilities that use inorganic wood preservatives and generate F035 wastes is less than one percent of total their estimated revenues. In contrast, active wood preserving facilities that use creosote and pentachlorophenol as a preservatives and generated F032 and F034 wastes have been estimated to incur upper bound compliance costs that may exceed one percent of this subsector's revenues.

Some active wood preserving facilities that use creosote and pentachlorophenol as preservatives may incur upper bound compliance costs that will exceed one percent of their estimated revenues. EPA believes, however, that in looking at the affected universe of active wood preserving facilities, today's final rule will not constitute a significant impact to a substantial number of them. First, only 18 or roughly 4 percent of over 469 wood preserving facilities are expected to incur compliance costs that exceed 2 percent of their revenues or more than 25 percent of their long run profits. Of the remaining 49 facilities or 10 percent with upper bound estimated compliance costs exceeding 1 percent of their revenue, none are expected to incur compliance costs exceeding 2 percent of firm revenues or 25 percent of long term profits. Second, industry information suggests that there is a trend within the wood preserving industry away from using pentachlorophenol as a preservative. Product substitution to other nontoxic or toxic preservatives resulting in less expensive treatment of wastes may result in lower costs to these wood preserving facilities. Finally, data collected to estimate the upper bound quantity of F032 generated at these facilities included values for mixed F032/F034/F035 wastes (meaning that the generator reported combined volumes for F032 and other wood preserving wastes) such that the total volume of F032 is probably much lower than the data suggests.

For inactive and abandoned wood preserving sites that require remediation, EPA believes that there should not be a significant economic impact resulting from today's rule. Of the estimated 1000 sites, based on the frequency of wood preserving Superfund cleanups, EPA projects that over 200 inactive and abandoned sites will use in-situ remedies and thus not incur any costs under today's rule. In addition, EPA projects that the remaining 800 sites will incur only administrative costs associated with recordkeeping and reporting requirements that average $240 in annualized cost per site. Given that the reported average cost of cleaning up wood preserving Superfund sites is $9.3 million,[4] EPA believes that these administrative costs should not significantly affect remedial activities at inactive and abandoned wood preserving sites.

5. Benefit Estimate Results

EPA has not performed analysis sufficient to estimate risks to actual individuals or populations exposed to these listed wastes under conditions of Subtitle C management without LDRs. However, EPA has completed a qualitative benefits analysis of the types of benefits that may result from today's rule. This analysis is described in greater detail in the regulatory impact analysis for newly identified listed wood preserving hazardous waste placed in today's docket. Benefits for this final rule as measured by individual or population risk reduction require substantially more information than the Agency has available now. Further, site specific information on waste characterization, hydrogeological parameters, meteorological conditions and demographic patterns would be needed for a representative number of facilities before national estimates of

[4] Shreekant Gupta, George Van Houtven, and Maureen L. Cropper, "Do Benefits and Costs Matter in Environmental Regulation?", in *anaylzing Superfund, Economics, Science and Law,* ed. Richard L. Revesz and Richard B. Stewart (Washington, D.C.: Resources for the Future, 1996), p. 97.

population risk could be calculated. The Agency does not have sufficient information to complete a quantitative individual or population risk estimate.

While waste management rules to protect ground water have been promulgated in the past to control otherwise unacceptable individual risks, it is unusual to predict high 'population risks' unless there is an unusually large water supply well impacted by the facility, simply because ground water contamination generally moves slowly and locally. It has been the agency's experience that regulations with land disposal restrictions have been found to produce relatively small, quantifiable population risk reductions to individuals exposed to contaminated groundwater via private wells. For example, in the analysis of Land Disposal Restrictions Phase II (40 CFR Parts 148, et al.) for organic toxicity wastes, some of the individual risk were in the range of 10^{-4}, the population risk reductions were found to be only about 0.22 cases of cancer per year.

If population densities and prevalence of private ground water wells around wood preserving facilities are similar to other waste management facilities, it is the Agency's expectation that land disposal restrictions for hazardous wood preserving wastes would also achieve relatively small, quantifiable population risk reductions. For these reasons and the data limitations cited above, the Agency has not attempted to address the quantification of population risk reduction for this final rule.

Nevertheless, the Agency has concluded that LDR rules like today's rule may produce benefits in the area of ecological risk reduction and reduced natural resource damage. EPA has not developed a quantitative assessment of these benefits categories because of budgetary and data limitations.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e.: small businesses, small organizations, and small governmental jurisdictions).

In assessing the regulatory approach for dealing with small entities in today's proposed rule, the Agency had to consider that due to the statutory requirements of the RCRA LDR program, no legal avenues exist for the Agency to provide relief from the LDR's for small entities. The only relief available for small entities is the existing small quantity generator provisions and conditionally exempt small quantity generator exemptions found in 40 CFR 262.11–12, and 261.5, respectively. These exemptions basically prescribe 100 kilograms (kg) per calendar month generation of hazardous waste as the limit below which one is exempted from complying with the RCRA standards.

Given this statutory constraint, the Agency was unable to frame a series of small entity options from which to select the lowest cost approach; rather, the Agency was legally bound to regulate the land disposal of the hazardous wastes covered in today's rule without regard to the size of the entity being regulated. For the reasons stated above in the economic impact discussion of section X.A, I hereby certify that today's final rule will not have a significant impact on a substantial number of small entities in the wood preserving sector.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMBRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local 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. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them 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 estimated that the total potential cost to State, local, and Tribal governments would not exceed approximately $200,000 per year over ten years. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

D. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA: OSWER ICR No. 1442.14 would amend the existing ICR approved under OMB Control No. 2050–0085. This ICR has not been approved by OMB and the information collection requirements, although they are less stringent than those previously required by the EPA, are not enforceable until OMB approves the ICR. EPA will publish a document in the **Federal Register** when OMB approves the information collection requirements showing the valid OMB control number. Until then, persons are not required to respond to collections of information in this ICR.

Copies of this ICR may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, D.C. 20460 or by calling (202) 260–2740. Include the ICR number in any request.

The annual public reporting and recordkeeping burden for this collection of information is estimated to be reduced by 8 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 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.

Send comments on the Agency's burden reduction, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection of techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

XI. Environmental Justice

A. Applicability of Executive Order 12898

EPA is committed to address environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agencies goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Potential Effects

Today's rule is intended to reduce risks of disposing hazardous wastes, and to benefit all populations. This rule is not expected to cause any disproportionate impacts to minority or low income communities versus affluent or non-minority communities.

XII. Submission to Congress and General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: April 18, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for Part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*

2. Section 148.18 is amended by revising the heading, redesignating paragraphs (a) through (c) as (c) through (e) respectively, and by adding paragraphs (a) and (b) to read as follows:

§ 148.18 Waste specific prohibitions—newly listed and identified wastes.

(a) Effective August 11, 1997, the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers F032, F034, F035 are prohibited from underground injection.

(b) Effective May 12, 1999, the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers F032, F034, F035 that are mixed with radioactive wastes are prohibited from underground injection.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. Section 261.1 is amended by adding paragraphs (c) (9) through (12) to read as follows:

§ 261.1 Purpose and scope.

* * * * *

(c) * * *

(9) ''Excluded scrap metal'' is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) ''Processed scrap metal'' is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§ 261.4(a)(13)).

(11) ''Home scrap metal'' is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) ''Prompt scrap metal'' is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

5. Section 261.2(c) is amended by revising table 1 to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

TABLE 1

	Use constituting disposal (§ 261.2(c)(1)) (1)	Energy recovery/fuel (§ 261.2(c)(2)) (2)	Reclamation (§ 261.2(c)(3)) (3)	Speculative accumulation (§ 261.2(c)(4)) (4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or 261.32	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)		(*)
By-products (listed in 40 CFR 261.31 or 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)		(*)
Commercial chemical products listed in 40 CFR 261.33	(*)	(*)		
Scrap metal other than excluded scrap metal (see 261.1(c)(9))	(*)	(*)	(*)	(*)

Note: The terms ''spent materials'', ''sludges'', ''by-products'', and ''scrap metal'' and ''processed scrap metal'' are defined in § 261.1.

* * * * *

6. Section 261.4(a) is amended by adding paragraphs (a) (13) and (14) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

* * * * *

7. Section 261.6 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(ii) Scrap metal that is not excluded under § 261.4(a)(13);

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

8. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

9. Section 268.1 is amended by revising paragraph (e) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(e) The following hazardous wastes are not subject to any provision of part 268:

(1) Waste generated by small quantity generators of less than 100 kilograms of non-acute hazardous waste or less than 1 kilogram of acute hazardous waste per month, as defined in § 261.5 of this chapter;

(2) Waste pesticides that a farmer disposes of pursuant to § 262.70;

(3) Wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards;

(4) *De minimis* losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.

* * * * *

10. Section 268.4 is amended by revising paragraphs (a)(2)(iv), and (a)(4) introductory text to read as follows:

§ 268.4 Treatment surface impoundment exemption.

(a) * * *

(2) * * *

(iv) *Recordkeeping:* Sampling and testing and recordkeeping provisions of §§ 264.13 and 265.13 of this chapter apply.

* * * * *

(4) The owner or operator submits to the Regional Administrator a written certification that the requirements of § 268.4(a)(3) have been met. The following certification is required:

* * * * *

11. Section 268.7 is amended by revising the section heading: revising paragraph (a); by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(7) as (b)(2) through (b)(6) respectively; and by revising the introductory text of paragraph (b), and revising paragraphs (b)(1), newly designated paragraphs (b)(2) through (b)(4), (c)(1), and (c)(2) to read as follows:

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

(a) *Requirements for generators:* (1) Determine if the waste has to be treated before being land disposed, as follows: A generator of a hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40 or § 268.45. This determination can be made in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as referenced in § 260.11 of this chapter, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this part in addition to any applicable requirements in this section.

(2) If the waste does not meet the treatment standard: With the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column ''268.7(a)(2)'' of the Generator Paperwork Requirements Table in § 268.7(a)(4). No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.

(3) If the waste meets the treatment standard at the original point of generation:

(i) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in the file. The notice must include the information indicated in column ''268.7(a)(3)'' of the Generator Paperwork Requirements Table in § 268.7(a)(4) and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR part 268 subpart D. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(ii) If the waste changes, the generator must send a new notice and certification to the receiving facility, and place a copy in their files. Generators of hazardous debris excluded from the definition of hazardous waste under § 261.3(f) of this chapter are not subject to these requirements.

(4) For reporting, tracking and recordkeeping when exceptions allow certain wastes that do not meet the treatment standards to be land disposed: There are certain exemptions from the requirement that hazardous wastes meet treatment standards before they can be land disposed. These include, but are not limited to case-by-case extensions under § 268.5, disposal in a no-migration unit under § 268.6, or a national capacity variance or case-by-case capacity variance under subpart C of this part. If a generator's waste is so exempt, then with the initial shipment of waste, the generator must send a one-time written notice to each land disposal facility receiving the waste. The notice must include the information indicated in column ''268.7(a)(4)'' of the Generator Paperwork Requirements Table below. If the waste changes, the generator must send a new notice to the receiving facility, and place a copy in their files.

GENERATOR PAPERWORK REQUIREMENTS TABLE

Required information	§ 268.7 (a)(2)	§ 268.7 (a)(3)	§ 268.7 (a)(4)	§ 268.7 (a)(9)
1. EPA Hazardous Waste and Manifest numbers	✔	✔	✔	✔
2. Statement: this waste is not prohibited from land disposal			✔	
3. The waste is subject to the LDRs. The constituents of concern for F001–F005, and F039, and underlying hazardous constituents (for wastes that are not managed in a Clean Water Act (CWA) or CWA-equivalent facility), unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice	✔	✔		
4. The notice must include the applicable wastewater/ nonwastewater category (see §§ 268.2(d) and (f)) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide)	✔	✔		
5. Waste analysis data (when available)	✔	✔	✔	
6. Date the waste is subject to the prohibition			✔	
7. For hazardous debris, when treating with the alternative treatment technologies provided by § 268.45: the contaminants subject to treatment, as described in § 268.45(b); and an indication that these contaminants are being treated to comply with § 268.45	✔		✔	
8. A certification is needed (see applicable section for exact wording)		✔		✔

(5) If a generator is managing and treating prohibited waste in tanks, containers, or containment buildings regulated under 40 CFR 262.34 to meet applicable LDR treatment standards found at § 268.40, the generator must develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1, § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

(i) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this part, including the selected testing frequency.

(ii) Such plan must be kept in the facility's on-site files and made available to inspectors.

(iii) Wastes shipped off-site pursuant to this paragraph must comply with the notification requirements of § 268.7(a)(3).

(6) If a generator determines that the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines that the waste is restricted based on testing this waste or an extract developed using the test method 1311 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as referenced in § 260.11 of this chapter, and all waste analysis data must be retained on-site in the generator's files.

(7) If a generator determines that he is managing a restricted waste that is

excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation, under 40 CFR 261.2 through 261.6 subsequent to the point of generation (including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the Clean Water Act (CWA) as specified at 40 CFR 261.4(a)(2), or are CWA-equivalent), he must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's file.

(8) Generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The three year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFR 261.2 through 261.6, or exempted from Subtitle C regulation, subsequent to the point of generation.

(9) If a generator is managing a lab pack containing hazardous wastes and wishes to use the alternative treatment standard for lab packs found at § 268.42(c):

(i) With the initial shipment of waste to a treatment facility, the generator must submit a notice that provides the information in column ''§ 268.7(a)(9)'' in the Generator Paperwork Requirements Table of paragraph (a)(4) of this section, and the following certification. The certification, which must be signed by an authorized representative and must be placed in the generator's files, must say the following:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under appendix IV to 40 CFR part 268 and that this lab pack will be sent to a combustion facility in compliance with the alternative treatment standards for lab packs at 40 CFR 268.42(c). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(ii) No further notification is necessary until such time that the wastes in the lab pack change, or the receiving facility changes, in which case a new notice and certification must be sent and a copy placed in the generator's file.

(iii) If the lab pack contains characteristic hazardous wastes (D001–D043), underlying hazardous constituents (as defined in § 268.2(i)) need not be determined.

(iv) The generator must also comply with the requirements in paragraphs (a)(6) and (a)(7) of this section.

(10) Small quantity generators with tolling agreements pursuant to 40 CFR 262.20(e) must comply with the applicable notification and certification requirements of paragraph (a) of this section for the initial shipment of the waste subject to the agreement. Such generators must retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans as required by 40 CFR 264.13 (for permitted TSDs) or 40 CFR 265.13 (for interim status facilities). Such testing must be performed as provided in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(1) For wastes with treatment standards expressed as concentrations in the waste extract (TCLP), the owner or operator of the treatment facility must test an extract of the treatment residues, using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 as incorporated by reference in § 260.11 of this chapter), to assure that the treatment residues extract meet the applicable treatment standards.

(2) For wastes with treatment standards expressed as concentrations in the waste, the owner or operator of the treatment facility must test the treatment residues (not an extract of such residues) to assure that they meet the applicable treatment standards.

(3) A one-time notice must be sent with the initial shipment of waste to the land disposal facility. A copy of the notice must be placed in the treatment facility's file.

(i) No further notification is necessary until such time that the waste or receiving facility change, in which case a new notice must be sent and a copy placed in the treatment facility's file.

(ii) The one-time notice must include these requirements:

TREATMENT FACILITY PAPERWORK REQUIREMENTS TABLE

Required information	§ 268.7(b)
1. EPA Hazardous Waste and Manifest numbers	✔
2. The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents (for wastes that are not managed in a Clean Water Act (CWA) or CWA-equivalent facility), unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.	✔
3. The notice must include the applicable wastewater/ nonwastewater category (see §§ 268.2(d) and (f)) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide)	✔
4. Waste analysis data (when available)	✔
5. A certification statement is needed (see applicable section for exact wording)	✔

(4) The treatment facility must submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. The certification must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment standards specified in 40 CFR 268.40 without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(i) A copy of the certification must be placed in the treatment facility's on-site files. If the waste or treatment residue changes, or the receiving facility changes, a new certification must be sent to the receiving facility, and a copy placed in the file.

(ii) Debris excluded from the definition of hazardous waste under § 261.3(e) of this chapter (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the Director has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of paragraph (d) of this section rather than the certification requirements of this paragraph.

(iii) For wastes with organic constituents having treatment standards expressed as concentration levels, if compliance with the treatment standards is based in whole or in part on the analytical detection limit alternative specified in § 268.40(d), the certification, signed by an authorized representative, must state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by combustion units as specified in 268.42, Table 1. I have been unable to detect the nonwastewater organic constituents, despite having used best good-faith efforts to analyze for such constituents. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

* * * * *

(c) * * *

(1) Have copies of the notice and certifications specified in paragraph (a) or (b) of this section.

(2) Test the waste, or an extract of the waste or treatment residue developed using test method 1311 (the Toxicity Characteristic Leaching Procedure), described in ''Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods,'' EPA Publication SW–846 as incorporated by reference in § 260.11 of this chapter), to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in subpart D of this part. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by § 264.13 or § 265.13 of this chapter.

* * * * *

12. Section 268.9 is amended by revising paragraph (a) and (d)(1)(ii) to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (Part 261, Subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (Part 261, Subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

* * * * *

(d) * * *

(1) * * *

(ii) A description of the waste as initially generated, including the applicable EPA hazardous waste code(s), treatability group(s), and underlying hazardous constituents (as defined in § 268.2(i)), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice.

* * * * *

Subpart C—Prohibitions on Land Disposal

13. Section 268.30 is revised to read as follows:

§ 268.30 Waste specific prohibitions—wood preserving wastes.

(a) Effective August 11, 1997, the following wastes are prohibited from land disposal: the wastes specified in 40 CFR part 261 as EPA Hazardous Waste numbers F032, F034, and F035.

(b) Effective May 12, 1999, the following wastes are prohibited from land disposal: soil and debris contaminated with F032, F034, F035; and radioactive wastes mixed with EPA Hazardous waste numbers F032, F034, and F035.

(c) Between May 12, 1997 and May 12, 1999, soil and debris contaminated with F032, F034, F035; and radioactive waste mixed with F032, F034, and F035 may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2) of this part.

(d) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under § 268.44; or

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Universal Treatment Standard levels of § 268.48 of this part, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

§§ 268.32, 268.33, 268.34, 268.35 and 286.36 [Removed and Reserved]

14. Sections 268.32, 268.33, 268.34, 268.35, and 268.36 are removed and reserved.

Subpart D—Treatment Standards

15. In § 268.40 the Table of Treatment Standards is amended by adding, in alpha-numerical order, entries for F032, F034, and F035, and revising entries for D001, F024 to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
D001 [9]	High TOC Ignitable Characteristic Liquids Subcategory based on 40 CFR 261.21(a)(1)—Greater than or equal to 10% total organic carbon. (Note: This subcategory consists of nonwastewaters only.).	NA	NA	NA	RORGS; CMBST; OR POLYM
*	*	*	* *	*	*
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.31 or § 261.32.).	All F024 wastes	NA	CMBST [11]	CMBST [11]
		2-Chloro-1,3-butadiene	126–99–8	0.057	0.28
		3-Chloropropylene	107–05–1	0.036	30
		1,1-Dichloroethane	75–34–3	0.059	6.0
		1,2-Dichloroethane	107–06–2	0.21	6.0
		1,2-Dichloropropane	78–87–5	0.85	18
		cis-1,3-Dichloropropylene	10061–01–5	0.036	18
		trans-1,3-Dichloropropylene	10061–02–6	0.036	18
		bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28
		Hexachloroethane	67–72–1	0.055	30
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP
		Nickel	7440–02–0	3.98	5.0 mg/l TCLP
*	*	*	* *	*	*
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	Acenaphthene	83–32–9	0.059	3.4
		Anthracene	120–12–7	0.059	3.4
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k) fluoranthene).	205–99–2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b) fluoranthene).	207–08–9	0.11	6.8
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		2-4-Dimethyl phenol	105–67–9	0.036	14
		Fluorene	86–73–7	0.059	3.4
		Hexachlorodibenzo-p-dioxins	NA	0.000063 or CMBST [11]	0.001 or CMBST [11]
		Hexachlorodibenzofurans	NA	0.000063 or CMBST [11]	0.001 or CMBST [11]
		Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4
		Naphthalene	91–20–3	0.059	5.6
		Pentachlorodibenzo-p-dioxins	NA	0.000063 or CMBST [11]	0.001 or CMBST [11]
		Pentachlorodibenzofurans	NA	0.000035 or CMBST [11]	0.001 or CMBST [11]
		Pentachlorophenol	87–86–5	0.089	7.4
		Phenanthrene	85–01–8	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyrene	129–00–0	0.067	8.2
		Tetrachlorodibenzo-p-dioxins	NA	0.000063 or CMBST [11]	0.001 or CMBST [11]
		Tetrachlorodibenzofurans	NA	0.000063 or CMBST [11]	0.001 or CMBST [11]
		2,3,4,6-Tetrachlorophenol	58–90–2	0.030	7.4
		2,4,6-Trichlorophenol	88–06–2	0.035	7.4
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
		Chromium (Total)	7440–47–3	2.77	0.86 mg/lTCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS[2] No.	Concentration in mg/l[3]; or technology code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	Acenaphthene	83–32–9	0.059	3.4
		Anthracene	120–12–7	0.059	3.4
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene).	205–99–2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene).	207–08–9	0.11	6.8
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		Fluorene	86–73–7	0.059	3.4
		Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	85–01–8	0.059	5.6
		Pyrene	129–00–0	0.067	8.2
		Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
		Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP

* * * * * * *

FOOTNOTES TO TREATMENT STANDARDS TABLE 268.40:

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in § 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in § 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[6] Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[8] These wastes, when rendered nonhazardous and then subsequently managed in CWA, or CWA-equivalent systems are not subject to treatment standards. (See § 268.1(c) (3) and (4)).

[9] These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well are not subject to treatment standards. (See 40 CFR part 148.1(d)).

[10] Between August 26, 1996, and August 26, 1997, the treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technolgy code CMBST at § 268.42 Table 1 of this part, for nonwastewaters; and, biodegradation as definded by the technolgy code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technolgy code CMBST at § 268.42 Table 1 of this part, for wastewaters.

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code

[11] For these wastes, the definition of CMBST is limited to: (1) combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR Part 264, Subpart O, or (3) combustion units operating under 40 CFR 265, Subpart O, which have obtained a determination of equivalent treatment under 268.42(b).

* * * * *

§ 268.42 [Amended]

16. Section 268.42 is amended by adding the entry ''POLYM'' into Table 1.— Technology Codes and Description of Technology-Based Standards, in alphabetical order, to read as follows:

* * * * *

TABLE 1.—TECHNOLOGY CODES AND DESCRIPTION OF TECHNOLOGY-BASED STANDARDS

Technology code	Description of technology-based standards
* *	* * * * *
POLYM:	Formation of complex high-molecular weight solids through polymerization of monomers in high-TOC D001 non-wastewaters which are chemical components in the manufacture of plastics.
* *	* * * * *

* * * * *

17. Section 268.44 is amended by revising both entries in the ''see also'' column of the table in paragraph (o) to read ''§ 268.40'' and by revising the introductory language of paragraph (o) and the heading of the table in paragraph (o) to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) The following facilities are excluded from the treatment standards under § 268.40 and are subject to the following constituent concentrations:

Table—Wastes Excluded from the Treatment Standards Under § 268.40.

* * * * *

Appendices I, II, III, and X to Part 268 [Removed and Reserved]

18. Appendices I, II, III, and X to part 268 are removed and reserved.

19. The introductory language of appendix VI to part 268 is revised to read as follows:

Appendix VI to Part 268—Recommended Technologies to Achieve Deactivation of Characteristics in Section 268.42

The treatment standard for many characteristic wastes is stated in the § 268.40 Table of Treatment Standards as ''Deactivation and meet UTS.'' EPA has determined that many technologies, when used alone or in combination, can achieve the deactivation portion of the treatment standard. Characteristic wastes that are not managed in a facility regulated by the Clean Water Act (CWA) or in a CWA-equivalent facility, and that also contain underlying hazardous constituents (see § 268.2(i)) must be treated not only by a ''deactivating'' technology to remove the characteristic, but also to achieve the universal treatment standards (UTS) for underlying hazardous constituents. The following appendix presents a partial list of technologies, utilizing the five letter technology codes established in 40 CFR 268.42 Table 1, that may be useful in meeting the treatment standard. Use of these specific technologies is not mandatory and does not preclude direct reuse, recovery, and/or the use of other pretreatment technologies, provided deactivation is achieved and underlying hazardous constituents are treated to achieve the UTS.

* * * * *

20. Appendix VII to Part 268 is revised to read as follows:

Appendix VII to Part 268—LDR Effective Dates of Surface Disposed Prohibited Hazardous Wastes

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST

Waste code	Waste category	Effective date
D001 [c]	All (except High TOC Ignitable Liquids)	Aug. 9, 1993.
D001	High TOC Ignitable Liquids	Aug. 8, 1990.
D002 [c]	All	Aug. 9, 1993.
D003 [e]	All	July 8, 1996.
D004	Nonwastewater	May 8, 1992.
D004	Wastewater	Aug. 8, 1992.
D005	All	Aug. 8, 1990.
D006	All	Aug. 8, 1990.
D007	All	Aug. 8, 1990.
D008	Lead materials before secondary smelting	May 8, 1992.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
D008	All others	Aug. 8, 1990.
D009	Nonwastewater	May 8, 1992.
D009	All others	Aug. 8, 1990.
D010	All	Aug. 8, 1990.
D011	All	Aug. 8, 1990.
D012 (that exhibit the toxicity characteristic based on the TCLP) [d].	All	Dec. 14, 1994.
D013 (that exhibit the toxicity characteristic based on the TCLP) [d].	All	Dec. 14, 1994.
D014 (that exhibit the toxicity characteristic based on the TCLP) [d].	All	Dec. 14, 1994.
D015 (that exhibit the toxicity characteristic based on the TCLP) [d].	All	Dec. 14, 1994.
D016 (that exhibit the toxicity characteristic based on the TCLP) [d].	All	Dec. 14, 1994.
D017 (that exhibit the toxicity characteristic based on the TCLP) [d].	All	Dec. 14, 1994.
D018	Mixed with radioactive wastes	Sept. 19, 1996.
D018	All others	Dec. 19, 1994.
D019	Mixed with radioactive wastes	Sept. 19, 1996.
D019	All others	Dec. 19, 1994.
D020	Mixed with radioactive wastes	Sept. 19, 1996.
D020	All others	Dec. 19, 1994.
D021	Mixed with radioactive wastes	Sept. 19, 1996.
D021	All others	Dec. 19, 1994.
D022	Mixed with radioactive wastes	Sept. 19, 1996.
D022	All others	Dec. 19, 1994.
D023	Mixed with radioactive wastes	Sept. 19, 1996.
D023	All others	Dec. 19, 1994.
D024	Mixed with radioactive wastes	Sept. 19, 1996.
D024	All others	Dec. 19, 1994.
D025	Mixed with radioactive wastes	Sept. 19, 1996.
D025	All others	Dec. 19, 1994.
D026	Mixed with radioactive wastes	Sept. 19, 1996.
D026	All others	Dec. 19, 1994.
D027	Mixed with radioactive wastes	Sept. 19, 1996.
D027	All others	Dec. 19, 1994.
D028	Mixed with radioactive wastes	Sept. 19, 1996.
D028	All others	Dec. 19, 1994.
D029	Mixed with radioactive wastes	Sept. 19, 1996.
D029	All others	Dec. 19, 1994.
D030	Mixed with radioactive wastes	Sept. 19. 1996.
D030	All others	Dec. 19, 1994.
D031	Mixed with radioactive wastes	Sept. 19, 1996.
D031	All others	Dec. 19, 1994.
D032	Mixed with radioactive wastes	Sept. 19, 1996.
D032	All others	Dec. 19, 1994.
D033	Mixed with radioactive wastes	Sept. 19, 1996.
D033	All others	Dec. 19, 1994.
D034	Mixed with radioactive wastes	Sept. 19, 1996.
D034	All others	Dec. 19, 1994.
D035	Mixed with radioactive wastes	Sept. 19, 1996.
D035	All others	Dec. 19, 1994.
D036	Mixed with radioactive wastes	Sept. 19, 1996.
D036	All others	Dec. 19, 1994.
D037	Mixed with radioactive wastes	Sept. 19, 1996.
D037	All others	Dec. 19, 1994.
D038	Mixed with radioactive wastes	Sept. 19, 1996.
D038	All others	Dec. 19, 1994.
D039	Mixed with radioactive wastes	Sept. 19, 1996.
D039	All others	Dec. 19, 1994.
D040	Mixed with radioactive wastes	Sept. 19, 1996.
D040	All others	Dec. 19, 1994.
D041	Mixed with radioactive wastes	Sept. 19, 1996.
D041	All others	Dec. 19, 1994.
D042	Mixed with radioactive wastes	Sept. 19, 1996.
D042	All others	Dec. 19, 1994.
D043	Mixed with radioactive wastes	Sept. 19, 1996.
D043	All others	Dec. 19, 1994.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
F001	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F001	All others	Nov. 8, 1986.
F002 (1,1,2-trichloroethane)	Wastewater and Nonwastewater	Aug. 8, 1990.
F002	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F002	All others	Nov. 8, 1986.
F003	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F003	All others	Nov. 8, 1986.
F004	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F004	All others	Nov. 8, 1986.
F005 (benzene, 2-ethoxy ethanol, 2-nitropropane)	Wastewater and Nonwastewater	Aug. 8, 1990.
F005	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F005	All others	Nov. 8, 1986.
F006	Wastewater	Aug. 8, 1990.
F006	Nonwastewater	Aug. 8, 1988.
F006 (cyanides)	Nonwastewater	July 8, 1989.
F007	All	July 8, 1989.
F008	All	July 8, 1989.
F009	All	July 8, 1989.
F010	All	June 8, 1989.
F011 (cyanides)	Nonwastewater	Dec. 8, 1989.
F011	All others	July 8, 1989.
F012 (cyanides)	Nonwastewater	Dec. 8, 1989.
F012	All others	July 8, 1989.
F019	All	Aug. 8, 1990.
F020	All	Nov. 8, 1988.
F021	All	Nov. 8, 1988.
F025	All	Aug. 8, 1990.
F026	All	Nov. 8, 1988.
F027	All	Nov. 8, 1988.
F028	All	Nov. 8, 1988.
F032	Mixed with radioactive wastes	May 12, 1999
F032	All others	May 12, 1997
F033	Mixed with radioactive wastes	May 12, 1999
F033	All others	May 12, 1997
F034	Mixed with radioactive wastes	May 12, 1999
F034	All others	May 12, 1997
F037	Not generated from surface impoundment cleanouts or closures	June 30, 1993.
F037	Generated from surface impoundment cleanouts or closures	June 30, 1994.
F037	Mixed with radioactive wastes	June 30, 1994.
F038	Not generated from surface impoundment cleanouts or closures	June 30, 1993.
F038	Generated from surface impoundment cleanouts or closures	June 30, 1994.
F038	Mixed with radioactive wastes	June 30, 1994.
F039	Wastewater	Aug. 8, 1990.
F039	Nonwastewater	May 8, 1992.
K001 (organics) [b]	All	Aug. 8, 1988.
K001	All others	Aug. 8, 1988.
K002	All	Aug. 8, 1990.
K003	All	Aug. 8, 1990.
K004	Wastewater	Aug. 8, 1990.
K004	Nonwastewater	Aug. 8, 1988.
K005	Wastewater	Aug. 8, 1990.
K005	Nonwastewater	June 8, 1989.
K006	All	Aug. 8, 1990.
K007	Wastewater	Aug. 8, 1990.
K007	Nonwastewater	June 8, 1989.
K008	Wastewater	Aug. 8, 1990.
K008	Nonwastewater	Aug. 8, 1988.
K009	All	June 8, 1989.
K010	All	June 8, 1989.
K011	Wastewater	Aug. 8, 1990.
K011	Nonwastewater	June 8, 1989.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
K013	Wastewater	Aug. 8, 1990.
K013	Nonwastewater	June 8, 1989.
K014	Wastewater	Aug. 8, 1990.
K014	Nonwastewater	June 8, 1989.
K015	Wastewater	Aug. 8, 1988.
K015	Nonwastewater	Aug. 8, 1990.
K016	All	Aug. 8, 1988.
K017	All	Aug. 8, 1990.
K018	All	Aug. 8, 1988.
K019	All	Aug. 8, 1988.
K020	All	Aug. 8, 1988.
K021	Wastewater	Aug. 8, 1990.
K021	Nonwastewater	Aug. 8, 1988.
K022	Wastewater	Aug. 8, 1990.
K022	Nonwastewater	Aug. 8, 1988.
K023	All	June 8, 1989.
K024	All	Aug. 8, 1988.
K025	Wastewater	Aug. 8, 1990.
K025	Nonwastewater	Aug. 8, 1988.
K026	All	Aug. 8, 1990.
K027	All	June 8, 1989.
K028 (metals)	Nonwastewater	Aug. 8, 1990.
K028	All others	June 8, 1989.
K029	Wastewater	Aug. 8, 1990.
K029	Nonwastewater	June 8, 1989.
K030	All	Aug. 8, 1988.
K031	Wastewater	Aug. 8, 1990.
K031	Nonwastewater	May 8, 1992.
K032	All	Aug. 8, 1990.
K033	All	Aug. 8, 1990.
K034	All	Aug. 8, 1990.
K035	All	Aug. 8, 1990.
K036	Wastewater	June 8, 1989.
K036	Nonwastewater	Aug. 8, 1988.
K037 [b]	Wastewater	Aug. 8, 1988.
K037	Nonwastewater	Aug. 8, 1988.
K038	All	June 8, 1989.
K039	All	June 8, 1989.
K040	All	June 8, 1989.
K041	All	Aug. 8, 1990.
K042	All	Aug. 8, 1990.
K043	All	June 8, 1989.
K044	All	Aug. 8, 1988.
K045	All	Aug. 8, 1988.
K046 (Nonreactive)	Nonwastewater	Aug. 8, 1988.
K046	All others	Aug. 8, 1990.
K047	All	Aug. 8, 1988.
K048	Wastewater	Aug. 8, 1990.
K048	Nonwastewater	Nov. 8, 1990.
K049	Wastewater	Aug. 8, 1990.
K049	Nonwastewater	Nov. 8, 1990.
K050	Wastewater	Aug. 8, 1990.
K050	Nonwastewater	Nov. 8, 1990.
K051	Wastewater	Aug. 8, 1990.
K051	Nonwastewater	Nov. 8, 1990.
K052	Wastewater	Aug. 8, 1990.
K052	Nonwastewater	Nov. 8, 1990.
K060	Wastewater	Aug. 8, 1990.
K060	Nonwastewater	Aug. 8, 1988.
K061	Wastewater	Aug. 8, 1990.
K061	Nonwastewater	June 30, 1992.
K062	All	Aug. 8, 1988.
K069 (Non-Calcium Sulfate)	Nonwastewater	Aug. 8, 1988.
K069	All others	Aug. 8, 1990.
K071	All	Aug. 8, 1990.
K073	All	Aug. 8, 1990.
K083	All	Aug. 8, 1990.
K084	Wastewater	Aug. 8, 1990.
K084	Nonwastewater	May 8, 1992.
K085	All	Aug. 8, 1990.
K086 (organics) [b]	All	Aug. 8, 1988.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
K086	All others	Aug. 8, 1988.
K087	All	Aug. 8, 1988.
K088	Mixed with radioactive wastes	Apr. 8, 1998.
K088	All others	Jan. 8, 1997.
K093	All	June 8, 1989.
K094	All	June 8, 1989.
K095	Wastewater	Aug. 8, 1990.
K095	Nonwastewater	June 8, 1989.
K096	Wastewater	Aug. 8, 1990.
K096	Nonwastewater	June 8, 1989.
K097	All	Aug. 8, 1990.
K098	All	Aug. 8, 1990.
K099	All	Aug. 8, 1988.
K100	Wastewater	Aug. 8, 1990.
K100	Nonwastewater	Aug. 8, 1988.
K101 (organics)	Wastewater	Aug. 8, 1988.
K101 (metals)	Wastewater	Aug. 8, 1990.
K101 (organics)	Nonwastewater	Aug. 8, 1988.
K101 (metals)	Nonwastewater	May 8, 1992.
K102 (organics)	Wastewater	Aug. 8, 1988.
K102 (metals)	Wastewater	Aug. 8, 1990.
K102 (organics)	Nonwastewater	Aug. 8, 1988.
K102 (metals)	Nonwastewater	May 8, 1992.
K103	All	Aug. 8, 1988.
K104	All	Aug. 8, 1988.
K105	All	Aug. 8, 1990.
K106	Wastewater	Aug. 8, 1990.
K106	Nonwastewater	May 8, 1992.
K107	Mixed with radioactive wastes	June 30, 1994.
K107	All others	Nov. 9, 1992.
K108	Mixed with radioactive wastes	June 30, 1994.
K108	All others	Nov. 9, 1992.
K109	Mixed with radioactive wastes	June 30, 1994.
K109	All others	Nov. 9, 1992.
K110	Mixed with radioactive wastes	June 30, 1994.
K110	All others	Nov. 9, 1992.
K111	Mixed with radioactive wastes	June 30, 1994.
K111	All others	Nov. 9, 1992.
K112	Mixed with radioactive wastes	June 30, 1994.
K112	All others	Nov. 9, 1992.
K113	All	June 8, 1989.
K114	All	June 8, 1989.
K115	All	June 8, 1989.
K116	All	June 8, 1989.
K117	Mixed with radioactive wastes	June 30, 1994.
K117	All others	Nov. 9, 1992.
K118	Mixed with radioactive wastes	June 30, 1994.
K118	All others	Nov. 9, 1992.
K123	Mixed with radioactive wastes	June 30, 1994.
K123	All others	Nov. 9, 1992.
K124	Mixed with radioactive wastes	June 30, 1994.
K124	All others	Nov. 9, 1992.
K125	Mixed with radioactive wastes	June 30, 1994.
K125	All others	Nov. 9, 1992.
K126	Mixed with radioactive wastes	June 30, 1994.
K126	All others	Nov. 9, 1992.
K131	Mixed with radioactive wastes	June 30, 1994.
K131	All others	Nov. 9, 1992.
K132	Mixed with radioactive wastes	June 30, 1994.
K132	All others	Nov. 9, 1992.
K136	Mixed with radioactive wastes	June 30, 1994.
K136	All others	Nov. 9, 1992.
K141	Mixed with radioactive wastes	Sep. 19, 1996.
K141	All others	Dec. 19, 1994.
K142	Mixed with radioactive wastes	Sep. 19, 1996..
K142	All others	Dec. 19, 1994.
K143	Mixed with radioactive wastes	Sep. 19, 1996.
K143	All others	Dec. 19, 1994.
K144	Mixed with radioactive wastes	Sep. 19, 1996.
K144	All others	Dec. 19, 1994.
K145	Mixed with radioactive wastes	Sep. 19, 1996.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
K145	All others	Dec. 19, 1994.
K147	Mixed with radioactive wastes	Sep. 19, 1996.
K147	All others	Dec. 19, 1994.
K148	Mixed with radioactive wastes	Sep. 19, 1996.
K148	All others	Dec. 19, 1994.
K149	Mixed with radioactive wastes	Sep. 19, 1996.
K149	All others	Dec. 19, 1994.
K150	Mixed with radioactive wastes	Sep. 19, 1996.
K150	All others	Dec. 19, 1994.
K151	Mixed with radioactive wastes	Sep. 19, 1996.
K151	All others	Dec. 19, 1994.
K156	Mixed with radioactive wastes	Apr. 8, 1998.
K156	All others	July 8, 1996.
K157	Mixed with radioactive wastes	Apr. 8, 1998.
K157	All others	July 8, 1996.
K158	Mixed with radioactive wastes	Apr. 8, 1998.
K158	All others	July 8, 1996.
K159	Mixed with radioactive wastes	Apr. 8, 1998.
K159	All others	July 8, 1996.
K160	Mixed with radioactive wastes	Apr. 8, 1998.
K160	All others	July 8, 1996.
K161	Mixed with radioactive wastes	Apr. 8, 1998.
K161	All others	July 8, 1996.
P001	All	Aug. 8, 1990.
P002	All	Aug. 8, 1990.
P003	All	Aug. 8, 1990.
P004	All	Aug. 8, 1990.
P005	All	Aug. 8, 1990.
P006	All	Aug. 8, 1990.
P007	All	Aug. 8, 1990.
P008	All	Aug. 8, 1990.
P009	All	Aug. 8, 1990.
P010	Wastewater	Aug. 8, 1990.
P010	Nonwastewater	May 8, 1992.
P011	Wastewater	Aug. 8, 1990.
P011	Nonwastewater	May 8, 1992.
P012	Wastewater	Aug. 8, 1990.
P012	Nonwastewater	May 8, 1992.
P013 (barium)	Nonwastewater	Aug. 8, 1990.
P013	All others	June 8, 1989.
P014	All	Aug. 8, 1990.
P015	All	Aug. 8, 1990.
P016	All	Aug. 8, 1990.
P017	All	Aug. 8, 1990.
P018	All	Aug. 8, 1990.
P020	All	Aug. 8, 1990.
P021	All	June 8, 1989.
P022	All	Aug. 8, 1990.
P023	All	Aug. 8, 1990.
P024	All	Aug. 8, 1990.
P026	All	Aug. 8, 1990.
P027	All	Aug. 8, 1990.
P028	All	Aug. 8, 1990.
P029	All	June 8, 1989.
P030	All	June 8, 1989.
P031	All	Aug. 8, 1990.
P033	All	Aug. 8, 1990.
P034	All	Aug. 8, 1990.
P036	Wastewater	Aug. 8, 1990.
P036	Nonwastewater	May 8, 1992.
P037	All	Aug. 8, 1990.
P038	Wastewater	Aug. 8, 1990.
P038	Nonwastewater	May 8, 1992.
P039	All	June 8, 1989.
P040	All	June 8, 1989.
P041	All	June 8, 1989.
P042	All	Aug. 8, 1990.
P043	All	June 8, 1989.
P044	All	June 8, 1989.
P045	All	Aug. 8, 1990.
P046	All	Aug. 8, 1990.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
P047	All	Aug. 8, 1990.
P048	All	Aug. 8, 1990.
P049	All	Aug. 8, 1990.
P050	All	Aug. 8, 1990.
P051	All	Aug. 8, 1990.
P054	All	Aug. 8, 1990.
P056	All	Aug. 8, 1990.
P057	All	Aug. 8, 1990.
P058	All	Aug. 8, 1990.
P059	All	Aug. 8, 1990.
P060	All	Aug. 8, 1990.
P062	All	June 8, 1989.
P063	All	June 8, 1989.
P064	All	Aug. 8, 1990.
P065	Wastewater	Aug. 8, 1990.
P065	Nonwastewater	May 8, 1992.
P066	All	Aug. 8, 1990.
P067	All	Aug. 8, 1990.
P068	All	Aug. 8, 1990.
P069	All	Aug. 8, 1990.
P070	All	Aug. 8, 1990.
P071	All	June 8, 1989.
P072	All	Aug. 8, 1990.
P073	All	Aug. 8, 1990.
P074	All	June 8, 1989.
P075	All	Aug. 8, 1990.
P076	All	Aug. 8, 1990.
P077	All	Aug. 8, 1990.
P078	All	Aug. 8, 1990.
P081	All	Aug. 8, 1990.
P082	All	Aug. 8, 1990.
P084	All	Aug. 8, 1990.
P085	All	June 8, 1989.
P087	All	May 8, 1992.
P088	All	Aug. 8, 1990.
P089	All	June 8, 1989.
P092	Wastewater	Aug. 8, 1990.
P092	Nonwastewater	May 8, 1992.
P093	All	Aug. 8, 1990.
P094	All	June 8, 1989.
P095	All	Aug. 8, 1990.
P096	All	Aug. 8, 1990.
P097	All	June 8, 1989.
P098	All	June 8, 1989.
P099 (silver)	Wastewater	Aug. 8, 1990.
P099	All others	June 8, 1989.
P101	All	Aug. 8, 1990.
P102	All	Aug. 8, 1990.
P103	All	Aug. 8, 1990.
P104 (silver)	Wastewater	Aug. 8, 1990.
P104	All others	June 8, 1989.
P105	All	Aug. 8, 1990.
P106	All	June 8, 1989.
P108	All	Aug. 8, 1990.
P109	All	June 8, 1989.
P110	All	Aug. 8, 1990.
P111	All	June 8, 1989.
P112	All	Aug. 8, 1990.
P113	All	Aug. 8, 1990.
P114	All	Aug. 8, 1990.
P115	All	Aug. 8, 1990.
P116	All	Aug. 8, 1990.
P118	All	Aug. 8, 1990.
P119	All	Aug. 8, 1990.
P120	All	Aug. 8, 1990.
P121	All	June 8, 1989.
P122	All	Aug. 8, 1990.
P123	All	Aug. 8, 1990.
P127	Mixed with radioactive wastes	Apr. 8, 1998.
P127	All others	July 8, 1996.
P128	Mixed with radioactive wastes	Apr. 8, 1998.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
P128	All others	July 8, 1996.
P185	Mixed with radioactive wastes	Apr. 8, 1998.
P185	All others	July 8, 1996.
P188	Mixed with radioactive wastes	Apr. 8, 1998.
P188	All others	July 8, 1996.
P189	Mixed with radioactive wastes	Apr. 8, 1998.
P189	All others	July 8, 1996.
P190	Mixed with radioactive wastes	Apr. 8, 1998.
P190	All others	July 8, 1996.
P191	Mixed with radioactive wastes	Apr. 8, 1998.
P191	All others	July 8, 1996.
P192	Mixed with radioactive wastes	Apr. 8, 1998.
P192	All others	July 8, 1996.
P194	Mixed with radioactive wastes	Apr. 8, 1998.
P194	All others	July 8, 1996.
P196	Mixed with radioactive wastes	Apr. 8, 1998.
P196	All others	July 8, 1996.
P197	Mixed with radioactive wastes	Apr. 8, 1998.
P197	All others	July 8, 1996.
P198	Mixed with radioactive wastes	Apr. 8, 1998.
P198	All others	July 8, 1996.
P199	Mixed with radioactive wastes	Apr. 8, 1998.
P199	All others	July 8, 1996.
P201	Mixed with radioactive wastes	Apr. 8, 1998.
P201	All others	July 8, 1996.
P202	Mixed with radioactive wastes	Apr. 8, 1998.
P202	All others	July 8, 1996.
P203	Mixed with radioactive wastes	Apr. 8, 1998.
P203	All others	July 8, 1996.
P204	Mixed with radioactive wastes	Apr. 8, 1998.
P204	All others	July 8, 1996.
P205	Mixed with radioactive wastes	Apr. 8, 1998.
P205	All others	July 8, 1996.
U001	All	Aug. 8, 1990.
U002	All	Aug. 8, 1990.
U003	All	Aug. 8, 1990.
U004	All	Aug. 8, 1990.
U005	All	Aug. 8, 1990.
U006	All	Aug. 8, 1990.
U007	All	Aug. 8, 1990.
U008	All	Aug. 8, 1990.
U009	All	Aug. 8, 1990.
U010	All	Aug. 8, 1990.
U011	All	Aug. 8, 1990.
U012	All	Aug. 8, 1990.
U014	All	Aug. 8, 1990.
U015	All	Aug. 8, 1990.
U016	All	Aug. 8, 1990.
U017	All	Aug. 8, 1990.
U018	All	Aug. 8, 1990.
U019	All	Aug. 8, 1990.
U020	All	Aug. 8, 1990.
U021	All	Aug. 8, 1990.
U022	All	Aug. 8, 1990.
U023	All	Aug. 8, 1990.
U024	All	Aug. 8, 1990.
U025	All	Aug. 8, 1990.
U026	All	Aug. 8, 1990.
U027	All	Aug. 8, 1990.
U028	All	June 8, 1989.
U029	All	Aug. 8, 1990.
U030	All	Aug. 8, 1990.
U031	All	Aug. 8, 1990.
U032	All	Aug. 8, 1990.
U033	All	Aug. 8, 1990.
U034	All	Aug. 8, 1990.
U035	All	Aug. 8, 1990.
U036	All	Aug. 8, 1990.
U037	All	Aug. 8, 1990.
U038	All	Aug. 8, 1990.
U039	All	Aug. 8, 1990.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
U041	All	Aug. 8, 1990.
U042	All	Aug. 8, 1990.
U043	All	Aug. 8, 1990.
U044	All	Aug. 8, 1990.
U045	All	Aug. 8, 1990.
U046	All	Aug. 8, 1990.
U047	All	Aug. 8, 1990.
U048	All	Aug. 8, 1990.
U049	All	Aug. 8, 1990.
U050	All	Aug. 8, 1990.
U051	All	Aug. 8, 1990.
U052	All	Aug. 8, 1990.
U053	All	Aug. 8, 1990.
U055	All	Aug. 8, 1990.
U056	All	Aug. 8, 1990.
U057	All	Aug. 8, 1990.
U058	All	June 8, 1989.
U059	All	Aug. 8, 1990.
U060	All	Aug. 8, 1990.
U061	All	Aug. 8, 1990.
U062	All	Aug. 8, 1990.
U063	All	Aug. 8, 1990.
U064	All	Aug. 8, 1990.
U066	All	Aug. 8, 1990.
U067	All	Aug. 8, 1990.
U068	All	Aug. 8, 1990.
U069	All	June 30, 1992.
U070	All	Aug. 8, 1990.
U071	All	Aug. 8, 1990.
U072	All	Aug. 8, 1990.
U073	All	Aug. 8, 1990.
U074	All	Aug. 8, 1990.
U075	All	Aug. 8, 1990.
U076	All	Aug. 8, 1990.
U077	All	Aug. 8, 1990.
U078	All	Aug. 8, 1990.
U079	All	Aug. 8, 1990.
U080	All	Aug. 8, 1990.
U081	All	Aug. 8, 1990.
U082	All	Aug. 8, 1990.
U083	All	Aug. 8, 1990.
U084	All	Aug. 8, 1990.
U085	All	Aug. 8, 1990.
U086	All	Aug. 8, 1990.
U087	All	June 8, 1989.
U088	All	June 8, 1989.
U089	All	Aug. 8, 1990.
U090	All	Aug. 8, 1990.
U091	All	Aug. 8, 1990.
U092	All	Aug. 8, 1990.
U093	All	Aug. 8, 1990.
U094	All	Aug. 8, 1990.
U095	All	Aug. 8, 1990.
U096	All	Aug. 8, 1990.
U097	All	Aug. 8, 1990.
U098	All	Aug. 8, 1990.
U099	All	Aug. 8, 1990.
U101	All	Aug. 8, 1990.
U102	All	June 8, 1989.
U103	All	Aug. 8, 1990.
U105	All	Aug. 8, 1990.
U106	All	Aug. 8, 1990.
U107	All	June 8, 1989.
U108	All	Aug. 8, 1990.
U109	All	Aug. 8, 1990.
U110	All	Aug. 8, 1990.
U111	All	Aug. 8, 1990.
U112	All	Aug. 8, 1990.
U113	All	Aug. 8, 1990.
U114	All	Aug. 8, 1990.
U115	All	Aug. 8, 1990.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
U116	All	Aug. 8, 1990.
U117	All	Aug. 8, 1990.
U118	All	Aug. 8, 1990.
U119	All	Aug. 8, 1990.
U120	All	Aug. 8, 1990.
U121	All	Aug. 8, 1990.
U122	All	Aug. 8, 1990.
U123	All	Aug. 8, 1990.
U124	All	Aug. 8, 1990.
U125	All	Aug. 8, 1990.
U126	All	Aug. 8, 1990.
U127	All	Aug. 8, 1990.
U128	All	Aug. 8, 1990.
U129	All	Aug. 8, 1990.
U130	All	Aug. 8, 1990.
U131	All	Aug. 8, 1990.
U132	All	Aug. 8, 1990.
U133	All	Aug. 8, 1990.
U134	All	Aug. 8, 1990.
U135	All	Aug. 8, 1990.
U136	Wastewater	Aug. 8, 1990.
U136	Nonwastewater	May 8, 1992.
U137	All	Aug. 8, 1990.
U138	All	Aug. 8, 1990.
U140	All	Aug. 8, 1990.
U141	All	Aug. 8, 1990.
U142	All	Aug. 8, 1990.
U143	All	Aug. 8, 1990.
U144	All	Aug. 8, 1990.
U145	All	Aug. 8, 1990.
U146	All	Aug. 8, 1990.
U147	All	Aug. 8, 1990.
U148	All	Aug. 8, 1990.
U149	All	Aug. 8, 1990.
U150	All	Aug. 8, 1990.
U151	Wastewater	Aug. 8, 1990.
U151	Nonwastewater	May 8, 1992.
U152	All	Aug. 8, 1990.
U153	All	Aug. 8, 1990.
U154	All	Aug. 8, 1990.
U155	All	Aug. 8, 1990.
U156	All	Aug. 8, 1990.
U157	All	Aug. 8, 1990.
U158	All	Aug. 8, 1990.
U159	All	Aug. 8, 1990.
U160	All	Aug. 8, 1990.
U161	All	Aug. 8, 1990.
U162	All	Aug. 8, 1990.
U163	All	Aug. 8, 1990.
U164	All	Aug. 8, 1990.
U165	All	Aug. 8, 1990.
U166	All	Aug. 8, 1990.
U167	All	Aug. 8, 1990.
U168	All	Aug. 8, 1990.
U169	All	Aug. 8, 1990.
U170	All	Aug. 8, 1990.
U171	All	Aug. 8, 1990.
U172	All	Aug. 8, 1990.
U173	All	Aug. 8, 1990.
U174	All	Aug. 8, 1990.
U176	All	Aug. 8, 1990.
U177	All	Aug. 8, 1990.
U178	All	Aug. 8, 1990.
U179	All	Aug. 8, 1990.
U180	All	Aug. 8, 1990.
U181	All	Aug. 8, 1990.
U182	All	Aug. 8, 1990.
U183	All	Aug. 8, 1990.
U184	All	Aug. 8, 1990.
U185	All	Aug. 8, 1990.
U186	All	Aug. 8, 1990.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
U187	All	Aug. 8, 1990.
U188	All	Aug. 8, 1990.
U189	All	Aug. 8, 1990.
U190	All	June 8, 1989.
U191	All	Aug. 8, 1990.
U192	All	Aug. 8, 1990.
U193	All	Aug. 8, 1990.
U194	All	June 8, 1989.
U196	All	Aug. 8, 1990.
U197	All	Aug. 8, 1990.
U200	All	Aug. 8, 1990.
U201	All	Aug. 8, 1990.
U202	All	Aug. 8, 1990.
U203	All	Aug. 8, 1990.
U204	All	Aug. 8, 1990.
U205	All	Aug. 8, 1990.
U206	All	Aug. 8, 1990.
U207	All	Aug. 8, 1990.
U208	All	Aug. 8, 1990.
U209	All	Aug. 8, 1990.
U210	All	Aug. 8, 1990.
U211	All	Aug. 8, 1990.
U213	All	Aug. 8, 1990.
U214	All	Aug. 8, 1990.
U215	All	Aug. 8, 1990.
U216	All	Aug. 8, 1990.
U217	All	Aug. 8, 1990.
U218	All	Aug. 8, 1990.
U219	All	Aug. 8, 1990.
U220	All	Aug. 8, 1990.
U221	All	June 8, 1989.
U222	All	Aug. 8, 1990.
U223	All	June 8, 1989.
U225	All	Aug. 8, 1990.
U226	All	Aug. 8, 1990.
U227	All	Aug. 8, 1990.
U228	All	Aug. 8, 1990.
U234	All	Aug. 8, 1990.
U235	All	June 8, 1989.
U236	All	Aug. 8, 1990.
U237	All	Aug. 8, 1990.
U238	All	Aug. 8, 1990.
U239	All	Aug. 8, 1990.
U240	All	Aug. 8, 1990.
U243	All	Aug. 8, 1990.
U244	All	Aug. 8, 1990.
U246	All	Aug. 8, 1990.
U247	All	Aug. 8, 1990.
U248	All	Aug. 8, 1990.
U249	All	Aug. 8, 1990.
U271	Mixed with radioactive wastes	Apr. 8, 1998.
U271	All others	July 8, 1996.
U277	Mixed with radioactive wastes	Apr. 8, 1998.
U277	All others	July 8, 1996.
U278	Mixed with radioactive wastes	Apr. 8, 1998.
U278	All others	July 8, 1996.
U279	Mixed with radioactive wastes	Apr. 8, 1998.
U279	All others	July 8, 1996.
U280	Mixed with radioactive wastes	Apr. 8, 1998.
U280	All others	July 8, 1996.
U328	Mixed with radioactive wastes	June 30, 1994.
U328	All others	Nov. 9, 1992.
U353	Mixed with radioactive wastes	June 30, 1994.
U353	All others	Nov. 9, 1992.
U359	Mixed with radioactive wastes	June 30, 1994.
U359	All others	Nov. 9, 1992.
U364	Mixed with radioactive wastes	Apr. 8, 1998.
U364	All others	July 8, 1996.
U365	Mixed with radioactive wastes	Apr. 8, 1998.
U365	All others	July 8, 1996.
U366	Mixed with radioactive wastes	Apr. 8, 1998.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
U366	All others	July 8, 1996.
U367	Mixed with radioactive wastes	Apr. 8, 1998.
U367	All others	July 8, 1996.
U372	Mixed with radioactive wastes	Apr. 8, 1998.
U372	All others	July 8, 1996.
U373	Mixed with radioactive wastes	Apr. 8, 1998.
U373	All others	July 8, 1996.
U375	Mixed with radioactive wastes	Apr. 8, 1998.
U375	All others	July 8, 1996.
U376	Mixed with radioactive wastes	Apr. 8, 1998.
U376	All others	July 8, 1996.
U377	Mixed with radioactive wastes	Apr. 8, 1998.
U377	All others	July 8, 1996.
U378	Mixed with radioactive wastes	Apr. 8, 1998.
U378	All others	July 8, 1996.
U379	Mixed with radioactive wastes	Apr. 8, 1998.
U379	All others	July 8, 1996.
U381	Mixed with radioactive wastes	Apr. 8, 1998.
U381	All others	July 8, 1996.
U382	Mixed with radioactive wastes	Apr. 8, 1998.
U382	All others	July 8, 1996.
U383	Mixed with radioactive wastes	Apr. 8, 1998.
U383	All others	July 8, 1996.
U384	Mixed with radioactive wastes	Apr. 8, 1998.
U384	All others	July 8, 1996.
U385	Mixed with radioactive wastes	Apr. 8, 1998.
U385	All others	July 8, 1996.
U386	Mixed with radioactive wastes	Apr. 8, 1998.
U386	All others	July 8, 1996.
U387	Mixed with radioactive wastes	Apr. 8, 1998.
U387	All others	July 8, 1996.
U389	Mixed with radioactive wastes	Apr. 8, 1998.
U389	All others	July 8, 1996.
U390	Mixed with radioactive wastes	Apr. 8, 1998.
U390	All others	July 8, 1996.
U391	Mixed with radioactive wastes	Apr. 8, 1998.
U391	All others	July 8, 1996.
U392	Mixed with radioactive wastes	Apr. 8, 1998.
U392	All others	July 8, 1996.
U393	Mixed with radioactive wastes	Apr. 8, 1998.
U393	All others	July 8, 1996.
U394	Mixed with radioactive wastes	Apr. 8, 1998.
U394	All others	July 8, 1996.
U395	Mixed with radioactive wastes	Apr. 8, 1998.
U395	All others	July 8, 1996.
U396	Mixed with radioactive wastes	Apr. 8, 1998.
U396	All others	July 8, 1996.
U400	Mixed with radioactive wastes	Apr. 8, 1998.
U400	All others	July 8, 1996.
U401	Mixed with radioactive wastes	Apr. 8, 1998.
U401	All others	July 8, 1996.
U402	Mixed with radioactive wastes	Apr. 8, 1998.
U402	All others	July 8, 1996.
U403	Mixed with radioactive wastes	Apr. 8, 1998.
U403	All others	July 8, 1996.
U404	Mixed with radioactive wastes	Apr. 8, 1998.
U404	All others	July 8, 1996.
U407	Mixed with radioactive wastes	Apr. 8, 1998.
U407	All others	July 8, 1996.
U409	Mixed with radioactive wastes	Apr. 8, 1998.
U409	All others	July 8, 1996.
U410	Mixed with radioactive wastes	Apr. 8, 1998.
U410	All others	July 8, 1996.
U411	Mixed with radioactive wastes	Apr. 8, 1998.
U411	All others	July 8, 1996.

[a] This table does not include mixed radioactive wastes (from the First, Second, and Third Third rules) which received national capacity variance until May 8, 1992. This table also does not include contaminated soil and debris wastes.

[b] The standard was revised in the Third Third Final Rule (55 FR 22520, June 1, 1990).

[c] The standard was revised in the Third Third Emergency Rule (58 FR 29860, May 24, 1993); the original effective date was August 8, 1990.

[d] The standard was revised in the Phase II Final Rule (59 FR 47982, Sept. 19, 1994); the original effective date was August 8, 1990.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date

[e] The standards for selected reactive wastes was revised in the Phase III Final Rule (61 FR 15566, Apr. 8, 1996); the original effective date was August 8, 1990.

TABLE 2.—SUMMARY OF EFFECTIVE DATES OF LAND DISPOSAL RESTRICTIONS FOR CONTAMINATED SOIL AND DEBRIS (CSD)

Restricted hazardous waste in CSD	Effective date
1. Solvent–(F001–F005) and dioxin–(F020–F023 and F026–F028) containing soil and debris from CERCLA response or RCRA corrective actions.	Nov. 8, 1990.
2. Soil and debris not from CERCLA response or RCRA corrective actions contaminated with less than 1% total solvents (F001–F005) or dioxins (F020–F023 and F026–F028).	Nov. 8, 1988.
3 All soil and debris contaminated with First Third wastes for which treatment standards are based on incineration	Aug. 8, 1990.
4. All soil and debris contaminated with Second Third wastes for which treatment standards are based on incineration	June 8, 1991.
5. All soil and debris contaminated with Third Third wastes or, First or Second Third ''soft hammer'' wastes which had treatment standards promulgated in the Third Third rule, for which treatment standards are based on incineration, vitrification, or mercury retorting, acid leaching followed by chemical precipitation, or thermal recovery of metals; as well as all inorganic solids debris contaminated with D004–D011 wastes, and all soil and debris contaminated with mixed RCRA/radioactive wastes.	May 8, 1992.
6. Soil and debris contaminated with D012–D043, K141–K145, and K147–151 wastes	Dec. 19, 1994.
7. Debris (only) contaminated with F037, F038, K107–K112, K117, K118, K123–K126, K131, K132, K136, U328, U353, U359	Dec. 19, 1994
8. Soil and debris contaminated with K156–K161, P127, P128, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–U387, U389–U396, U400–U404, U407, and U409–U411 wastes.	July 8, 1996.
9. Soil and debris contaminated with K088 wastes	Jan. 8, 1997.
10. Soil and debris contaminated with radioactive wastes mixed with K088, K156–K161, P127, P128, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–U387, U389–U396, U400–U404, U407, and U409–U411 wastes.	April 8, 1998.
11. Soil and debris contaminated with F032, F034, and F035	May 12, 1997.

Note: Appendix VII is provided for the convenience of the reader.

21. Appendix VIII to Part 268 is revised to read as follows:

Appendix VIII to Part 268—LDR Effective Dates of Surface Disposed Prohibited Hazardous Wastes

NATIONAL CAPACITY LDR VARIANCES FOR UIC WASTES [a]

Waste code	Waste category	Effective date
F001–F005	All spent F001–F005 solvent containing less than 1 percent total F001–F005 solvent constituents.	Aug. 8, 1990.
D001 (except High TOC Ignitable Liquids Subcategory)[c].	All	Feb. 10, 1994.
D001 (High TOC Ignitable Characteristic Liquids Subcategory).	Nonwastewater	Sept. 19, 1995.
D002[b]	All	May 8, 1992.
D002[c]	All	Feb. 10, 1994.
D003 (cyanides)	All	May 8, 1992.
D003 (sulfides)	All	May 8, 1992.
D003 (explosives, reactives)	All	May 8, 1992.
D007	All	May 8, 1992.
D009	Nonwastewater	May 8, 1992.
D012	All	Sept. 19, 1995.
D013	All	Sept. 19, 1995.
D014	All	Sept. 19, 1995.
D015	All	Sept. 19, 1995.
D016	All	Sept. 19, 1995.
D017	All	Sept. 19, 1995.
D018	All, including mixed with radioactive wastes	Apr. 8, 1998.
D019	All, including mixed with radioactive wastes	Apr. 8, 1998.
D020	All, including mixed with radioactive wastes	Apr. 8, 1998.
D021	All, including mixed with radioactive wastes	Apr. 8, 1998.
D022	All, including mixed with radioactive wastes	Apr. 8, 1998.
D023	All, including mixed radioactive wastes	Apr. 8, 1998.
D024	All, including mixed radioactive wastes	Apr. 8, 1998.
D025	All, including mixed radioactive wastes	Apr. 8, 1998.
D026	All, including mixed radioactive wastes	Apr. 8, 1998.
D027	All, including mixed radioactive wastes	Apr. 8, 1998.
D028	All, including mixed radioactive wastes	Apr. 8, 1998.

NATIONAL CAPACITY LDR VARIANCES FOR UIC WASTES [a]—Continued

Waste code	Waste category	Effective date
D029	All, including mixed radioactive wastes	Apr. 8, 1998.
D030	All, including mixed radioactive wastes	Apr. 8, 1998.
D031	All, including mixed radioactive wastes	Apr. 8, 1998.
D032	All, including mixed radioactive wastes	Apr. 8, 1998.
D033	All, including mixed radioactive wastes	Apr. 8, 1998.
D034	All, including mixed radioactive wastes	Apr. 8, 1998.
D035	All, including mixed radioactive wastes	Apr. 8, 1998.
D036	All, including mixed radioactive wastes	Apr. 8, 1998.
D037	All, including mixed radioactive wastes	Apr. 8, 1998.
D038	All, including mixed radioactive wastes	Apr. 8, 1998.
D039	All, including mixed radioactive wastes	Apr. 8, 1998.
D040	All, including mixed radioactive wastes	Apr. 8, 1998.
D041	All, including mixed radioactive wastes	Apr. 8, 1998.
D042	All, including mixed radioactive wastes	Apr. 8, 1998.
D043	All, including mixed radioactive wastes	Apr. 8, 1998.
F007	All	June 8, 1991.
F032	All, including mixed radioactive wastes	May 12, 1999.
F034	All, including mixed radioactive wastes	May 12,1999.
F035	All, including mixed radioactive wastes	May 12, 1999.
F037	All	Nov. 8, 1992.
F038	All	Nov. 8, 1992.
F039	Wastewater	May 8, 1992.
K009	Wastewater	June 8, 1991.
K011	Nonwastewater	June 8, 1991.
K011	Wastewater	May 8, 1992.
K011	Nonwastewater	June 8, 1991.
K011	Wastewater	May 8, 1992.
K013	Nonwastewater	June 8, 1991.
K013	Wastewater	May 8, 1992.
K014	All	May 8, 1992.
K016 (dilute)	All	June 8, 1991.
K049	All	Aug. 8, 1990.
K050	All	Aug. 8, 1990.
K051	All	Aug. 8, 1990.
K052	All	Aug. 8, 1990.
K062	All	Aug. 8, 1990.
K071	All	Aug. 8, 1990.
K088	All	Jan. 8, 1997.
K104	All	Aug. 8, 1990.
K107	All	Nov. 8, 1992.
K108	All	Nov. 9, 1992.
K109	All	Nov. 9, 1992.
K110	All	Nov. 9, 1992.
K111	All	Nov. 9, 1992.
K112	All	Nov. 9, 1992.
K117	All	June 30, 1995.
K118	All	June 30, 1995.
K123	All	Nov. 9, 1992.
K124	All	Nov. 9, 1992.
K125	All	Nov. 9, 1992.
K126	All	Nov. 9, 1992.
K131	All	June 30, 1995.
K132	All	June 30, 1995.
K136	All	Nov. 9, 1992.
K141	All	Dec. 19, 1994.
K142	All	Dec. 19, 1994.
K143	All	Dec. 19, 1994.
K144	All	Dec. 19, 1994.
K145	All	Dec. 19, 1994.
K147	All	Dec. 19, 1994.
K148	All	Dec. 19, 1994.
K149	All	Dec. 19, 1994.
K150	All	Dec. 19, 1994.
K151	All	Dec. 19, 1994.
K156	All	July 8, 1996.
K157	All	July 8, 1996.
K158	All	July 8, 1996.
K159	All	July 8, 1996.
K160	All	July 8, 1996.
K161	All	July 8, 1996.
P127	All	July 8, 1996.
P128	All	July 8, 1996.

NATIONAL CAPACITY LDR VARIANCES FOR UIC WASTES [a]—Continued

Waste code	Waste category	Effective date
P185	All	July 8, 1996.
P188	All	July 8, 1996.
P189	All	July 8, 1996.
P190	All	July 8, 1996.
P191	All	July 8, 1996.
P192	All	July 8, 1996.
P194	All	July 8, 1996.
P196	All	July 8, 1996.
P197	All	July 8, 1996.
P198	All	July 8, 1996.
P199	All	July 8, 1996.
P201	All	July 8, 1996.
P202	All	July 8, 1996.
P203	All	July 8, 1996.
P204	All	July 8, 1996.
P205	All	July 8, 1996.
U271	All	July 8, 1996.
U277	All	July 8, 1996.
U278	All	July 8, 1996.
U279	All	July 8, 1996.
U280	All	July 8, 1996.
U328	All	Nov. 9, 1992.
U353	All	Nov. 9, 1992.
U359	All	Nov. 9, 1992.
U364	All	July 8, 1996.
U365	All	July 8, 1996.
U366	All	July 8, 1996.
U367	All	July 8, 1996.
U372	All	July 8, 1996.
U373	All	July 8, 1996.
U375	All	July 8, 1996.
U376	All	July 8, 1996.
U377	All	July 8, 1996.
U378	All	July 8, 1996.
U379	All	July 8, 1996.
U381	All	July 8, 1996.
U382	All	July 8, 1996.
U383	All	July 8, 1996.
U384	All	July 8, 1996.
U385	All	July 8, 1996.
U386	All	July 8, 1996.
U387	All	July 8, 1996.
U389	All	July 8, 1996.
U390	All	July 8, 1996.
U391	All	July 8, 1996.
U392	All	July 8, 1996.
U395	All	July 8, 1996.
U396	All	July 8, 1996.
U400	All	July 8, 1996.
U401	All	July 8, 1996.
U402	All	July 8, 1996.
U403	All	July 8, 1996.
U404	All	July 8, 1996.
U407	All	July 8, 1996.
U409	All	July 8, 1996.
U410	All	July 8, 1996.
U411	All	July 8, 1996.

[a] Wastes that are deep well disposed on-site receive a six-month variance, with restrictions effective in November 1990.
[b] Deepwell injected D002 liquids with a pH less than 2 must meet the California List treatment standards on August 8, 1990.
[c] Managed in systems defined in 40 CFR 144.6(e) and 14.6(e) as Class V injection wells, that do not engage in CWA-equivalent treatment before injection.
NOTE: This table is provided for the convenience of the reader.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

22. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

Subpart A—Requirements for Final Authorization

23. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by effective date in the **Federal Register**, and by adding

the following entries to Table 2 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * * * *			
May 12, 1997	Land Disposal Restrictions for Wood Preserving Wastes and Paperwork Reductions.	62 FR 26040	August 11, 1997.
* * * * * * *			

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * * * *			
August 11, 1997	Prohibition on land disposal of wood preserving wastes.	3004(g)(4)(c) and 3004 (m)	May 12, 1997. 62 FR 26040
May 12, 1999	Prohibition on land disposal of radioactive waste and soil and debris mixed with wood preserving wastes.	3004(m).	Do.
* * * * * * *			

* * * * *

[FR Doc. 97–11636 Filed 5–9–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 266, 268, and 271

RIN 2050 AE05

[FRL–5816–6]

Land Disposal Restrictions Phase IV: Second Supplemental Proposal on Treatment Standards for Metal Wastes and Mineral Processing Wastes, Mineral Processing and Bevill Exclusion Issues, and the Use of Hazardous Waste as Fill

AGENCY: Environmental Protection Agency.

ACTION: Supplemental proposed rule.

SUMMARY: This is the third proposed rule related to treatment standards for certain metal wastes and wastes from mineral processing. EPA is seeking comment on additional proposed provisions and on new data. This proposed rule would revise universal treatment standards (UTS) for twelve metal constituents when they are in hazardous waste. Affected wastes include ''TC metal'' wastes (those containing high levels of certain metals), mineral processing wastes, and other metal-bearing wastes. These treatment standards are being revised to provide consistency in the LDR standards while minimizing threats to human health and the environment. This proposed rule also addresses the issue of the sampling method for compliance with treatment standards. EPA is seeking comment on a conditional exclusion for secondary mineral processing materials, on co-processing of materials in Bevill-exempt mining units, and on whether certain mineral processing and mining wastes currently excluded from federal hazardous waste regulations warrant regulatory controls. Also included is an exclusion from the definition of solid waste for certain materials reused by wood preserving operations, a clarified policy on EPA-approved variances from hazardous waste treatment, and a prohibition on the use of most hazardous wastes as fill material.

DATES: Comments on this proposed rule must be submitted by July 11, 1997.

ADDRESSES: Commenters must send an original and two copies of their comments to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M. Street, SW, Washington, DC 20460. Commenters must place Docket Number F–97–2P4P–FFFFF on their comments. Hand deliveries of comments should be made to the Arlington, VA, address below. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to : RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460. For information on submittal of comments electronically, see the section called ''Electronic Submittal of Comments'' in **SUPPLEMENTARY INFORMATION** below.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except on Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline between 9:00 a.m. and 6:00 p.m. EST, toll free at (800) 424–9346; or (703) 412–9810 from Government phones or if in the Washington, D.C. local calling area; or (800) 553–7672 for the hearing impaired. Questions can also be directed to the Waste Treatment Branch (5302W), Office of Solid Waste (OSW), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460; phone (703) 308–8434. For information on the issue of treatment standards for metal-bearing wastes, ask for Elaine Eby or Anita Cummings. Anita Cummings is the contact for LDR treatment standards for mineral processing wastes and for the issue of grab versus composite sampling methods. For information on secondary mineral processing materials and Bevill issues, call Van Housman at (703) 308–8419 or Stephen Hoffman at (703) 308–8413. Contact Stephen Bergman for questions on the exclusion for wood preserving wastewaters. For information on the capacity analyses, call Bill Kline at (703) 308–8440. For questions on the regulatory impact analyses, contact Paul Borst at (703) 308–0481. For other questions, call Sue Slotnick at (703) 308–8462.

SUPPLEMENTARY INFORMATION:

Availability of Rule on the Internet

Please follow these instructions to access the rule:

From the World Wide Web (WWW), type http://www.epa.gov/rules and regulations. In addition, several technical background documents contained in the docket supporting this rule will be available on the Internet at http://www.epa.gov/offices and regions/oswer.

Electronic Submittal of Comments

In an effort to reduce unnecessary paper use, EPA is asking prospective commenters to voluntarily submit one copy of their comments, in addition to the paper copy, in either of two electronic methods: diskettes or the Internet. Commenters can send their comments to the RCRA Information Center on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. Please use mailing envelopes designed to physically protect the submitted diskettes. To send copies by Internet, address them to: rcra-docket@epamail.epa.gov. All comments sent by Internet must be ASCII files, avoiding the use of special characters and any form of encryption. Comments in electronic format should also be identified by the docket number F–97–2P4P–FFFFF. Commenters should not submit electronically any confidential business information (CBI). EPA emphasizes that submission of comments electronically is not mandatory, nor will it result in any advantage or disadvantage to any commenter. For further information on the electronic submission of diskettes, contact Sue Slotnick at the Waste Treatment Branch, (703) 308–8462, or Rhonda Minnick at (703) 308–8771.

Table of Contents

I. Background

In the 1984 Hazardous and Solid Waste Amendments (HSWA) of the Resource Conservation and Recovery Act (RCRA), Congress specified that land disposal of hazardous waste is prohibited unless the waste meets treatment standards established by EPA. HSWA requires that treatment standards must substantially diminish the toxicity or mobility of hazardous waste, so that short- and long-term threats to human health and the environment are minimized. The treatment standards are part of the Land Disposal Restrictions Program.

Today's proposed rule is one part of the collection of land disposal restrictions (LDR) rules known as ''Phase IV.'' They are the latest in a series of LDR rules that establish treatment standards for newly listed and identified wastes, and that resolve other hazardous waste matters. EPA proposed the Phase IV rule in two proposed rules (60 FR 43654, August 22, 1995; and 61 FR 2338, January 25, 1996). It subsequently issued a Notice of Data Availability on Phase IV issues (61 FR 21418, May 10, 1996). The attached proposed rule proposes, in some cases, alternative approaches from those in earlier proposals. These changes in approach are being proposed in response to additional data or comments that were submitted on the previous proposals.

Other issues from the Phase IV notices did not require additional proposal. These are being finalized today in a Phase IV rule appearing elsewhere in today's **Federal Register**. The final rule is titled ''Land Disposal Restrictions—Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions.''

EPA estimates that the directly measurable benefits associated with the land disposal restrictions treatment standards in this rule are limited relative to the costs that may be incurred. Therefore, the relative priority of addressing these risks could be questioned. However, we do not believe, for this specific action, that a simple cost effectiveness measure alone provides a sufficient basis for decision-making. As discussed below, the preference for permanent treatment of hazardous wastes is part of the basic policy structure which Congress enacted when it amended RCRA in 1984, and reflects concern over the technological uncertainties regarding risks and long term protectiveness of land disposal and the intent to assure that waste management practices are protective for future generations.

The whole premise of the LDR legislation is that risks posed by land disposal of hazardous wastes are inherently uncertain to evaluate and that land-based units are incapable of long term containment. Land disposal units (such as landfills, surface impoundments, and waste piles) are engineered units that can and have failed in the past with significant consequences to human health and the environment. For this reason, Congress required that hazardous wastes be pretreated before disposal by ''treatment [which] should be the best that has been demonstrated to be achievable.'' Congressional Record of July 25, l984 (S9178). The technology-based approach of the land disposal restrictions provides a measure of insurance against the potential for failure in these land based units.

Given these facts, and evident Congressional intent, EPA continues to believe that the LDR prohibitions and treatment standards are justified in many instances. EPA sets treatment standards that reduce toxicity and mobility of hazardous constituents (or require recycling), and EPA also requires that the treated wastes be placed in reasonably secure land disposal units. However, EPA does believe that, in some situations, the current LDR rules may not provide the optimum regulatory approach. In those situations, EPA will look to other mechanisms to address those relatively low risk scenarios.

II. Potentially Regulated Entities

Entities potentially regulated by this final rule vary according to the section of the rule. The following table shows the industry categories that may be regulated according to each major section of the rule. The table is not intended to be exhaustive, but rather to provide 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.

TABLE OF ENTITIES POTENTIALLY AFFECTED BY THE PHASE IV 2ND SUPPLEMENTAL PROPOSAL

Section of the rule	Category	Examples of entities potentially affected
Treatment Standards for TC metal hazardous wastes, characteristic mineral processing wastes, and other metal-bearing wastes.	Small or Large Quantity Generators of Toxicity Characteristic (TC) metal hazardous wastes (D004–D011), characteristic mineral processing waste, or any hazardous waste required to meet the LDR treatment standard for barium, cadmium, chromium, lead, silver, selenium, antimony, beryllium, nickel, thallium, vanadium, or zinc. Facilities that treat TC metal hazardous wastes, characteristic mineral processing wastes, and other metal-bearing hazardous wastes.	Any party that generates greater than 100 kg of hazardous waste or 1 kg of acute hazardous waste, and generates TC metal hazardous wastes or characteristic mineral processing wastes. Major industries generating TC metal wastes include: primary mineral processing, alkalines and chlorine, industrial inorganic chemicals, industrial organic chemicals, blast furnaces and steel mills, metal plating and polishing, aircraft parts and equipment.
Mineral Processing Secondary Materials, and Bevill Issues.	Generators Storage and Recycling Facilities	Any person who generates secondary materials from the primary mineral processing industry that are destined for recovery of mineral values Facilities that store and/or recycle secondary materials from the primary mineral processing industry.
Exclusion for Recycled Wood Preserving Process Wastewaters.	Wood Preserving Facilities	Facilities that generate and reclaim drippage and wastewaters on-site from the wood processing industry.

III. Revised Treatment Standards for Twelve Metal Constituents in Nonwastewater Forms of TC Metal and Other Wastes

A. Summary

EPA is proposing to revise the universal treatment standards (UTS) for twelve metal constituents: barium, cadmium, chromium (total), lead, selenium, silver, antimony, beryllium, nickel, thallium, vanadium, and zinc that can be found in nonwastewater forms of hazardous waste. (Note, vanadium and zinc are not regulated as underlying hazardous constituents in characteristic wastes.) The revised standards for eight of the metal constituents are higher numerical levels (less stringent) than their existing UTS; the revised standards for four of the metal constituents are lower than their existing UTS. In the original Phase IV proposal (August 22, 1995; 60 FR 43582), EPA proposed to apply the UTS to wastes that exhibit the characteristic of toxicity, as measured by the Toxicity Characteristic Leaching Procedure (TCLP). See 40 CFR 261.24. This procedure measures the possibility that a waste may leach toxic metals above a designated concentration level, and so is a measure of the potential mobility of toxic metals in a waste. Currently, TC metal wastes are subject to LDR standards that are the same as the TC levels. However, these levels are typically higher than those for which threats posed by land disposal of the wastes are minimized. *Chemical Waste Management* v. *EPA*, 976 F.2d2, 13–14.26–27 (D.C. Cir. 1992); cert. denied 113 S. Ct. 1961 (1993). Consequently, treatment to levels lower than the characteristic levels normally is required. *Id.* Commenters took issue with the Agency's use of data from previous rulemakings (those establishing UTS) in setting the TC metal standards. After considering comments and new information, EPA believes applying the UTS levels to TC metal waste is still quite valid, but in some cases the new data indicate that the UTS levels should be modified to better reflect the universe of wastes that would now be subject to the standards.

As a result, the Agency is proposing to modify the proposal so that the treatment standards for the following metal wastes would be higher (less stringent) than the current UTS: barium, beryllium, cadmium, nickel, lead, thallium, vanadium, and selenium. The Agency is proposing to lower the UTS for antimony, chromium (total), silver, and zinc. The revised UTS levels for all twelve metal constituents would apply to all wastes, listed or characteristic, that are subject to UTS. In some cases, the proposed increase in UTS still would lower the existing standard (making it more stringent) for the TC metal waste in question. An example is the constituent lead. The current UTS standard is 0.37 milligrams per liter, while the standard for TC metal wastes is 5.0 milligrams per liter, because these wastes have been subject to the TC level rather than to UTS prior to this rule. Today's proposal would revise the UTS level for lead from 0.37 milligrams per liter to 0.75 milligrams per liter TCLP. This would make the lead standard less stringent for listed wastes (and characteristic wastes such as corrosive wastes that are not characteristic for metals), but would lower (make more stringent) the lead standard for TC metal wastes required to meet UTS.

B. Applicability

The new treatment standards would apply to four sets of hazardous wastes. The first is TC metal wastes, which are those found to be characteristic because one of their metal concentrations is higher than the TC level. One group of TC metal wastes would be subject to treatment standards for the first time: those which are found hazardous by testing with the Toxic Characteristic Leaching Procedure (TCLP) but not by the Extraction Procedure that was formerly used. This somewhat arcane distinction (necessitated by statutory language) is discussed in more detail in the following section. EPA proposed standards for all TC metal wastes on August 22, 1995 (60 FR 43582), and today's action would modify the proposed standards, as discussed in detail below. The second set of wastes affected by this rule are currently subject to UTS, so for these wastes, the proposed standards may provide regulatory relief; these are the other characteristic wastes (toxic organic, ignitable, corrosive, or reactive) that contain any of the nine metal constituents as underlying hazardous constituents. The third set of wastes also would generally have less stringent standards. These are listed wastes that are required to treat any of the nine metal constituents to meet the numerical universal treatment standards. Finally, one last set is being required to meet LDR treatment standards for the first time: mineral processing wastes that exhibit a hazardous waste characteristic. (See 55 FR at 22667 (June 1, 1990) explaining why mineral processing wastes no longer considered eligible for exempt status under the Bevill amendment are classified as ''newly identified'' for purposes of LDR prohibitions, and, hence, not yet subject to LDRs until EPA adopts regulations expressly prohibiting them from land disposal and establishing treatment standards for them.) The Agency proposed treatment standards for those wastes on January 25, 1996 (61 FR 2359), and today's action seeks comment on revisions to those proposed standards.

C. Background

Land disposal of hazardous wastes is largely prohibited by statute, unless the wastes are treated before land disposal to satisfy treatment standards established by EPA. RCRA sections 3004(d)–(g),(m). In developing these treatment standards, EPA has sought to make the standards as uniform as possible while adhering to the ultimate requirement that the standards be sufficient to minimize threats to human health and the environment. The results are the UTS whereby the Agency has, wherever possible, developed the same numerical limit for a hazardous constituent in all of the hazardous wastes where the constituent is present. See 268.40 and 59 FR 47982, September 19, 1994.

Today's notice reproposes treatment standards for the following toxic metals: barium, cadmium, chromium, lead, selenium, silver, antimony, beryllium, nickel, thallium, vanadium, and zinc. Since it affects the UTS, the following hazardous wastes would be affected: (a) characteristic hazardous wastes where these metals are present as Underlying Hazardous Constituents (See 268.2(I) and 59 FR 47982, September 19, 1994); and (b) listed wastes which have treatment standards for one or more of these metals. In addition, these standards would affect the treatment standards for wastes that exhibit the characteristic of toxicity as measured by the Toxicity Characteristic Leaching Procedure (TCLP) because of the presence of these metals. These include both the wastes that are newly identified because they exhibit the toxicity characteristic (TC), which are not yet prohibited from land disposal, and wastes that were already identified as hazardous under the predecessor leaching protocol, the Extraction Procedure (EP), which remain hazardous because they also exhibit the TC. EPA already promulgated treatment standards for this latter class of wastes (wastes identified as hazardous which exhibit both EP and TC toxicity), but these standards were established at the characteristic level. 55 FR 22520, June 1, 1990.

The D.C. Circuit remanded the standards for lead and chromium as being insufficiently stringent when data indicated that further increments of treatment were technically feasible. 976 F. 2d at 27, 32. These proposed standards would, among other things, respond to that remand. The standards also would satisfy EPA's legal obligations to develop treatment standards for newly identified hazardous wastes within 6 months following the wastes' identification as hazardous, RCRA section 3004(g)(4), subsequently extended by consent decree. (*EDF* v. *Reilly,* Cir No. 89–0598, D.D.C.)

D. Proposal of Revised Treatment Standards for Metal Constituents in TC Metal and Other Metal-bearing Wastes

1. August 22, 1995 Proposed Treatment Standards for TC Wastes

In support of the Phase IV proposal (60 FR 43654), EPA performed a comprehensive re-evaluation of the available treatment performance data from both listed and characteristic wastes for all metal constituents in the UTS table. This analysis was conducted in order to determine whether UTS levels could appropriately be transferred to TC metal wastes. Treatment standards for most of the toxic metals in nonwastewater listed wastes were based upon the performance of High Temperature Metal Recovery (HTMR), based on treatment of hazardous wastes K061, K062 and F006 (59 FR 47998, September 19, l994). At that time, the Agency determined that both HTMR and stabilization were BDAT and that while the majority of the UTS numbers were based on High Temperature Metal Recovery, stabilization was also capable of treating to the UTS levels. (See USEPA, ''Background Document for Treatment Technologies'', June 1991; and USEPA, ''Metals Recovery Processes for RCRA Hazardous Waste'', December 1994). As such, the Agency proposed that the metal UTS should also be the LDR treatment standards for characteristic metal wastes. This resulted in the proposed change of treatment standards for six TC metal constituents (barium, cadmium, chromium (total), lead, selenium and silver). The Agency did not propose a change in the treatment levels for arsenic (D004) or mercury-retort residues (D007), and those constituents are not discussed further in today's notice.

2. Comments to the August 22, 1995 Proposal

In response to the Phase IV proposal, the Agency received numerous comments on the proposed treatment standards. The commenters raised three basic issues with regard to the data used to develop the standards: (1) characteristic metal wastes were extremely variable and that the data used to calculate the treatment standards were not representative of the diversity of TC metal wastes; (2) while both HTMR and stabilization were determined to be BDAT, the standards were based solely on HTMR, a technology not commercially available for many TC metal wastes; and (3) the standards were not uniformly achievable when waste streams with multiple toxic metals were being treated. In light of these concerns, the commenters urged the Agency to obtain additional data that would demonstrate the effectiveness of stabilization on TC metal waste streams and to more fully characterize the diversity of these waste streams.

The following commenters provided the Agency with stabilization performance data: Battery Council International, American Foundrymen's Association, Chemical Waste Management and the Environmental Treatment Council. These commenters provided extensive composite data on the stabilization of various TC metal wastes. While each of the data sets provided information on the various performance levels of stabilization treatment, they did not provide the Agency with the full range of information necessary to re-evaluate or re-calculate the treatment standards based on EPA's BDAT protocol (see USEPA ''Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology'', Office of Solid Waste, October 23, 1991). The Agency, convinced that additional data were needed to further assess the treatment of TC metal wastes, attempted to obtain the additional information from the commenters; however, the information/ data required by the commenters that would result in the generation of a ''BDAT'' quality data set has not been forthcoming. The reader is referred to the rulemaking docket for analysis and discussion of the data submittals.

3. Development of Revised UTS for TC Metal Wastes

In response to the concerns raised by the commenters regarding the lack of stabilization data for TC metal wastes, and the concern that some UTS levels may be unachievable by stabilization, the Agency began an effort to obtain additional treatment performance data that better characterized the diversity of metal wastes. During September l996, EPA conducted site visits at three hazardous waste treatment facilities. These facilities represented different types of treatment operations: one facility was a large commercial TSDF that employed conventional stabilization techniques to treat a wide array of inorganic metal wastes and another was an on-site treatment facility that focused on the stabilization of inorganic metal slag. A third facility was commercial and focused on stabilization of inorganic materials using non-conventional stabilization techniques. During these site visits, the Agency either gathered performance data from company records or requested the collection of actual treatment performance data through sampling and analysis. The facilities provided the Agency with detailed performance data consistent with BDAT protocols (including effluent grab samples).

The performance data represented a wide range of metal-bearing wastes (both listed and characteristic) that the Agency believes represents the most difficult to treat metal-bearing wastes. The types of wastes treated included mineral processing wastes, baghouse dust, battery slag, soils, pot solids, recycling by-products, and sludge. TCLP values in the untreated wastes included 4430 mg/l lead, 1580 mg/l chromium, 82 mg/l barium and 4280 mg/l cadmium. In addition, numerous waste streams contained multiple metals which would be representative of a characteristic waste with UHCs, while other waste streams had significant concentrations of combination metals including: lead and cadmium, barium and lead, and chromium and antimony. The Agency reviewed all the performance data and the facility treatment operations. It determined that at least two of the facilities were well-designed and well-operated and represented BDAT technology for the full range of TC metals and the metal UHCs that are often found in these wastes. The reader is referred to the rulemaking docket for a complete discussion of the site visits and the data collected by the Agency. See item numbers 2, 5,6, 17, 18, 19,and 20 in the docket submittal entitled, *Documents Supporting the Reproposed Treatment Standards for D005, D006, D007, D008, D010, and D011 Wastes and the Proposed Revision to the Universal Treatment Standards for Barium, Cadmium, Chromium (total), Lead, Selenium, Silver, Antimony, Beryllium, Nickel, Thallium, Vanadium and Zinc.* Note again that while EPA has developed data and is proposing new treatment standards for vanadium and zinc, they are not regulated as underlying hazardous constituents.

In addition, between October 1994 and December 1995, the Agency obtained performance data from one HTMR facility based totally on grab samples. (The reader is referred to items 3 and 16 in the aforementioned docket materials for a complete discussion of the HTMR data set.) The assessment of the new data sets began with the calculation of treatment standards for each of the two data sets, i.e., stabilization and HTMR. Next, the Agency compared these treatment levels. Based on this comparison, the Agency selected the highest standard for each metal to establish UTS and to allow for process variability and detection limit difficulties. The Agency believes that this approach is consistent with the intent of UTS and derives limits achievable by both HTMR and stabilization technologies. The new data also confirmed that the other proposed levels (i.e., UTS) proposed on August 22, 1995 for TC metal waste and on January 25, 1996 for mineral processing waste are in fact achievable with grab sampling by both stabilization and HTMR. Therefore, EPA is not proposing to modify any levels except those discussed here.

As a result of this new analysis, the Agency is today proposing to change the treatment standard for the following TC metal constituents as well as their associated UTS: barium, cadmium, chromium, lead, and silver. In addition, the Agency is proposing to change the UTS for antimony, nickel, thallium, vanadium, beryllium, and zinc. With these changes, the Agency is establishing metal treatment standards using performance data based solely on grab samples. EPA used the same methodology, sometimes called ''C 99'' in calculating today's proposed levels (i.e., the proposed UTS levels) as has been used in past rulemakings (56 FR 41164, August 18, 1991) and the BDAT Background Document for K061 dated August 1991. The table at the end of this section provides information detailing the standards generated by both data sets as well as the newly proposed standards. The Agency discusses next two metals where data are still limited.

4. Proposed Revision of UTS for Selenium

In the Phase IV proposal, the Agency proposed a treatment standard of 0.16 mg/l for nonwastewater forms of D010-selenium (60 FR 43654, August 22, 1995). This number was the UTS level for selenium that was promulgated in the Phase II rule (59 FR 47980, September 19, 1994). Today, the Agency is proposing to change the UTS for selenium to 5.7 mg/l TCLP and retain the current treatment standard of 5.7 mg/l TCLP for D010 waste. This would in effect create a uniform standard of 5.7 mg/l TCLP for nonwastewater forms of selenium. (The Agency received no comment on the proposed wastewater treatment standard for selenium and is not asking for further comment on this issue.)

Several commenters suggested that EPA establish the treatment standard for selenium at the TC level (1.0 mg/l) for nonwastewaters or promulgate a revised treatment standard for D010 based on stabilization performance data. Commenters proposed alternative treatment standards for D010 wastes that ranged from 0.20 mg/l to 10.0 mg/l. The commenters argued that the proposed standard of 0.16 mg/l which was based on the performance of High Temperature Metals Recovery (HTMR) was not achievable by stabilization and that commercial HTMR units may not accept selenium-containing wastes making the technology unavailable, or at least, not suitable as the technology basis for a uniformly-applicable treatment standard. Furthermore, the commenters argued that the Agency did not account for the difficulties in stabilizing wastes containing high levels of selenium in conjunction with the presence of other metals when developing the treatment standard.

One comment focused on the inability to stabilize selenium-containing wastes in the presence of other metals. The commenter stated that they did not feel that 0.16 mg/l TCLP for nonwastewater forms of D010 was routinely achievable utilizing best operating practices. As stated in their comment, selenium has a pH and solubility that is significantly different from other characteristic metals. Selenium's minimum solubility is at a neutral to mildly acidic pH (6.5–7.5), while it is highly soluble in the alkaline pH range (8–12). The other characteristic metals have a minimum solubility in the strongly alkaline pH range (8–12), while their solubility increases at neutral and acidic pH levels. This difference in solubilities, the commenter stated, creates a problem for treating wastes with a mixture of characteristic metals which include selenium. Since there is a difference in solubilities for the metals depending on the pH of the stabilized wastes, if a neutral pH is maintained in treatment, selenium will not leach but the other metals will, if a high pH is maintained, the selenium will leach while the other metals will not. In light of these distinctly different pH/solubility curves for selenium and other characteristic metals, the commenter believes that the treatment standard for selenium should be established at a higher level. In support of the commenters claims, a laboratory study was submitted showing the leachability of selenium while varying pH and binder to waste ratios.

The Agency has researched the claims made by the commenter and concurs with his assertions. The Agency is convinced that wastes containing selenium concentrations greater than 1.0 mg/l TCLP in the presence of other metals, e.g., cadmium, lead or chromium may encounter difficulties in stabilization due to the different solubility curves noted above. While it may be possible to treat a D010 waste to the proposed treatment standard of 0.16 mg/l TCLP, in the absence of other metal contaminants, the Agency cannot be certain that this would or could occur. The Agency believes that it is more realistic to assume that treatment will occur in the presence of other metals thus limiting the effectiveness of stabilization on selenium. As such, the Agency has decided to propose to maintain the current treatment standard for nonwastewater forms of D010 at 5.7 mg/l TCLP. This standard is based on the stabilization of a D010 waste containing 700 ppm selenium and is considered by the Agency to be the most difficult to treat selenium waste. See the Third rule (55 FR 22574, June 1, 1990.)

The Agency notes that because this treatment standard is above the level of leachable selenium that defines the waste as D010 (1.0 mg/l TCLP), D010 wastes that are generated at a level between 5.7 mg/l and 1.0 mg/l TCLP meet the treatment standard but are still considered to be hazardous wastes (assuming the TCLP value exceeds 1.0 mg/l) and, therefore, must be land disposed in a Subtitle C facility. In addition, since the treatment standard for selenium is above its characteristic level, selenium would not be recognized as an UHC.

The Agency has also decided to propose a change in the UTS for selenium from 0.16 mg/l to 5.7 mg/l TCLP. While the Agency has performance data showing treatment levels for selenium of between 0.16 to 0.29 mg/l TCLP for stabilization and HTMR technologies, these levels seem to be achievable only with extremely low concentrations of selenium in the untreated waste. Therefore, the Agency feels that this standard does not reflect the true diversity of the waste stream, nor is it reflective of the most difficult to treat selenium waste. As such, the Agency feels that 5.7 mg/l TCLP is a better assessment of treatability and a more appropriate standard.

5. Proposed Revision of UTS for Beryllium

In the Phase IV proposal, the Agency proposed to change the UTS for beryllium from 0.014 mg/l TCLP to 0.04 mg/l TCLP, based on composite data (60 FR 43683, August 22, 1995). A commenter was critical of the proposed beryllium level and stated that 0.04 mg/l TCLP was too stringent and not supported by stabilization data. However, the Agency has been unable to obtain, despite repeated efforts, any treatment performance data from that commenter to validate claims that the treatment standard is not achievable. Also, the Agency recognizes that proposing to use composite data was an error, as this is not consistent with BDAT methodology, as discussed above. As such, the Agency is proposing a UTS for beryllium based on available performance data from the stabilization and HTMR facilities described above. These data, which admittedly do not include incoming waste with high beryllium levels, show that the appropriate treatment level is 0.018 mg/l. Therefore, the Agency is today proposing a revised UTS of 0.018 mg/l TCLP (actually 0.02 mg/l, due to rounding) for nonwastewaters based on the performance of HTMR using grab samples. The Agency is however, soliciting comment on whether there are difficulties in treating various beryllium-containing waste streams. The Agency welcomes the opportunity to evaluate any performance data and reminds the reader should any hazardous beryllium production wastes fail to meet the 0.018 mg/l TCLP level (if finalized), the facility may apply for a treatability variance under 40 CFR 268.42.

6. Proposed Revision of UTS for Silver

EPA proposed a concentration level of 0.30 mg/l as the treatment standard for silver nonwastewaters, based on data from the treatment of K061 waste sampled on a composite basis. See 60 FR 43684, August 22, 1995. Citing low human health risks from silver, commenters stated that EPA should not be setting a treatment standard for silver that is lower than the characteristic level of 5.0, and instead should remove silver from the list of TC constituents altogether. Later, EPA issued a Notice of Data Availability which stated that EPA was not prepared to make a decision on whether or not to retain silver on the TC list, but that the Agency was considering two new treatment standard options: a UTS level of 5.0 mg/l, or a level of 5.0 mg/l for D011 while maintaining a UTS of 0.30 mg/l for all other silver-containing waste. See 61 FR 21420, May 10, 1996.

EPA is still studying silver in order to decide on its status as a TC waste, and is not proposing any change to that status in today's notice. However, EPA is proposing a revised UTS, based on the new data on metal constituents discussed above. For silver, the data is based on treatment by High Temperature Metals Recovery and on the preferred method of grab sampling. The data supports a level of 0.11 mg/l for silver nonwastewaters, making the standard more stringent than proposed in either of the earlier notices.

EPA believes that silver wastes are generally recycled due to their economic value and are covered by the special streamlined standards for recyclable materials utilized for precious metal recovery at 40 CFR Part 266.70 Subpart F. There may be little or no land disposal of silver wastes, hence little or no impact of applying a new treatment standard. EPA is today seeking information on quantities of silver nonwastewaters that would be affected by LDR treatment standards, and on whether a level of 0.11 mg/l is achievable for those wastes if they exist. However, as discussed above, standards in the LDR program can be either technology- or risk-based. In the absence of definitive risk information, the Agency sets technology-based standards. Data from both HTMR and stabilization technologies show 0.11 mg/l is achievable for nonwastewaters.

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR TWELVE METAL CONSTITUENTS CALCULATED FROM HTMR AND STABILIZATION SAMPLE SETS*

[Affecting Nonwastewater TC Metal Wastes and Nonwastewater Metal Constituents in All Wastes]

Waste code	Constituent	TC level (mg/l)	Existing UTS level (mg/l TCLP)	HTMR grab samples (mg/l TCLP)	Stabilization grab samples (mg/l TCLP)	Proposed UTS level (revised) (mg/l TCLP)
D005	Barium	100	7.6	3.3	21	21
D006	Cadmium	1.0	0.19	0.20	0.014	0.20
D007	Chromium	5.0	0.86	0.85	0.13	0.85
D008	Lead	5.0	0.37	0.12	0.75	0.75
D010	Selenium	1.0	0.16	0.29	0.12	5.7
D011	Silver	5.0	0.30	0.11	0.0084	0.11
	Antimony	....	2.1	0.043	0.068	** 0.07
	Beryllium	....	0.014	0.02	0.012	** 0.02
	Nickel	....	5.0	13.6	0.082	13.6
	Thallium	....	0.078	....	0.20	0.20
	Vanadium ***	....	0.23	0.015	1.6	1.6
	Zinc ***	....	5.3	3.8	4.3	4.3

* The proposed universal treatment standard (UTS) was established by selecting the higher of the two treatment standards that were calculated from stabilized wastes and HTMR residues.
** The proposed UTS levels for antimony and beryllium were rounded up to the nearest 0.01 mg/l TCLP.
*** Vanadium and zinc are not underlying hazardous constituents.

7. Demonstrating Compliance by Grab or Composite Sampling

EPA has long preferred that compliance with the LDR standards for nonwastewaters be based on grab samples (a one-time sample taken from any part of the waste), rather than composite samples (a combination of samples collected at various locations for a given waste, or samples collected over time from that waste). This is because ''grab samples normally reflect maximum process variability, and thus would reasonably characterize the range of treatment system performance.'' (See 54 FR at 26605–06, June 23, 1989; 55 FR at 22539, June 1, 1990.) This type of sampling is in keeping with the ultimate objective of the land disposal restrictions program: that all of the hazardous waste to be land disposed be treated in a way that minimizes the threats that land disposal could pose, not just that some average portion of the waste be so treated (a possible result of using composite sampling). In addition, there is an implementation advantage to use of grab sampling, since enforcement for EPA, authorized states, or citizen groups is facilitated if enforcement can be based on individual sampling events (as occurs with grab sampling).

The universal treatment standards for nonwastewaters are consequently enforced on the basis of grab sampling. The revisions to those standards for toxic metals reproposed today would likewise be enforced on the basis of grab sampling, and, in all cases are based on grab sampling data. EPA intends to maintain that regime, with the temporary exception of three wastes: K061, K062, and F006 managed at certain facilities, as described below.

Current treatment standards for hazardous waste K061, K062, and F006 were based partially on the use of composite rather than grab sampling. That is, the data for certain of the hazardous constituents regulated under that standard— namely beryllium, nickel, lead, silver, cadmium, and thallium— were obtained exclusively from composite samples, and the data for vanadium and zinc came partially from composite samples. (See memorandum from Richard Kinch to RCRA Docket dated August 19, 1991, regarding promulgation of K061. See also 57 FR at 37207, August 18, 1992, which explains that K061 standards were transferred to K062 and F006). The BDAT technology for this waste code was High Temperature Metal Recovery (HTMR), and the composite samples used to develop parts of the standard indeed came from HTMR facilities. *Id.* The two HTMR facilities involved in developing the data for the current standards have pointed out in comments to the Phase IV proposal and to earlier LDR rules that they may not be able to achieve the metal treatment standards for these waste codes if enforcement is based on grab sampling, and that such enforcement is unwarranted for their facilities since the underlying data used to develop the treatment standard for these wastes included composite data. (See comments from Horsehead Resource Development Company, Inc. and International Metals Reclamation Company, Inc. in the docket for the Phase IV proposal, 60 FR 43654, August 22, 1995).

EPA is rectifying this problem in the short term by allowing two HTMR facilities, Horse head Resource Development Company Inc. and International Metals Reclamation Company Inc. to comply with the current treatment standards for K061, K062, and F006 through use of composite samples. The two facilities must follow the procedures contained in two documents in appendices to this preamble, entitled ''Procedures For Horse Head Development Company to Establish Compliance With RCRA Treatment Standards at 40 CFR 268.40 and 268.48 for K061, K062, and F006 residuals; and ''Procedures For INMETCO to Establish Compliance With RCRA Treatment Standards at 40 CFR 268.40 and 268.48 for K061, K062, and F006 residuals.''

However, EPA's ultimate intent is to require compliance with UTS on a grab basis for all facilities, including HTMR facilities treating K061, K062, or F006. As discussed above, EPA has received additional grab sample data on metal-bearing hazardous waste that was not available at the time UTS was promulgated. As discussed above, EPA has proposed to use the new data to revise the UTS standards for some constituents. It appears that with the new UTS metal levels proposed in this notice, that HTMR facilities should be able to meet UTS on a grab sampling basis. There are some data (from one facility) supporting this position, and EPA has requested additional data from the other facility, which has indicated it will provide additional data within six months. Therefore, EPA will consider data received until six months from the date this notice is published in the **Federal Register** before making a final decision. The Agency will act sooner, if in its judgement there is little likelihood that additional data will be available within six months. Currently the Agency's view is that the UTS levels proposed today can be met by both stabilization and HTMR, and grab sampling must be required in all cases.

IV. Revised Treatment Standards for Mineral Processing Wastes

A. Summary

EPA is proposing to apply Universal Treatment Standards, as revised today, to the newly identified mineral processing wastes. The revised treatment standards can be found in the table at the end of the section in this preamble on treatment standards for TC metal wastes.

B. Discussion

On August 22, 1995 the Agency requested comment on a proposed rulemaking which would apply LDR treatment standards to all characteristic metal wastes (60 FR 43654), and on January 25, 1996 EPA proposed that those same standards apply to mineral processing waste that exhibit a characteristic of hazardous waste. As noted above, such wastes are considered to be ''newly identified'' for purposes of timing of LDR prohibitions. The comments received suggested that the proposed treatment standards could not be achieved using stabilization treatment; and that more stabilization technology performance data was necessary to set treatment levels for TC metals. Since the receipt of these comments the Agency has conducted site visits to facilities using stabilization technology to treat mineral processing or similar wastes, i.e. TC metal wastes. See Section II above for the discussion of TC metal waste.

The new data from these site visits reaffirm the Agency's position that the mineral processing wastes are similar (i.e., no harder to treat) than those wastes from which the Universal Treatment Standards (UTS) were established. (In addition to the new data on TC metal waste referenced above, see: Modified Background Document dated December, 1996 and BDAT Background Document for TC Metals dated August, 1995; and Background Document for Universal Treatment Standards dated September, 1994). Specifically, the new site visit data came from facilities treating primary or secondary mineral processing (68%); facilities that generated metal-bearing remediation waste (10%), metal manufacturing waste (10%), foundry wastes (6%), and spent metallic wastes (6%), most of which exhibited a characteristic or were listed hazardous wastes. As discussed in section II above, this new data has convinced the Agency that some revisions should be made to the UTS. With these revisions, the Agency concludes that UTS levels are achievable for mineral processing wastes, as for other TC metal wastes.

V. Proposal of New Options for Mineral Processing Materials

Today's proposal seeks comment on several specific options considered by the Agency related to recycling of secondary materials from mineral processing, and to wastes excluded by the Bevill Amendment. This proposal is a supplement to, and not a replacement of, the January 25, 1996 proposed rule.

The first issue pertains to the land storage of hazardous mineral processing secondary materials—that is, sludges, byproducts or spent materials generated by and legitimately recycled within the mineral processing industry sector, which secondary materials would be either identified or listed as hazardous wastes if they are first classified as solid wastes (see 50 FR at 616, n.4, and 627 (Jan. 4, 1985))— and when such storage could occur without the secondary materials being RCRA ''solid wastes''. The second issue involves whether the wastes generated when a facility uses alternative feedstocks along with Bevill raw materials retain Bevill-exempt status. EPA is proposing and seeking comment on new options for addressing these issues. The final matter addressed is a limited solicitation of comment on the question of whether the risks posed by some wastes which are currently Bevill-exempt warrant future regulatory controls by the Agency.

A. New Option—Land Storage of Secondary Materials

1. General Discussion

In the January 25, 1996, rule, the Agency proposed changes to the current definition of solid waste by providing a conditional exclusion for primary mineral processing secondary materials that are further processed within the industry. Under this approach, mineral processing secondary materials would not be solid wastes if certain conditions are met. These conditions included meeting criteria to ensure that legitimate reprocessing was occurring and that the land-based unit was functioning as a process unit and not a waste disposal unit. These include: a performance standard through groundwater monitoring; technical standard by design and construction; or a determination by a state or EPA Region that the unit is functioning as a process unit. See generally 61 FR at 2339–2351. In response to this proposal, the Agency received 101 comments, many providing the Agency new information about the identification, management, and volumes of particular wastes.

The information from the comments, further analysis of existing data, and new data collected since the January 25, 1996 proposal indicate that mineral processing secondary materials are generated in smaller volumes than EPA previously believed. Further, this new information indicates that a significant number of secondary mineral processing materials are not stored in land-based units. The Agency also has gathered additional data indicating that land-based storage of secondary materials contributes to environmental releases. Based on this information, the Agency questions the necessity of land-based storage units for most of the mineral processing industry.

The Agency today is proposing a new option that would restrict the use of land-based units for secondary materials generated by and recycled within the mineral processing industry. This new option would condition exclusion from being a solid waste on storage in units that are not land-based—typically tanks, containers, or buildings. Thus, if a hazardous secondary material from mineral process is legitimately recycled within another mineral processing operation, it would not be a solid waste provided the storage that precedes the recycling does not entail land placement. This proposal is conceptually the same as the one EPA proposed for the oil-bearing secondary materials generated by and recycled within the petroleum industry. See 60 FR 57753 (Nov. 20, 1995). The Agency would make an exception where there is a volumetric necessity to use land-based storage units to store hazardous secondary materials. The Agency is proposing as the volumetric cut-off 45,000 tons per year for solids and one million tons per year for liquids—consistent with the high volume criteria previously established by the Agency for 20 special mineral processing wastes. (See 54 FR 36629, September 1, 1989). High volume hazardous secondary materials, to the extent that any exist, would be subject to the land storage conditions based on the concepts proposed in the January 25, 1996 Proposed Rule. (See 61 FR at 2345–48). Further, in today's notice EPA is providing information on what types of tanks, containers, and buildings would be suitable as storage structures. In general, the Agency is proposing that these units be able to contain the secondary materials, but would not require that the units satisfy subtitle C design, operation, and performance standards. (See Non-RCRA Tanks, Containers, and Buildings, EPA, 1997). This approach, again, is analogous to that proposed for oil-bearing secondary materials generated by and recycled within the petroleum industry.

The Agency received comments that land based units were not protective due to uncontrolled releases of hazardous constituents. In evaluating the comments, the Agency identified additional information which characterizes how mineral processing land-based units can release or threaten to release hazardous constituents. (See Damage Cases and Environmental Releases, EPA 1997). Also, the Agency has found that use of land-based units to store hazardous secondary materials is less common than EPA previously believed, indicating that land-based storage may not be such an integral practice of the mineral processing industry. Further, as noted in the preceding paragraph, the information provided by commenters indicates that the volumes of mineral processing secondary materials may be lower than expected, indicating that land-based storage may not always be necessary because comparable quantities of secondary materials from other industrial sectors are typically managed in tanks, containers, and buildings. This information is provided in the RCRA docket for public review and comment. (See Characterization of Mineral Processing Wastes and Materials, EPA 1997).

The information collected by the Agency indicates that mineral processing hazardous secondary materials stored in land-based units can pose actual and potential threats to human health and the environment. Due to particle size reduction, heat, and chemical reactions in the processing steps, metal compounds and other constituents become more mobile and concentrated. (54 FR 36614–36619, September 1, 1989). Specifically, EPA has found cases where land storage (surface impoundments and piles) of hazardous secondary mineral processing materials awaiting recycling increase the potential for groundwater contamination, contaminated runoff, windblown dust, and soil contamination and increase the cost of cleanup. (See Damage Cases and Environmental Releases, EPA, 1997).

In the case of piles, the storage practice of allowing secondary materials to erode due to rainfall and to be carried away by the prevailing winds can pose actual or potential threats to human health and environment and are suggestive of waste disposal practices. (See Damage Cases and Environmental Releases, EPA, 1997). The same is true for surface impoundments where materials are allowed to migrate to contaminate soils and groundwater. In contrast to these practices, most other industries which generally store secondary materials destined for recycling in tanks, containers, or buildings. Further, and more importantly, these land-based storage practices can result in the types of environmental damage that RCRA was designed to prevent.[1] Such materials can be viewed as ''part of the waste disposal problem'' when stored in land-based units, and hence ''discarded'' (within the meaning of the statutory definition of solid waste, RCRA section 1004 (27)). *American Mining Congress* v. *EPA,* 907 F.2d 1179, 1186 (D.C. Cir. 1990). The Agency is proposing conditions that would better define when discard is not occurring, such as storage in a tank, container, or building.

The Agency received sufficient comment on the jurisdictional solid waste issues in the January 25, 1996 rule and requests that commenters direct their comments solely to the new options in today's notice.

As noted earlier, EPA initially found that land-based units at mineral processing sites have historically been a significant part of the production processes typical of the mining and mineral processing industries. (See 61 FR at 2340–41). The Agency reasoned that land-based units were necessary due to large volumes of materials managed by this industry (or, in some cases, due to the heat of the material precluding any other type of immediate handling) and historical practices for the mineral industry. However, the Agency also noted that there is a trend for some mineral processing facilities to manage secondary materials in tanks or other units which provide containment integrity. The Agency believes that the trend toward storage of secondary materials in tanks, containers, and buildings is a function of technological advances, process changes, and sometimes in response to increasing environmental liability.

The Agency's review of comments on the volumes and the management practices of secondary materials generated support the observation that facilities are less likely to use land-based units and are managing more hazardous secondary materials in contained units. Based on the comments received and further evaluation of new data, the Agency has found the volumes of hazardous secondary materials from mineral processing to be much lower than earlier believed. Specifically, EPA found that of the 119 hazardous waste streams, 117 (98 percent) were generated in quantities lower than the respective Bevill high volume cutoffs for solid and liquids. Even more demonstrative is that 79 (48 solid wastes and 31 liquid wastes) of the 119 waste streams are generated in quantities less than 5,000 tons per year. (See Characterization of Mineral Processing Wastes and Materials, EPA, 1997).

EPA's assumption that there was production-related necessity for mineral processing facilities to utilize land-based storage units is also called into question by comparison of other industries' storage practices with respect to comparable metal-bearing wastes which are likewise recycled for metal recovery. For example, electric arc furnace dust from steel smelting (K061) is a similar metal-bearing waste that is also re-processed. K061 is generated at the average rate of 4,662 tons per facility per year. However, K061 is stored in tanks, containers, and buildings, not on the land. There is no evidence that such management poses an undue burden on the generators or processors of K061. Further, there are many similarities between the recycling of K061 and the recycling of hazardous secondary materials by the mineral processing industry. In both cases, metal-bearing dust that bears resemblance to the raw material metal concentrate being smelted is generated as part of a smelting process.

The Agency has seen a trend for mineral processing wastes to be placed in tanks upon generation and treatment. This is the case for spent potliners K088 listed waste, a primary mineral processing waste and one of the remanded smelting wastes. Approximately 23 facilities generate an average of 5,400 tons per year of K088, an aggregate of 125,000 tons per year.[2] One facility, Reynolds Metal Company,

[1] See RCRA Section 1003(b), 42 U.S.C. 6902(b) (''The Congress hereby declares it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.'')

[2] EPA Background Document for Capacity Analysis for Land Disposal Restrictions, Volume 1, February 1996.

is able to store and treat almost the entire nation's production of K088 in tanks, containers, and buildings. In the case of spent aluminum potliners, the industry does not appear to be unduly burdened by storing this waste in tanks, containers, or buildings.

Commenters presented little in the way of data or compelling technical reasons why mineral processing hazardous secondary materials cannot be stored in units other than land-based units. One commenter stated that molten copper slag needs to be poured onto the ground because no container would withstand the heat during the cooling process. However, the Agency finds this example unpersuasive because copper slag is one of the special 20 mineral processing wastes and therefore isn't subject to subtitle C regulation (See 261.4(b)(7)). In any case, the copper slag is stored and transported in metal containers prior to being land applied, indicating that land storage is not an exclusive alternative. In addition, the slag is typically put back into the beneficiation or smelting operation within 24 hours, which is a practice indicating immediate reuse and not discard. (Additional discussion on the concept of immediate reuse can be found in Section IV.A.4-Class of Materials Outside of RCRA Jurisdiction.) One commenter stated that red and brown muds from bauxite refining required surface impoundment due to large volumes. Here also the Agency finds this example unpersuasive because red and brown muds are included in the special 20 mineral processing wastes and therefore are not subject to subtitle C regulation (See 261.4(b)(7)). Commenters did not identify any other materials for which land-based storage was a compelled mode of management.

2. Criteria for High Volumes of Bevill-Exempt Mining and Mineral Processing Wastes

High volume is the principal indicator of whether a particular waste is amenable to management under Subtitle C of RCRA. In developing the high volume criterion for special mineral processing waste, the Agency evaluated four methodological issues: (1) The appropriate degree of aggregation of waste streams; (2) the basis for quantitative analysis (facility specific vs. industry wide); (3) the units of measure; and, (4) the types of other wastes to be used as the basis for comparison. (For a detailed discussion on establishing the high volume criteria see 54 FR 15327–31, April 17, 1989). The Agency established a high volume cutoff for solid wastes from mineral processing at 45,000 tons per facility waste stream per year and the high volume cutoff for liquids at one million tons per facility waste stream per year. In the case of extraction/beneficiation wastes, the Agency published a determination that regulation of such wastes under Subtitle C of RCRA was not warranted, primarily because traditional hazardous waste controls applied to large volume mining wastes may be technically infeasible or economically impractical. July 3, 1986 (51 FR 24496). In today's rule, the Agency is soliciting comment on whether large volume secondary materials from mineral processing should similarly be given special consideration. The Agency is soliciting comment on whether large volume secondary materials from mineral processing may require land-based storage because of technical infeasibility or production-related necessity.

Under this new option, (actually a subset of the January 25 proposal) those mineral processing secondary materials that meet or exceed the high volume criteria would be eligible for the conditional exclusion as proposed in the January 25, 1996 Proposed Rule (61 FR 2338). Specifically, if large volume secondary materials are stored on the land, such storage unit must meet either risk based performance standards, or minimum design criteria, or receive a site-specific determination that the unit is a process unit and not a waste disposal unit. 61 FR at 2345–47. The generally applicable conditions related to legitimate recycling and speculative accumulation would also apply. 61 FR at 2342–45. In essence, today's proposal applies one additional condition: to be stored in a land-based unit, the secondary material must be generated on a per waste stream annual basis that meets or exceeds the high volume criteria. The Agency solicits comments on this proposed regulatory approach.

3. Containment Units

EPA has collected information on a variety of tanks, containers, and buildings. The unit must function as a process unit and should be designed to contain the material placed in it with reasonable certainty, that is, the secondary materials must be stored in a way that distinguishes the unit from a waste disposal unit. Generally, a containment unit should be an engineered unit made of non-earthen materials providing structural support. The Agency believes that most containment units currently in use by the mineral industry would meet this description. The Agency's review of currently available tanks, containers, and buildings indicates that wide variety of commercially available units meet or exceed these criteria. The capacity, design, and function of these containment units are as varied as the construction materials. (See Non-RCRA Tanks, Containers, and Buildings, EPA, 1997). This report provides examples of what the Agency considers to be acceptable containment units for the storage of mineral processing secondary materials.

As discussed in this report, an acceptable tank or container must be free standing and not a surface impoundment, be manufactured of a material suitable for storage of its contents, and meet comparable specification as those established by ASTM, API, or other industry standards. Additional descriptions of these standards and examples of acceptable storage units are described in EPA's technical background document. (See Non-RCRA Tanks, Containers, and Buildings, EPA, 1997.) An acceptable building containment unit must be a man-made structure and foundation constructed from non-earthen materials, have walls (which may be removable), and have a roof suitable for diverting rainwater away from the foundation. In considering criteria for tanks, containers, and buildings, EPA is placing special emphasis upon practical considerations, such as the need to transport materials in and out of the unit in a reasonable fashion. The Agency believes that buildings with one or more open doors or removable walls accessible to machinery, such as a front-end loader, are acceptable. The Agency solicits comment as to whether a three sided concrete bunker, with no roof, used to store flue dust is an acceptable building or whether a tank or container needs to be covered or have a fixed or removable lid. Such containment units may be acceptable in geographic regions with sparse rainfall.

The Agency would not require that these units meet full Subtitle C requirement for storage units of hazardous wastes. Specifically, the Subpart J requirements for tanks at 40 CFR 265.190–265.201 would not be required. The Agency believes that an appropriate indicia of containment should include a comparison of how this industry stores its primary feedstocks and products, which is typically in non-subtitle C tanks, containers, or buildings. The Agency believes that it is reasonable not to condition an exclusion on using units that meet all of the subtitle C standards. These standards were not created to demarcate a line between wastes and non-wastes, and, similarly, are not the necessary benchmark for ascertaining if a unit functions as part of a production process or is being used as a mode of discard. Indeed, even raw materials containment structures would not meet all of the subtitle C requirements. The Agency solicits comment on this approach.

4. Class of Materials Outside of RCRA Jurisdiction

In the January 25 proposal, the Agency stated that the statutory definition of solid waste, as well as the judicial opinions construing it, must be taken into account in addressing EPA's jurisdiction over mineral processing secondary materials. 61 FR 2341. In *American Mining Congress* v. *EPA*, 824 F. 2d 1177 (D.C. Cir. 1987) (''AMC I''), the court found that EPA's jurisdiction does not extend to materials that are destined for immediate reuse in another phase of the industry's ongoing production process. 824 F. 2d at 1186. Subsequent judicial opinions have clarified the narrow scope of AMC I, so that the only absolute bar on the Agency's authority to define recycled secondary materials as solid wastes is to ''materials that are destined for immediate reuse in another phase of the industry's ongoing production process' and that have not yet become part of the waste disposal problem.''' *American Mining Congress* v. *EPA*, 907 F. 2d 1179, 1186 (D.C. Cir. 1990) (''AMC II'') quoting AMC I, 824 F. 2d at 1186 n2. In the January 25 rule, the Agency focused its attention on land-based units which by their very nature are unable to prevent releases of secondary materials. 61 FR 2342. While storage of secondary materials on the land is one indication of discard, other practices such as lack of immediate reuse is an indication that unit is part of the waste management problem. The Agency has damage case information involving the environmental release of product-like materials being stored for extended periods of time. (See Damage Cases and Environmental Releases, EPA, 1997). Conversely, materials that are immediately reused in a process is a practice indicative of on-going processing that is outside the scope of RCRA subtitle C.

Based on the Agency's study of mineral processing industry practices and review of comments on this subject from the January 25 proposal, the Agency believes initially that there are two categories of materials that are included in the definition of immediate reuse. The first are materials that by their very nature are being continually processed and whose management practices indicate that discard is not occurring. These materials have always been outside of RCRA jurisdiction and are unaffected by this or the January 25 proposal. An example are copper reverts, a refined copper material that falls on the ground when molten copper is transferred within the smelter.[3] The common industry practice is to pick up reverts on an hourly basis and put them back into the smelting process. These are not secondary materials (sludges, spent materials, or byproducts) at all but rather some type of in-process material that is being put to further use. There is no use for reverts other than to be added to a copper smelting operation for continued refining. Further, the Agency is not aware of any case where reverts have been abandoned, discarded, or whose land storage has contributed to environmental problems. Copper reverts have always been outside of RCRA jurisdiction.

The second category are secondary materials whose management practices indicate that ongoing process immediate reuse is occurring. An example of an immediately reused secondary material would be copper flue dust generated from smelting operations. Most facilities routinely store flue dusts for very short periods of time before returning the material to the smelting process. Similar to reverts, copper flue dust has no other use other than to be returned to the smelting process for continued refining. However, unlike reverts, the Agency has information indicating that some flue dusts are stored for extended periods of time and have contributed to environmental problems. (See Damage Cases and Environmental Releases, EPA, 1997). The Agency believes that environmental releases are a function of the length of storage time for these materials.

Defining a particular time period that constitutes immediate reuse raises several considerations. The Agency has found that most mineral processing facilities operate 365 days per year, 24 hours per day. Because of this continuous production schedule, secondary materials that are destined for immediate reuse are routinely placed back into the process on an hourly basis and most are recycled within one or two days. The Agency believes that a time period of two days is an appropriate standard for immediate reuse. This means that a secondary material that is put back into production within two days of generation is outside of RCRA jurisdiction, regardless of whether it is stored on the land. The Agency believes that while most facilities could comply with a much shorter time period, the two day period allows flexibility to perform the major steps necessary for recycling. The Agency believes that there are generally five major steps: (1) Generation of the secondary material; (2) sampling of the material (3) chemical and property analysis of the material; (4) processing decisions; and (5) placing material back into the process.[4] Even if only one of the steps were to occur in a separate eight hour shift the entire sequence would require 40 production hours, which is well within the two day allowable period. The Agency believes that this is a worst case scenario, and certainly within the zone of reasonable durations from which EPA could select a value, because most facilities process materials in a much shorter time period than the two day (48 hour) period.

The Agency realizes there are occasions where a processing device must be taken off line for maintenance. There are occasions where machinery breaks down and extensive repair is needed. In such cases, the facility usually has parallel or backup devices to continue production. Nevertheless, the Agency realizes that this may not always be the case and that sometimes production stops for extended periods of time. The point is that notwithstanding the main line production stoppages, secondary materials destined for immediate reuse are routinely put back into production expeditiously. To make allowance for production stoppages, the Agency is proposing that the tolling of the two day period for immediate reuse would also stop. The tolling would continue on the next production day. Put another way, a production day counts towards one day of the two day limit.

In today's proposal, the Agency is limiting the two day immediate reuse exclusion only to on-site processing, that is, where a material is generated and reused in the same or similar process at the same facility. EPA believes that this is a reasonable interpretation of the ''immediate reuse'' test articulated in the judicial opinions. Once secondary materials are transferred off-site, the transaction is less continuous, and elements of discard

[3] Reverts are matte and copper spilled in the converter aisle in the process of being transferred to ladles from one part of the smelting process to another. See Memorandum from Roderick Dwyer, National Mining Association, to James Berlow, EPA, August 31, 1995.

[4] These steps are based upon information obtained from the Society of Mining Engineers Mineral Processing Handbook, Volume 2, Section 30—Sampling and Testing, and Section 14G—Purchase of Copper Concentrates and Cement Copper (1985); By-products Recycling at ASARCO. Processing of Drosses, Slages, and Dusts, G. Archer, B. Dunn, and F. Ojebuoboh, The Minerals, Metals, and Materials Society (1991).

such as use of land-based storage can be assessed in determining if management of the material has become part of the waste disposal problem. *AMC II*, 907 F. 2d at 1186. Further, the exclusion does not apply to secondary materials in either category that are managed in a way indicative of disposal.

The Agency solicits comment on the appropriateness of a two day time period; whether there are more practical or appropriate measures of immediate reuse; and whether this exclusion should apply beyond on-site processing. Further, the Agency solicits comment on what other specific materials would qualify under the immediate reuse exception.

B. New Option—Non-Bevill Materials Used as Alternative Feedstocks

The Agency is proposing an option related to the case where a process which generates a waste exemption from subtitle C regulation under the Bevill amendment uses as partial feedstock something other than a Bevill raw material. An example would be a copper beneficiation mill which uses by-products from primary zinc manufacture as an auxiliary feedstock along with copper ore. This new option would limit availability of the Bevill exemption to wastes generated exclusively from the use of Bevill raw materials, namely ores and minerals. Because of the potential additive risk posed by the co-processing of non-Bevill materials, the Agency is proposing an option that would 'prevent contaminants from non-Bevilled materials to be afforded the Bevill exclusion. This option is not an alternative to the option of restricting use of land-based storage units discussed in the section entitled ''New Option—Land Storage of Secondary Materials.'' It is an independent proposal which could be adopted regardless of the Agency's decision on land-based storage units.

In the January 25 proposal, the Agency discussed one option for evaluating wastes generated from these types of co-processing operations. 61 FR at 2351. In order for the waste to qualify for the Bevill exclusion under that proposal, the Agency proposed the following criteria: (1) The waste needs to result from operations that process greater than 50% beneficiation raw materials; (2) the material being co-processed would have to meet the tests for legitimate recycling proposed in the January 25 notice; and (3) the resulting waste could not be ''significantly affected'' by addition of the co-processed, alternative feedstock. This ''significantly affected'' test involved comparing wastes generated by processing exclusively Bevill raw materials with wastes from co-processing alternative feedstocks and showing that the addition of the alternative feedstocks did not have either a statistically significant effect, or, in the alternative, an environmentally significant effect. Wastes not ''significantly affected'' remained the type of waste EPA had determined warrant Subtitle C exemption. 61 FR at 2351.

Most industry commenters supported the 50 percent criteria but disagreed with the need for a quantified legitimacy test and the significantly affected test. Further, industry commenters argued that these tests were unworkable as applied to their wastes. Industry commenters also argued that Congress intended the Bevill Amendment to be interpreted broadly, to include not only solid waste from the extraction, beneficiation, and mineral processing of ores and minerals but also wastes generated when (1) non-Bevill feedstocks are added to a unit that generates a Bevill waste and (2) non-Bevill wastes are added directly to a Bevill waste.

At the outset, it is important to note the distinction between these two scenarios. The new option discussed in today's proposal addresses the first scenario in which non-Bevill feedstocks are co-processed with Bevill raw materials in a unit that generates a Bevill waste. The second scenario, which refers to direct disposal of a non-Bevill waste with a Bevill waste, was addressed in the January 25, 1996 proposed rule and EPA's proposed approach for dealing with that scenario is not being modified by today's notice.[5]

Under today's new option, in order for a waste to qualify for the Bevill exclusion, all feedstocks entering the unit must be solely derived from the extraction, beneficiation or processing of a virgin ore or mineral. This means that only extracted virgin ores used as a feedstock to a beneficiation operation and only concentrates derived from beneficiation and then used as a feedstock to mineral processing would be eligible for the Bevill exclusion. If alternative materials are used as feedstocks, the resulting waste would not be eligible for the Bevill exclusion. For purposes of this proposal, alternative feedstocks include secondary materials generated from mineral processing operations and any materials generated in industries other than mining or mineral processing, regardless of whether the material exhibits a hazardous characteristic.

Under this option, the 50 percent criteria for Bevill eligibility, as discussed in the January 25, 1996 proposed rule at 61 FR 2351, would not be applicable. Similarly, the significantly affected test proposed at 61 FR 2351 would no longer be applicable. Since under today's proposal, any addition of a non-Bevill feedstock would disqualify the resulting wastes from the Bevill exemption, the 50 percent and significantly affected tests would be redundant.

This proposal is based on the following principles. First, the Bevill exemption allows for management of what would otherwise be hazardous waste outside of subtitle C controls. This uncontrolled management has led to instances of, widespread, and serious environmental damage. (See Damage Cases and Environmental Releases, EPA, 1997). In light of this, EPA believes it is sound policy to interpret the scope of the exclusion to the narrowest permissible in order to limit the amount of hazardous waste escaping regulatory control. Second, the Bevill amendment creates an unfortunate incentive to maximize volume of Bevill waste generated. Put another way, there is an incentive to maximize the volume of material processed through the Bevill circuit because the resulting wastes are accorded Bevill exempt status. Compounding the problem, the co-processing can frequently make the resulting wastes more toxic. Again, given the exempt status of the wastes, EPA believes it makes sense to limit the scope of the exemption and reduce this incentive for waste maximization. These points are discussed more fully below. Co-processing of non-Bevill feedstock has changed significantly since the Agency performed its Congressionally mandated studies. When EPA studied extraction, beneficiation, and mineral processing wastes in the 1985 and 1990 Reports to Congress, the Agency did not specifically study the practice of co-processing alternative feedstock with Bevill feedstocks. In the case of beneficiation, the Agency believed this practice was conducted on such a small scale as to warrant little or no mention in the 1985 Report to Congress and 1986 Regulatory Determination. For mineral processing the Agency believed that both co-processing and co-disposal of hazardous materials was performed on such a small scale that it addressed both situations under a general Bevill mixture rule. (See 54 FR 36622–23 and

[5] See Proposed Amendment to Bevill Mixture Rule, 61 FR at 2352. The Agency proposed that Subtitle C requirements would apply when non-Bevill hazardous wastes are disposed with, stored with, mixed with or otherwise combined with Bevill-exempt solid wastes.

also 61 FR 2352). The Agency's continued study of mining and mineral processing indicates that co-processing of non-Bevill feedstocks is becoming much more prevalent. This could be because as EPA has implemented the LDR program, generators have sought alternative outlets for waste rather than paying for the required treatment. For example, copper smelting operations currently process a substantial portion of the nation's F006 listed hazardous electroplating wastes, a practice that did not exist when EPA studied the Bevill special waste, copper slag, produced by this smelting. Based on environmental damages from copper slag and other Bevill wastes, the Agency is concerned about the contribution of contaminants from non-Bevill sources. The Agency seeks additional data on the types, quantities, and management practices of non-Bevill feedstock which are co-processed by units that generate Bevill wastes.[6]

The Agency believes that the addition of hazardous substances from non-Bevill sources only makes the risk posed by exempt mining wastes greater. In light of the environmental damages caused by Bevill wastes, the high cost of remediation, and the contribution of contaminants from non-Bevill feedstocks, the Agency is taking comment on a rigorously narrow reading of the Bevill exemption and proposing this option which removes the Bevill exclusion for wastes that are generated from a unit or device that co-processes non-Bevill alternative feedstocks. Under this option, non-Bevill feedstocks may still be processed in a Bevill device or unit; however, the resulting wastes will not be afforded the Bevill exclusion. The Agency found cases where alternative feedstocks may have contributed to the quantities of hazardous constituents found at mining and mineral processing sites. (See Damage Cases and Environmental Releases, EPA, 1997.) In addition, the Agency has reviewed other damage cases from beneficiation and mineral processing sites and similarly found that non-Bevill materials may have contributed to the environmental problems at these sites. Id. Because of the potential additive risk posed by the co-processing of non-Bevill materials, the Agency is proposing an option that would prevent contaminants from non-Bevill materials being afforded the Bevill exclusion.

The Agency believes that co-processing even nonhazardous alternative feedstocks can also potentially pose additional risks when co-processed in a unit generating Bevill waste. Some alternative feedstocks, while not exhibiting a RCRA hazardous characteristic, often still contain hazardous constituents that ultimately are disposed with the Bevill wastes. These hazardous constituents are found in remediation wastes at mining sites, adding to the cleanup costs. (See Damage Cases and Environmental Releases, EPA, 1997). The Agency's views are influenced in part on *Horsehead Resources Corp.* v. *Browner* 16 F.3d 1246, 1258 where the Court held that ''it simply makes no sense to permit Bevill devices to become inadequately regulated dumping grounds for hazardous materials.'' The Agency is proposing that the co-processing of alternative feedstocks, even those that do not exhibit a characteristic under RCRA, results in the loss of the Bevill exemption for the resulting wastes. The Agency solicits comment on this approach.

There are situations where secondary materials generated from mineral processing would be given Bevill protection. This is when the secondary material is independently classified as a Bevill waste, for example, it is one of the enumerated special mineral processing wastes streams or a beneficiation waste. (See § 261.4(b)(7)). Under today's proposal, the use of a Bevill waste as an alternative feedstock does not change the Bevill status of a resulting waste. For example, copper slag (a special 20 waste) used as an alternative feedstock for a copper beneficiation operation would not change the Bevill status of the resulting tailings. The Agency believes that use of a Bevill waste as an alternative feedstock does not have an overall impact on the toxicity of the resulting waste since any Bevill waste can be land-disposed without regard to co-disposal with another Bevill waste.

The benefits to the option proposed today include a reduction of hazardous substances found in the resulting Bevill wastes and a potential reduction of environmental risks. The environmental cleanup costs due to hazardous substances found at mine and mineral processing sites is significant (See Costs of Remediation at Mine Site, EPA, 1997).

The Agency also believes that this approach could assist in more simpler application of the exemption. The application of the Bevill exemption poses many practical difficulties, especially where non-Bevill feedstocks are co-processed and other industrial wastes are stored and mixed with Bevill feedstocks. There can be a significant implementation burden (e.g., analytical testing, assessing a facility's material balance and operating costs) associated with discerning in some cases whether co-processing of alternative feedstocks is a legitimate form of recycling or simply a method of disposal.

In these instances, as noted earlier, the Bevill exemption creates an incentive to maximize generation of wastes. Any secondary materials, including those that are low volume and highly toxic, that are used as a feedstock in a beneficiation unit are afforded the same Bevill protection as a large volume mining waste. Given that beneficiation units generally recover only a fraction of material in a feedstock (often less than one percent of the volume or weight) the majority of the alternative feedstock ultimately is discarded along with the Bevill waste. Further, the remainder often has contaminant concentrations greater than the Bevill waste. (See Characterization of Mineral Processing Wastes and Materials, EPA, 1997) By clearly defining which feedstocks are derived from the mining of an ore or mineral and therefore Bevill eligible, regulators would be more readily able to determine which wastes found at a mine or mineral processing sites qualify for the Bevill exemption and which do not.

However, there would be negative aspects of this restriction on alternative feedstocks. First, there are limits to EPA's knowledge of environmental damage caused by Bevill wastes. Most Bevill wastes are disposed of in land-based units and the Agency can measure the degree of contamination caused by the overall disposal practice. In many cases it is difficult to distinguish between the contribution of contaminants from alternative feedstocks and contaminants from Bevill-exempt wastes. Some alternative feedstocks may not pose any additive risk to the resulting Bevill wastes, and this option may needlessly restrict legitimate recycling and cause industry to forgo economical recovery of minerals. This may be especially true in the case where the alternative feedstock does not exhibit the toxicity

[6] EPA notes that it has established a different type of rule covering the status of cement kiln dust generated when a cement kiln co-processes hazardous waste fuel along with its normal raw materials. In this case, the cement kiln dust retains Bevill status so long as the dust is not ''significantly affected'' by the hazardous waste co-processing. 40 CFR 266.112. There is an important distinction between this situation and co-processing in the beneficiation/mineral processing setting which justifies a different regulatory approach. A cement kiln which burns hazardous waste must obtain a subtitle C permit for its hazardous waste storage and combustion activities, and must subject its entire facility (including cement kiln dust management) to RCRA corrective action in the event of releases. There thus are substantial environmental safeguards present which justify a more lenient interpretation of Bevill status.

characteristic (TC). Removing Bevill-exempt status if such materials are used as an alternative feedstock may therefore not result in improved environmental management. A useful means of recycling the alternative feedstock also might be eliminated. The Agency solicits comment on this proposed option generally as well as the specific proposal to eliminate the applicability of Bevill for co-processing nonhazardous materials.

This restriction would not be applicable to materials such as water or acid that are otherwise effective substitutes for commercial products; these materials are not being reclaimed and are not solid wastes. (See 261.2(e)(ii)). The Agency solicits comment on whether there may be situations where water or acid is a solid waste because they are being reclaimed in a Bevill unit and whether the alternative feedstock restriction should apply.

The Agency seeks comment on this option, which would remove the Bevill exclusion for wastes resulting from the co-processing of non Bevill feedstocks. As previously stated, the Agency also seek comments on whether this restriction should apply to all non-Bevill feedstock or only to those that exhibit a hazardous characteristic, specifically the TC. (261.24).

C. High Risk Mining Wastes Excluded by the Bevill Amendment

1. General Discussion

The Agency is presenting new information on threats to human health and the environment from Bevill mining and mineral processing wastes and posing the question of whether certain wastes currently excluded under Bevill warrant further study or regulatory controls. The Agency also is soliciting comment on whether a high volume test or other method should be applied to wastes in order to determine Bevill eligibility.

As part of the information gathering efforts under the Phase IV rulemaking, the Agency has continued to learn more about management practices in the mining and mineral processing industry, and has reached the point where public input would help focus the Agency's future efforts in determining how best to address the risks posed by Bevill wastes. The Agency's concerns include issues involving environmental and natural resource damages from acid mine drainage, the use of cyanide and other toxic chemicals, radioactivity, stability of tailings and waste rock piles, and in-situ mining methods. The Agency prepared a report that includes a history of the Bevill Amendment and the Agency's activities, description of mining practices, information about actual and potential environmental threats caused by mining and mineral processing wastes, and information about new risk assessment techniques that may be applicable to mining wastes. This report is presented in the RCRA docket for review and comment. (See Risks Posed by Bevill Mining Wastes, EPA, 1997). Any regulatory activity regarding the examination of risk posed by Bevill wastes would be addressed in a future rulemaking other than Phase IV.

Based on the information in this report, the Agency is therefore seeking comment on whether reexamination of some Bevill wastes is warranted. In today's notice, the Agency is not proposing any specific change to the current Bevill exclusion nor has it concluded that any particular course of action is most appropriate. Rather, the Agency is presenting new information on risks posed by Bevill wastes and is posing the question of whether some waste streams require additional study or regulatory controls given the availability of new risk assessment techniques. Conversely, the Agency is also soliciting comment on whether more protective environmental practices have been put in place and, if so, whether future regulatory actions are necessary.

2. Wastes Eligible for the Bevill Exclusion

Commenters on the January 25 proposed rule contend that the Agency was proposing to narrow the current Bevill exemption by identifying certain wastes in its technical background documents that would be subject to Subtitle C requirements. The Agency includes a discussion in that document and made it available to the public because EPA believes that it is helpful for all parties to understand which wastes are indeed eligible for the Bevill exclusion for purposes of this rule when finalized. As discussed in previous sections of today's notice, small volume hazardous waste may contribute to the overall risk posed by some Bevill wastes and reduction of these waste streams would be desirable. The Agency currently determines whether Bevill is applicable on a case-by-case qualitative basis. The Agency is soliciting comment on whether to maintain the current qualitative assessment, or establish some other method to determine Bevill eligibility.

In addressing the issue of whether certain wastes should be eligible for the Bevill exclusion, the D.C. Circuit Court of Appeals found that Congress intended the Bevill Amendment to be limited to ''special wastes'' that are high volume and low hazard.[7] The Agency subsequently defined special wastes to include only extraction/beneficiation wastes and 20 mineral processing wastes. The Agency developed a high volume, low hazard criteria (e.g., 45,000 tons per year for solids, one million tons per year for liquids as generated) for mineral processing waste, consistent with the direction from the D.C. Circuit decisions, but did not apply these criteria on a wastestream by wastestream basis for the previously addressed extraction/beneficiation wastes. 54 FR 36619. Courts have also found that small volume hazardous wastes are outside the scope of Bevill.[8] It is clear from the legislative history that both EPA and Congress intended the ''special waste'' concept to have a finite scope that did not encompass wastes from operations that produce wastes in volumes similar to other manufacturing operations. 54 FR 15325. Further, the Court in *Horse head Resources* v. *Browner* (16 F.3d 1246, 1258) held that the large volume criteria applies to all Bevill wastes, and not just those from mineral processing.

Under section 3001(b)(3)(A)(ii) of RCRA, the Bevill exclusion is available for ''solid waste *from* the extraction, beneficiation and process of ores and minerals'' (emphasis added). In determining whether a particular waste is, in fact, from one of these processes, the Agency has generally evaluated whether the waste is ''uniquely

[7] ''[T]he structure of the Bevill Amendment suggests that Congress intended to single out high-volume 'special wastes' for regulatory suspension when it excluded 'solid waste from the extraction, beneficiation and processing of ores and minerals.' '' *Environmental Defense Fund* v. *EPA,* 852 F.2d 1316, 1327 (D.C. Cir. 1988). The Court also decided that ''[t]he legislative history of the Bevill Amendment establishes that the key to understanding Congress' intent is the concept of ''special waste'' articulated in the regulations proposed by EPA on December 18, 1978 following the enactment of RCRA.'' Id. See 43 FR 58911 (1978) and 50 FR 40293 (1985).

[8] The D.C. Circuit Court of Appeals held that the Agency's attempt to exclude six low volume, high hazard smelting wastes was an ''impermissibly over broad interpretation of the Bevill Amendment.'' *EDF II* at 1330. ''Since EPA found that those six smelter wastes are low volume and high hazard wastes, it cannot refuse to list them [as hazardous wastes].'' *EDF II* at 1327. The Agency notes that these six smelting wastes (which includes K088 potliners and K064 acid plant blowdown) are generated in quantities greater than most of the non-Bevill secondary materials at issue. ''Because the Court explicitly determined that the six smelting wastes are not high volume, low hazard wastes, the generation rates of these wastes can and should serve as a lower bound below which wastes should not be afforded Bevill status.'' 54 FR 15330 April 17, 1989.

associated'' with the enumerated processes. The Agency defines non-uniquely associated wastes to be non-indigenous to mining, small in volume, and generated by many other non-Bevill industrial operations. (See 45 FR 76619, November 19, 1980 and 54 FR 36623, September 1, 1989). Examples of non-uniquely associated wastes include spent solvents, pesticide wastes, and discarded commercial chemicals. In the Agency's view, these wastes are logically viewed as not being ''from'' mineral processing, beneficiation or extraction and therefore are not subject to the Bevill exclusion.

When applied to ancillary operations located at a mine site, such as degreasing solvents from vehicle maintenance, it is relatively straightforward to apply the uniquely associated principle and determine that the spent solvents are not uniquely associated with mining and therefore are not eligible for the Bevill exclusion. In this example the solvents are small volume, highly toxic, not indigenous to the ore being mined, and commonly generated from other industrial sectors.

However, it becomes more difficult to make such determinations when a small volume material comes into contact with a beneficiated ore or mineral during normal operations. Through contact the small volume material may acquire some of the chemical composition of the Bevill waste (e.g., a solvent absorbs some of the Bevill waste). Having acquired some of the chemical properties of the Bevill waste, under what circumstances, if any, should the solvent be considered a Bevill waste when discarded? Some commenters contend that Congress intended the Bevill Amendment to be interpreted broadly and that the Agency's application of the uniquely associated principle is an impermissible interpretation.[9]

In its studies of the mineral industry, the Agency found several small volume wastes that come into contact with a Bevill waste.[10] These include lead anodes, spent kerosene solvent, and crud from copper solvent extraction and electrowinning; and crucibles, cupels, and acid cleaning solution from gold heap leach operations. All of these small volume wastes are inherently hazardous (they would be hazardous waste when disposed regardless of whether contact occurred). The Agency believes that these wastes may be viewed as not being uniquely associated with mineral processing, beneficiation and extraction, and this conclusion is reflected in the technical background document to the Phase IV proposal. As stated in the previous section, the Agency believes it is sound policy to interpret the scope of the exclusion narrowly in order to prevent Bevill waste from being a dumping ground for hazardous waste and to reduce any incentives for waste maximization. The Agency believes that, given the extent of interest in EPA's practice in this area, solicitation of public comment would help ensure that EPA's application of the Bevill exclusion in particular cases is based on sound policies reflecting public input.

Recognizing that the ''uniquely associated'' principle can be difficult to apply in certain cases, the Agency is considering whether a simple application of the high volume thresholds to determine Bevill eligibility for beneficiation and extraction wastes discussed above might be preferable to application of the uniquely associated principle. Under this option, there would be no need to consider the non-uniquely associated principle because any waste stream from the extraction, beneficiation, or processing of an ore or mineral that is not high volume would not be a Bevill waste. This option has the advantage of being simple to apply and is consistent with the broad parameters of Congressional intent that Bevill generally applies only to high volume wastes. This option would help prevent additional toxic constituents being disposed with Bevill wastes, encourage recycling, and may result in reduction of cleanup costs. The Agency solicits comment on whether a large volume standard should be a determining factor for Bevill eligibility and, if so, whether the mineral processing high volume standards of 45,000 tons per year per waste stream for solids and one million tons per year per waste stream for liquids are appropriate measures of high volume.

The Agency also solicits public input regarding other potential approaches that could be applied in evaluating whether a particular waste is uniquely associated, and therefore excluded under the Bevill Amendment. One approach would be to adhere to a principle that any material that comes into contact with a Bevill waste, feedstock, or product during normal process operations becomes a uniquely associated Bevill waste when discarded. This approach would be consistent with past determinations that non-contact operations are non-uniquely associated, such as degreasing solvents from vehicle maintenance. The approach, however, would alter some determinations contained in the technical background document to the Phase IV Supplemental Proposal involving contact operations. Lead anodes, spent kerosene solvent, and crud from copper solvent extraction and electrowinning; and crucibles, cupels, and acid cleaning solution from gold heap leach operations, would all be considered uniquely associated and therefore Bevill wastes under this approach. A variation of this approach would be to utilize the contact principle, as stated above, but to consider small volume wastes that exhibit a hazardous characteristic both before and after contact with the Bevill waste, feedstock, or product, as being non-uniquely associated. This option would maintain the determination that non-contact wastes are non-uniquely associated. Where contact is involved, the option may increase the number of uniquely associated wastes identified in the technical background document to the Phase IV Supplemental Proposal. However, lead anodes, spent kerosene solvent, and crud from copper solvent extraction and electrowinning, and crucibles, cupels, and acid cleaning solution from gold heap leach operations would be considered non-uniquely associated (all of these small volume wastes are inherently hazardous—they would be hazardous waste when disposed regardless of whether contact occurred). The Agency solicits comment on whether to stay with the existing qualitative approach, or whether any of the above options provides a clearer and more appropriate definition of the uniquely associated principle. The Agency solicits comment on this and other potential analytical frameworks that the Agency and States could utilize in evaluating whether a particular waste is subject to the Bevill exclusion.

VI. Proposed Exclusion of Wood Preserving Wastewaters and Spent Wood Preserving Solutions From Classification as Solid Waste Under RCRA

Summary: EPA is proposing to amend the regulations under the Resource Conservation and Recovery Act (RCRA) to provide an exclusion from the definition of solid waste for certain materials generated and recycled by the wood preserving industry. Specifically, the provisions would exclude wood preserving wastewaters and spent wood preserving solutions from classification as solid waste under RCRA, provided that they are recycled and reused on-site in the production process for their original intended purpose, the materials are managed to prevent release, and

[9] Comments of the National Mining Association on the supplemental Proposal to Phase IV, April 24, 1996. Docket F–95–PH4A–FFFFF.

[10] Identification and Description of Mineral Processing Sectors and Waste Streams, EPA, 1995.

they meet other conditions specified in the following section. The Agency seeks public comment on this proposal.

A. Background

EPA first raised the possibility of providing a regulatory exclusion from the definition of solid waste for the wood preserving industry's recycled wastewaters in the August 22, 1995 Land Disposal Restrictions (LDR) Phase IV proposed rule (60 FR 43654). In that proposed rule EPA stated that it may be inappropriate to regulate a reclamation process under RCRA when that process is an essential part of production and the materials being reclaimed are not part of the waste disposal problem. We acknowledged that under the current system, it is possible for a wood preserving plant that reclaims its wastewaters as an essential step in the production process to successfully petition EPA for a site-specific variance (even though these wastes contact a drip pad, which is a regulated hazardous waste management unit), provided that the reclamation operation meets the standards and criteria identified under 40 CFR 260.31(b).

Under the current regulatory program, EPA may grant site-specific, case-by-case variances from the definition of solid waste (and therefore from the regulations under RCRA to which persons handling solid and hazardous waste are subject) for materials that are recycled in certain ways, (see 40 CFR 260.30 and 40 CFR 260.31). Any solid waste generator may petition EPA for a variance from the definition of solid waste based upon these criteria.

1. Request for Comment in Land Disposal Restrictions Phase IV Proposed Rule

In the August 22, 1995 LDR proposal, EPA requested comment on granting an exclusion from the definition of solid waste for production wastewaters being reclaimed by the wood preserving industry if the wood preservers could demonstrate on an industry-wide basis that reclamation of these wastewaters when reclaimed meet the eight variance criteria under § 260.31(b). EPA asked for comment on the extent to which the industry as a whole could meet the criteria. We expressed particular interest in the extent to which the industry could show that its reclamation operations meet the criterion under § 260.31(b)(3). This provision requires a demonstration that a material is handled in a manner that minimizes loss before reclamation.

EPA received comments from the wood preserving industry, a state regulatory agency, and a national environmental organization. These comments were noticed in a May 10, 1996 Notice of Data Availability (NODA) at 61 FR 21418 for the LDR proposed rule and were made available for public review as part of the docket for that rule. All comments received to date concerning a possible exclusion for recycled wood preserving wastewaters are currently available in the docket for the August proposal or the NODA.

2. Statutory Remedy Considered by Congress

While EPA was soliciting comment on the feasibility of an exclusion for the industry's recycled wastewaters, Congress was considering action to provide a statutory exclusion from the definition of solid waste for these materials. Congressional staff asked EPA to provide technical review and advice as they developed H.R. 2335, a bill that would have exempted ''materials contained, collected, and reused in an on-site production process that prevents releases to the environment'' from the definition of solid waste.

As part of this process, EPA staff participated in a number of meetings with Congressional staff and representatives from the wood preserving industry and was able to gather additional information to assist EPA in determining whether or not the industry would be able to successfully meet the evaluation criteria EPA had discussed in the August 22, 1995 **Federal Register** notice. EPA added this information, submitted by both EPA and industry representatives at the request of Congressional staff, to the LDR Phase IV rulemaking docket. This information was not referenced in the May 10, 1996 NODA because EPA had not yet gathered it. It is currently available for review in the docket for the May 10, 1996 NODA.

B. Rationale for Proposal

The August 22, 1995 LDR notice provided no specific regulatory language for an exclusion for the wastewaters generated and recycled by the wood preserving industry because the Agency was at that time soliciting information to determine whether proposing such an exclusion would be justified given the criteria referenced above. Based upon the information EPA received, EPA believes an exclusion is appropriate and therefore, today, EPA is soliciting public comment on a conditional exclusion from the definition of solid waste for wood preserving wastewaters and spent wood preserving solutions that are recycled and reused on-site at a wood preserving plant for their original intended purpose. Under today's approach, wastewaters and spent wood preserving solutions that are recycled on-site for their original intended purpose at a wood preserving facility are not solid wastes if they are recycled in a manner that meets the conditions discussed below. We believe that an exclusion is justified given the degree to which recycling of these materials as evaluated using the criteria set out in 40 CFR 260.31(b) is, on an industry-wide basis, an essential part of the production process and does not contribute to the waste management problem. It is important to clarify that today's proposal is for an exclusion from the definition of solid waste and not for a variance as provided for under 40 CFR 260.30. EPA is simply using the § 260.31(b) variance criteria to aid in an evaluation of whether an industry-wide exclusion is justified. It is only through compliance with the conditions EPA is presenting today that a wood preserving plant would be able to claim the exclusion.

In its comments on the August 22, 1995 **Federal Register** (in a letter dated November 20, 1995, hereafter referred to as ''the AWPI letter''), the American Wood Preservers Institute (AWPI) addressed the § 260.31(b) criteria and explained how the wood preservers meet them on an industry-wide basis. AWPI's comments are included in the docket for the August 1995 proposed rule.

As mentioned above, in the August 22, 1995 **Federal Register** notice EPA expressed particular interest in the extent to which the industry could show that its reclamation operations meet the § 260.31(b)(3) criterion that a material be handled before reclamation to minimize loss. Accordingly, EPA is today proposing conditions that should ensure that any facility meeting the conditions would be minimizing loss of its wastewaters and spent wood preserving solutions prior to reclamation. With respect to other criteria under § 260.31(b), EPA believes that the recycling of wastewaters and spent wood preserving solutions is essential to the financial well being of waterborne wood preserving plants (see discussion under section D below and page eight of the AWPI letter) and therefore meets the criteria set out in § 260.31(b)(1) for those plants. Without recycling their wastewater and preservative, wood preserving plants would have to purchase fresh water and preservative and pay for their disposal. It is our understanding that reuse of wastewaters and spent wood preserving solutions is standard practice at waterborne plants, which are subject to zero discharge requirements under the federal Clean Water Act and therefore, those plants meet the criteria set out in § 260.31(b)(2). The condition that these materials be recycled and reused on-site virtually assures close proximity of the recycling operation to the primary production process (§ 260.31(b)(5)) and that the materials are generated and reclaimed by the same party (§ 260.31(b)(7)). In its letter, AWPI stated that ''in both oilborne and waterborne processes, the reclamation operation is located within, and is an integral component of, the production process area.'' We are also proposing that the exclusion for wastewaters and spent wood preserving solutions being reclaimed be conditioned on the reclaimed materials being used for their original intended purpose when returned to the production process (§ 260.31(b)(6)). It is EPA's understanding (and is stated by AWPI in their letter) that the reused materials, once reclaimed, are returned to the process in substantially their original form (§ 260.31(b)(6)), and that the short amount of time . EPA believes that the industry also meets § 260.31(b)(4) criteria concerning the amount of time between generation and reclamation and reclamation and return to the primary production process § 260.31(b)(4)) supports finding that reclamation is an essential part of the production process. According to AWPI's letter, recoverable materials are reclaimed immediately upon generation at both waterborne and oilborne plants; and are immediately available for reuse at waterborne plants and are available for reuse after 24–48 hours at oilborne plants.

EPA believes that plants meeting the conditions proposed today will be recycling their wastewaters and spent solutions in a manner that is protective of human health and the environment. Today APIARY seeking comment on the regulatory language proposed below that would allow for the implementation of this exclusion.

C. Wastes Commonly Reused by the Wood Preserving Industry

Wood preserving wastewaters containing spent wood preserving solutions are commonly reused by wood preserving plants that use chromated copper arsenate (CCA) as a preservative and by other waterborne plants (as opposed to oilborne plants which use pentachlorophenol or creosote as a preservative). Typical pressure treatment processes involve the reuse of preservatives from work, storage, and mixing tanks for use in the retort. Preservative formulation lost with wastewater or through drippage into the door sumps (which collect liquid outside of the retort) is often collected and fed back into the production process. The industry also commonly reuses both drippage collected from drip pads (as is required under RCRA regulations) and wastewaters that it generates during production. The combination of the economic incentive to make use of existing resources and the regulatory requirements under the Clean Water Act (see 40 CFR Part 429) for the discharge of the industry's effluent waste, including a zero discharge requirement for waterborne plants, make the reuse of wastewater an attractive and necessary alternative to disposal.

D. Current Regulatory Status of Recycled Wastewaters and Spent Wood Preserving Solutions

Under the current regulations, wood preserving wastewaters and spent wood preserving solutions are regulated as solid and hazardous wastes until they are reclaimed by filtration, oil water separation or other means. The reclaimed materials are no longer regulated as solid and hazardous wastes once the reclamation process is completed provided they are used to treat wood. EPA issued a **Federal Register** Notice clarifying the regulatory status of these materials on July 1, 1991 (56 FR 30192). For example, water that is used to wash spent wood preserving solutions from a drip pad is regulated as a solid and hazardous waste under the current system. Once the water containing the spent solutions has been reclaimed, it is no longer considered a solid and hazardous waste if it is put back into the retort or otherwise used to treat wood. See § 261.3(c)(2)(i) (final sentence). (Once the recycled water has been used to treat wood and is ready for discard or further reclamation, it is again regulated as a solid and hazardous waste.)

E. Proposed Exclusion of Wastewaters and Spent Wood Preserving Solutions That are Recycled

1. General

Today EPA is asking for comment on amending the definition of solid waste to exclude wastewaters and spent wood preserving solutions that are recycled from regulation as solid and hazardous wastes if they are managed in a way that meets certain conditions. This would mean that, if this proposal is finalized, wastewaters and spent wood preserving solutions that are currently regulated as solid and hazardous wastes prior to reclamation, would no longer be regulated as solid and hazardous wastes if they are recycled according to the conditions discussed below.

2. Conditions for Exclusion

a. Materials are Recycled and Reused On-Site in the Production Process for Their Original Intended Purpose. Under this proposal, the exclusion would apply only to wastewaters and spent wood preserving solutions that are recycled and reused on-site in the production process for their original intended purpose. As mentioned above, when EPA initially raised the possibility of developing an exclusion for in-process wastewaters recycled on-site at wood preserving plants (60 FR 43654), the Agency said that a decision to grant such an exclusion would be based upon the degree to which the industry could demonstrate that the handling of these materials at wood preserving plants meet the 40 CFR 260.31(b) criteria, on an industry-wide basis. One of these criteria is ''whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process * * *'' (40 CFR 260.31(b)(6)). By requiring that these materials be used for their original intended purpose, it is our intention that they should be generally reused to treat wood. For example, at many wood preserving plants once water has been used to wash hazardous wastes off drip pads, it is collected and returned to a tank in order to be used to treat wood, with no releases to the environment. Because such a recycling operation (provided that it is managed to prevent releases to the environment) returns the preservative to the process to treat wood and adequately addresses the eight variance criteria, EPA is proposing an exclusion for appropriately managed wastewaters and wood preserving solutions that are reused for their original intended purpose. EPA has not evaluated whether any other use of these materials might merit an exclusion from the definition of solid waste. Therefore, for the purposes of today's proposal ''original intended purpose'' does not include uses other than treating wood.

b. Materials are Managed to Prevent Release. The exclusion EPA is proposing today would only apply to those materials that are managed to prevent releases to the land and groundwater. This condition is to assure that any plant claiming this exclusion is adequately handling its recyclable wastewaters and spent wood preserving solutions to minimize loss prior to reclamation. Based on our experience, management to prevent releases would include, but not necessarily be limited to, compliance with the standards for drip pads under Subpart W of 40 CFR Parts 264 and 265 and maintenance of the sumps receiving the wastewaters and spent solutions from the drip pad and retort to prevent leaching into the land and groundwater.

This exclusion would not apply to wastewaters and spent wood preserving solutions that are at any time managed in a surface impoundment. We would not consider this type of operation to be adequate management of these materials to minimize loss prior to reclamation.

c. Units Can Be Visually or Otherwise Determined to Prevent Releases. In order for EPA to adequately assure compliance with the condition to prevent releases to the land and groundwater, the Agency proposes to require that any plant claiming this exemption assure that inspectors are able to visually or otherwise determine that the plant is preventing such releases. For example, an inspector should be able to visually or otherwise ascertain whether the bottom and sides of a sump (which is often made of concrete) are preventing releases to the land and groundwater. This could be assured by having a secondary containment system that could be observed or by providing a means to easily empty a sump to allow for inspection or through other means.

d. Drip Pads Must Comply with Subpart W Standards. The exclusion that EPA is proposing today would require any plant claiming the exclusion and collecting or managing its wastes on a drip pad to comply with the regulatory drip pad standards referenced above. EPA has recognized that there is a potential for certain plants that are currently large quantity generators to be newly classified as conditionally exempt small quantity generators (CESQG) (see 40 CFR 261.5) solely by virtue of the exclusion proposed today. Unless EPA explicitly requires compliance with the Subpart W drip pad standards as EPA proposes to do, were a plant to avail itself of this new generator status, it would not be compelled to comply with these requirements. The Agency is convinced that a plant's failure to comply with the drip pad standards under RCRA would result in failure to meet the 40 CFR 260.31(b) variance criteria (See, e.g., 260.31(b)(3)). Therefore, the Agency is proposing that in order to qualify for this exclusion, a plant would need to comply with the Subpart W drip pad standards regardless of whether that plant generates no more than 100 kg of hazardous waste per month (which is the definition of a CESQG under 40 CFR 261.5(a)) once its wastewaters and spent wood preserving solutions are excluded from the definition of solid waste under this provision.

It is not EPA's intent or belief that the proposed exclusion for recycled wood preserving wastewaters and spent solutions in any way reduces the obligations that wood preserving plants have under 40 CFR Part 264, Subpart W and Part 265, Subpart W, including the requirements for drip pads and the requirements under § 264.570(c) and § 265.440(c) for response to infrequent and incidental drippage in storage yards. EPA requests comment from any party who believes it does reduce these requirements.

3. Process Residuals

The Agency wishes to emphasize that today's proposed exclusion from the definition of solid waste for wood preserving wastewaters and spent wood preserving solutions which are recycled and reused on-site in the production process for their original intended purpose at wood preserving plants pertains only to these materials. The proposed exclusion does not apply to residuals which may be produced from, i.e., derived from, these wastewaters and spent wood preserving solutions. Process residuals derived from these excluded wastewaters and spent wood preserving solutions continue to meet the hazardous waste listing description for EPA hazardous waste numbers FO32, FO34 and FO35 (See § 261.31(a)) and must be managed as RCRA hazardous wastes.

4. Notification

Today the Agency is also seeking comment on whether a plant claiming the proposed exclusion should be required to place a notification form to that effect in its files on-site and/or required to submit it to either EPA or a state regulatory authority so that an inspector is able to review it. The notification form would identify, among other things, the specific dates for which a wood preserving plant was claiming this exclusion.

5. Conditions Under Which the Exclusion Would No Longer Apply

Today EPA is also seeking comment concerning the conditions under which the proposed exclusion, once claimed, would no longer apply. For example, among other things, EPA seeks comment on whether the spill of a small quantity of excluded material would void the exclusion for only the spilled material or for all of the wastewaters and spent wood preserving solutions generated by the plant and, if so, for how long.

VII. Proposal to Amend Treatment Variance Rules

Summary: EPA is also proposing today to clarify the regulatory standard under which variances from treatment standards adopted to implement the Land Disposal Restrictions (LDR) program are decided, see 40 CFR 268. 44 (a) and (h), to explicitly reflect EPA's long-standing and reasonable interpretation that a treatment variance can be granted when treatment of the waste to the level or by the method specified in the regulations is not appropriate, whether or not it is technically feasible to treat the waste to that level or by that method. In addition, EPA is clarifying that, in EPA's view, the one such variance (involving CITGO Petroleum) adopted through rulemaking under the existing regulations using the "not appropriate" test satisfies the clarified regulations just as it satisfied the existing rules. To eliminate any ambiguity, EPA is considering recodifying the CITGO variance under the clarified standard; the Agency requests comment on this approach.

A. Background

Under RCRA section 3004(m), EPA is required to promulgate treatment standards for a hazardous waste which "specif[y] those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." RCRA section 3004(m)(1). These treatment standards are typically expressed as constituent concentration limits; however, in some cases the treatment standard is specified as a method of treatment. LDR treatment standards typically must be satisfied before a hazardous waste is land disposed. To satisfy RCRA Section 3004(m), EPA has chosen to promulgate treatment standards based on performance of the "best demonstrated available technology" (BDAT), see 51 FR 40, 572, 40, 578 (Nov. 7, 1986); provided such standards are not established at a point beyond which threats are minimized. See *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d 355, 361–66 (D.C. Cir. 1989) (upholding establishing technology-based treatment standards as a reasonable construction of section 3004(m)), *cert. denied*, 498 U.S. 849 (1990) ("*HWTC III*").

When EPA decided to implement RCRA section 3004(m) by means of technology-based treatment standards, the Agency recognized that there may be wastes for which the treatment standards would be unachievable or for which the treatment standards would be inappropriate. 51 FR at 40605–06 (Nov. 7, 1986). For such wastes, EPA established standards and procedures for granting so-called treatment variances. 40 CFR 268.44. A treatment variance establishes an alternative LDR treatment standard for the waste in question. 40 CFR 268.44(o). Section 268.44(a) states: ''where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the Administrator for a variance from the treatment standard. The petitioner must demonstrate that because the physical or chemical properties of the waste differs significantly from the wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.''

This same standard applies when a treatment variance is granted on a site-specific basis, see 268.44 (h), although site-specific variances may be processed without rulemaking. 53 FR at 31199–200 (August 17, 1988).

EPA has consistently interpreted the 40 CFR 268.44 treatment variance provision as creating two independent tests under which treatment variance applications can be considered: first, where the waste in question cannot be treated to the levels or by the methods established in the rules; and second where such treatment may be feasible but nevertheless ''not appropriate''. See 61 FR 55718 at 55720–21 (Oct. 28, 1996); 53 FR at 31200 (August 17, 1988); 55 FR 8666, 8760 (March 8, 1990); 61 FR 18780, 18811 (April 29, 1996). The test based on unachievability requires a demonstration that the waste's physical or chemical properties differ from those used to establish the treatment standard and must include a demonstration that the waste ''cannot be treated to specified levels or by specified methods'' (see second sentence of 268. 44 (a) and (h)). The ''not appropriate'' test is not elaborated upon in the rule. In the Agency's experience, treatment variances approved under the ''not appropriate'' test are often based on the totality of site-and waste-specific circumstances at any given site. EPA has most often approved treatment variances using the ''not appropriate'' test in situations where imposition of BDAT treatment, while technically feasible, nevertheless is unsuitable or impractical from a technical standpoint, for example when the treatment standard would result in combustion of large amounts of soil or wastewater, given that EPA's policy is that combustion of large amounts of contaminated media is generally inappropriate. See 55 FR at 8760, 8761. EPA has also approved treatment variances using the ''not appropriate'' test in situations where imposition of BDAT treatment would lead to environmentally counterproductive results, notably by creating disincentives to engage in remediation, see 61 FR at 55720–22; 54 FR 15566, 15568 (October 10, 1989); 55 FR at 8760–62; 61 FR at 18812; and EPA believes its long-standing interpretation that 40 CFR 268.44 provides two separate, independent tests under which treatment variance applications can be evaluated to be a reasonable reading of the regulatory language. In particular, the clause in the first sentence of 268. 44 (a) that waste ''*cannot* be treated to the specified level'' is mirrored in the second sentence of the rule, where a demonstration must be made that ''waste *cannot* be treated to specified levels or by specified methods'' (emphasis added). The second sentence of the rule—referring to a demonstration that the waste differs chemically or physically—thus relates to the first treatment variance test: technical infeasibility. It does not (or need not be read to) apply to situations where treatment is ''not appropriate'', since this test on its face deals with situations where wastes can be treated to a specified level or by a specified method, but it is inappropriate to do so. However, commenters on previous EPA actions have pointed out that the language of the rule is ambiguous, in that it might be read to require a demonstration that a waste is physically or chemically different along with a showing that the waste cannot be treated to a specified level or by a particular method whenever a treatment variance is sought, even if such treatment would be inappropriate; this was not EPA's intent.[11] Given the importance of treatment variances to the various EPA remediation programs, see 55 FR at 8760–61 and *National Electrical Manufacturers Association* v. *EPA*, 99 F.3d 1170, 1171 (D.C. Cir. 1996), EPA presently believes it better to re-draft 40 CFR 268.44 to explicitly conform with the Agency's long-standing and reasonable interpretation of the regulatory standards for treatment variances and to remove possible confusion. This proposed clarification is included in today's notice. EPA is further clarifying that the one national treatment variance finalized thus far using the ''not appropriate'' test would also satisfy the clarified regulations being proposed today. This is the treatment variance recently granted to CITGO Petroleum Co. 61 FR 55718 (Oct. 28, 1996). In EPA's view, the revision of the treatment variance regulations it is proposing today simply clarifies, and in no way changes, the current standards for evaluating treatment variances; therefore, by definition the variance already issued to CITGO under the current regulations and standard would satisfy the clarified regulations. However, to remove any ambiguity on the status of CITGO's treatment variance, and the standard it must meet, EPA is considering whether it would be better to re-codify the variance under the clarified regulations (should the Agency finalize that part of today's proposal).

[11] The Environmental Technology Council and the Louisiana Environmental Action Network (LEAN) have petitioned for review of a particular treatability variance and are arguing that the provision can only be read in this manner. *LEAN* v. *EPA*, no. 97– (D.C. Cir.). EPA disagrees and believes its present long-standing interpretation to be a reasonable construction of the rule's language, and to be amply supported on policy grounds. 61 FR at 55721.

B. Clarified Regulatory Language

EPA is proposing to revise 40 CFR 268.44 (a) and (h) to clarify that there are two separate and independent tests for approving treatment variances. The amended rule (if finalized) would thus explicitly conform with EPA's long-standing and reasonable interpretation that treatment variances may be granted for either of two independent reasons: 1) where, due to physical or chemical differences in the waste matrix, the waste cannot be treated to the level used as the basis for the treatment standard (or, in those few instances where the treatment standard is a method of treatment, where the method physically cannot be performed); and 2) where it is inappropriate to require treatment to the level or by the method set out in the regulations although such treatment is technically possible.

In EPA's experience, approval of treatment variances based on the ''inappropriate'' test depends largely on site-and waste-specific circumstances. Therefore, the Agency is not proposing detailed regulatory criteria for approving variances based on the ''inappropriate'' standard. Based on our implementation of the program to date, some examples of where variances based on the ''inappropriate'' test might be approved are where the treatment standard is unsuitable from a technical standpoint, as when it would result in combustion of large amounts of soil or other media that contain hazardous waste or where imposition of the treatment standard can reasonably be found to increase risks for example, by discouraging optimized remediation of land disposal units. A specific example of this second situation would be at a remediation site where the cost of LDR treatment would lead a reasonable remediator to choose the legally permissible option of managing wastes within an ''area of contamination'' (which would not trigger LDRs and would likely involve little or no waste treatment) over a more protective option of removing the wastes for treatment and disposal (which would trigger LDRs) (see 55 FR at 8760). Situations where imposition of the BDAT treatment standard (or specified treatment method) could expose site workers to immediate dangers, such as from explosion or fire and situations where an innovative technology that, while not BDAT, results in significant treatment and shows significant promise could be other examples of cases where the BDAT standard (or specified treatment method) might be inappropriate. EPA specifically solicits comment as to whether these circumstances (or other circumstances) are reasonable formulations of circumstances where treatment variances based on the ''inappropriate'' test might be considered and on whether EPA should, in future rulemakings, further define regulatory criteria for variances approved based on the ''inappropriate'' test.

In all cases, treatment variances must result in an alternative treatment standard which would have to be satisfied before the waste could be land disposed. These alternative treatment standards must comply with the statutory standard of RCRA Section 3004(m) by minimizing threats to human health and the environment.

Some commenters on previous EPA actions have questioned EPA's legal authority to vary from treatment standards based on BDAT absent a finding that the BDAT standard is outright unachievable because of physical or chemical differences in the waste. EPA disagrees for the following reasons.

First, the ''minimize threat'' standard in RCRA Section 3004 (m) allows EPA latitude in determining what levels or methods of treatment minimizes short- and long-term threats to human health and the environment. Not only is the statute ambiguous on the degree to which threats must be minimized (see *HWTC III*, 886 F.2d at 372 (concurring opinion)), but the legislative history to section 3004 (m) states explicitly that the treatment standards are not to be technology-forcing. See 131 Cong. Rec. S 9178 (daily ed., July 25, 1984) (statement of Sen. Chaffee); see also 56 FR at 12355 (March 25, 1991); 55 FR 6640–43 (Feb. 26, 1990); *Chemical Waste Management* v. *EPA*, 976 F.2d 2, 15–16 (treatment standard need not be based on BDAT, in this case, treatment standards for ignitable, corrosive, or reactive wastes) (D.C. Cir. 1992).

Second, EPA does not believe that RCRA Section 3004(m) requires, or Congress intended, that EPA impose technically inappropriate technologies even when they arguably could lead to lower treatment levels. For example, EPA has generally based the national LDR treatment standards for organic contaminants in wastewaters on technologies other than incineration (or other combustion), even though such organics could be treated to lower levels if the wastewaters were incinerated. This is because incineration (or other combustion) is not normally an appropriate technology for wastewaters, notwithstanding its capability of achieving lower constituent concentration levels than conventional wastewater treatment. See 55 FR 8761. Similarly, EPA has long believed that combustion of large volumes of contaminated soil, such as much of the soil routinely encountered during CERCLA remedial actions or RCRA corrective actions, is inappropriate and would yield little, if any, environmental benefit over non-combustion treatment options. In other situations, EPA has found that imposition of the BDAT standard, while technically possible, provides a strong incentive for facility owner/operators to choose legal remedial alternatives that minimize applicability of the RCRA land disposal restrictions (e.g., consolidating and capping waste within an area of contamination), a result obviously not contemplated by Congress in enacting the land disposal restriction. EPA believes that in the limited situations where an existing treatment standard is reasonably found to be inappropriate because imposition of the BDAT standard is technically inappropriate or would increase risks, including risks posed by continued land disposal, the facts would also indicate that the alternative standard set out in the treatment variance legitimately minimizes threats posed by land disposal, taking into account both the land disposal that has already occurred and that which will occur. In this regard, EPA notes that the Agency believes it can be argued that where imposition of the BDAT standard results in treatment technically inappropriate to the matrix at hand or in foregoing other, substantial environmental benefits, that standard is not ''best.'' See 61 FR at 55724 and at 55721 (citing case authority).

Finally, some commenters on previous EPA actions have expressed serious concern that considering treatment variances in situations where application of the nationally applicable LDR standard might cause a net environmental detriment could subject EPA to a form of ''environmental blackmail,'' where the Agency might be pressured to adjust an appropriate treatment standard in order to allow less treatment as part of site remediation and, therefore, this approach should be precluded. While EPA agrees that the net environmental detriment approach should be carefully applied in consideration of site-and waste-specific circumstances, EPA does not agree with commenters who suggested it be precluded. In implementing its various remedial programs, EPA has found that there simply are situations where federal law provides a legal alternative to leave wastes in place, and direct application of the existing treatment standards may create an incentive to utilize that legal alternative. *Id.*; 54 FR at 41566–569. It is at least worth examining through the treatment variance process whether there is an alternative that serves the dual statutory objectives of safe remediation and pretreatment before land disposal.

C. The CITGO Variance Under the Proposed Standard

It is EPA's view that the treatability variance granted to CITGO Petroleum, 55 FR 55718 (Oct. 28, 1996), remains valid under the clarified treatment variance standard proposed in this notice. CITGO operates a large (26 acre) surface impoundment which must be closed. The impoundment contains approximately 375,000 tons of wastewater treatment sludge listed as hazardous wastes F037 and F038. The State of Louisiana, EPA's Region 6, and the company all believe the best way to close the unit is to remove the sludge, treat it through air sparging to remove and destroy the most hazardous constituent (benzene) to levels achievable by BDAT, treat cyanide and metals to levels achievable by BDAT, and treat semi-volatile hazardous constituents significantly, although not to levels meeting the BDAT standard. (While the alternative treatment standards established in the treatment variance for semi-volatiles are, for some constituents, significantly higher than the treatment standard based on BDAT, the semi-volatile constituents are treated and, in any case, are not the constituents in the CITGO waste that drive its risk to human health or the environment.) Treatment residues are then disposed in a commercial subtitle C landfill. CITGO successfully removed and treated approximately 600,000 tons of sludge by this method before the LDR prohibition for F 037/038 wastes took effect. Treatment of the remaining sludge to meet standards reflecting performance of BDAT (in this case, almost certainly some type of combustion process) is likely to be cost-prohibitive and, at the least, creates an incentive for the company to seek to avoid triggering LDR requirements even if it means forgoing optimal closure of the impoundment. The federal rules do provide closure options by means other than waste removal. The closure rules provide that an impoundment can close with wastes in place provided it can satisfy the standards for post-closure care of a landfill. 40 CFR 265.111, 265.228 and 265.310. EPA found that CITGO would likely pursue these options, delaying if not precluding closure by removal, and possibly resulting in no treatment of the hazardous sludges at all. For these reasons, EPA found that the treatment technology on which the standard is based is not appropriate for this waste because imposition of the requirement would likely result in a net environmental detriment. 55 FR at 55719–722. The alternative treatment standard requires the same level of treatment which had proved successful on the 600,000 tons of sludge before the LDR prohibition took effect.

In EPA's view, these facts satisfy the ''not appropriate'' test in the clarified treatment variance regulations proposed today, just as they satisfy the existing rules. EPA has already found that the situation presented in CITGO's treatment variance application meets the standards of 40 CFR 268.44 (a) and (h) as the Agency interprets and implements them. By definition, if EPA amends 40 CFR 268.44 (a) and (h) to explicitly conform to the Agency's longstanding and reasonable interpretation of the treatment variance regulations, then the one national variance (CITGO) approved under the current regulations would meet the terms of the new, clarified, regulations. EPA, however, recognizes that the same ambiguity that commenters have identified in the current 268.44 (a) and (h) regulations underlies EPA's approval of the CITGO treatment variance. EPA therefore requests comment on whether the Agency should eliminate any ambiguity over the CITGO treatment variance by re-codifying the variance under the clarified regulations (assuming EPA finalizes this portion of today's proposal).

VIII. Ban on Use of Prohibited Hazardous Waste as Fill Material

SUMMARY: EPA is today supplementing its March 2, 1995 proposal (60 FR at 11732) to ban the placement of prohibited hazardous wastes (that is, wastes prohibited from land disposal unless they meet land disposal restrictions treatment standards, including wastes that initially exhibited a characteristic of hazardous waste but no longer do at the point they are placed as fill material) as a fill material. This proposal would ban use as fill unless the waste meets the LDR treatment standard applicable to it, and either of two conditions are satisfied: (a) The placement occurs exclusively in a regulated unit (i.e. a unit, like a landfill, which is subject to subtitle C regulation); or, (b) the person intending to utilize the hazardous waste as fill material is able to make a demonstration to the appropriate regulatory officials that the placement of the waste will be protective of human health and the environment (within the meaning of RCRA section 3004(d)(1)), taking into account the factors enumerated in RCRA section 3004(d)(1)(A), (B), and (C), as well as all possible exposure pathways, i.e., exposure pathways that may reasonably occur at the specific site. As EPA explains more fully in today's supplemental notice, this demonstration must be made ''to a reasonable degree of certainty,'' as set out in RCRA section 3004(d)(1). By ''fill material,'' EPA means prohibited waste used in place of such materials as sand or dirt which fills in significant levels of depression in the land, such as gullies or ditches. Revised regulatory language is provided to help clarify the scope of the proposal, and the process for demonstrating that the use is safe.

A. General Discussion

The basis for this proposal is essentially the same as EPA originally proposed. Utilization of prohibited hazardous wastes as fill material is, in the abstract, the least protective type of land disposal in that there are no commercial specifications or necessary physical constraints on the placement of the waste. There thus are no safeguards to prevent exposure to humans or to the environment from the hazardous constituents that are released, and no barriers stopping the releases from occurring. The types of potential exposure pathways include direct exposure via inhalation, ingestion (particularly by small children), dermal contact, surface runoff, and leaching to groundwater. Human exposure can also occur via indirect exposure pathways, such as ingestion of fish, animals, fruits or vegetables which have been contaminated by hazardous constituents released from the fill area. The number of environmental exposure pathways are just as numerous.

This potential for harm is confirmed by many damage incidents caused by utilization of wastes as fill material. The damage incidents include sites now on the Superfund National Priorities List, and an incident of direct human exposure (resulting in elevated blood lead levels in children) when prohibited hazardous wastes were used as fill material in a residential area. See summaries in the administrative record.

If one assumes that utilization of wastes as fill material is a type of hazardous waste recycling activity,[12] the current RCRA rules would classify it as a type of ''use constituting disposal.'' 40 CFR 261.2(c)(1). The rules then provide that a use constituting disposal can legally occur if the hazardous wastes are incorporated into a product, undergo a chemical reaction so as to be inseparable by physical means, and meet all treatment standards established under the Land Disposal Restrictions (LDR) program applicable to the hazardous waste incorporated into the waste-derived product. 40 CFR 266.20(b). In adopting these standards, EPA was not certain that any of these uses could be conducted in a protective manner. 50 FR at 646, 647 (Jan. 4, 1985); 53 FR at 17605 (May 17, 1988). However, the Agency was unwilling to prohibit all such uses—the likely effect of imposing full-scale subtitle C

[12] See 45 FR at 33093 (May 19, 1980); 48 FR at 14985 (April 4, 1983); and 60 FR at 14732 (March 2, 1995) where EPA noted that in most cases that this activity is a sham use. This is due to the marginal nature of the claimed recycling activity (replacing dirt to fill depressions), resemblance of the activity to uncontrolled waste dumping, and likelihood that hazardous constituents in the wastes are just being gotten rid of. Thus, the threshold step in determining whether disposition of hazardous waste as fill material is legal is to determine if this is a ''use'' at all, or simply is sham recycling, i.e., land disposal pure and simple. See *United States* v. *Marine Shale Processors*, 81 F.3d 1361, 1365 (5th Cir. 1996) (''sham recycling, as opposed to legitimate recycling, occurs when the hazardous waste purportedly recycled contributes in no significant way to the production of the product allegedly resulting from the recycling'') *id.*, at 1366 (endorsing so-called toxics along for the ride concept, whereby it is relevant in assessing whether an activity is sham recycling to determine what hazardous constituents contribute to the alleged recycling activity and conceivably to find that an activity is a sham if the hazardous constituents do not contribute significantly).

controls—and also felt that imposition of the LDR treatment standard requirement afforded some level of protection. 53 FR at 17605.

Because utilization of hazardous wastes as fill material is lacking in any control, EPA has concluded that this current conditioned deferral of regulation should not apply to the activity. This conclusion is directly founded in the language and policy of the LDR statutory provisions. Land disposal of hazardous wastes is prohibited unless the prohibition on disposal ''is not required in order to protect human health and the environment'' taking into account the uncertainties associated with assessing safety of land disposal, including the difficulty of making long-term predictions of wastes' behavior, and the persistence, toxicity, mobility, and bioaccumulative propensity of wastes' hazardous constituents. RCRA section 3004(d)(1) (repeated in 3004 (e)(1) and (g)(5) as well). Ordinarily, land disposal occurring after hazardous wastes have been treated to satisfy the standards established by EPA pursuant to section 3004(m) (which standards are to assure that short- and long-term threats to human health and the environment posed by land disposal of the waste ''are minimized'') will sufficiently ensure the requisite protectiveness. RCRA section 3004(m)(1). However, the ultimate requirement of protectiveness remains even after hazardous wastes have been treated. 60 FR at 14473; 56 FR at 41168 (August 19, 1991); *NRDC* v. *EPA,* 907 F.2d 1146, 1171–72 (D.C. Cir. 1990) (dissenting opinion).

EPA is indicating here that the existing LDR treatment standards do not result in this requisite minimization of threats when hazardous wastes are to be utilized as fill material. Thus, there is no treatment of which EPA is aware that can be determined, in the absence of site-specific investigation, to adequately minimize the threats posed by this form of land disposal. See RCRA section 3004(m)(1) which requires EPA to establish ''levels or methods of treatment, *if any,* which minimize short- and long-term threats' (emphasis added). Accordingly, EPA has proposed to modify the BDAT treatment standards for all hazardous wastes to make clear that wastes treated to meet these standards may still not be utilized as fill material absent a site-specific demonstration as described in 40 CFR 266.20(b)(2). Similarly, EPA is finding that the ultimate protectiveness standard in RCRA sections 3004 (d)(1), (e)(1) and (g)(5) remains unsatisfied, even after hazardous wastes are treated to meet existing LDR standards, if the wastes' ultimate disposition is as fill material (again, unless the site-specific demonstration described above is made).

B. Deferral of Ban Pending Study

Some commenters on the original proposal have contended that EPA should defer action on the proposed ban on hazardous waste as fill until risks could be studied further. The Agency disagrees that further studies are needed in order to go forward with the proposed action. While the commenter is correct that nonhazardous slags have been used for many years as fill, the Agency has the responsibility to ensure that residues from hazardous waste treatment are appropriately regulated, and this requires a minimization of threats to human health and the environment prior to land placement as fill, and ultimate protectiveness of the actual disposal.

As EPA explained at proposal, the treatment standards do not assure the requisite minimization of threat or ultimate safety for a number of reasons. 60 FR at 14473. In particular, the standards do not regulate the total metal content of a waste, typically requiring only reduction in metal constituents' mobility, as measured by the TCLP. However, when evaluating use as fill material, the total concentration of metals is highly important due to the number of exposure pathways (including direct inhalation and ingestion) which do not depend on leaching to release hazardous constituents. *Id.* In addition, the TCLP (or any single leaching test) may not be the appropriate means of evaluating potential for leaching given the wide range of potential conditions to which hazardous waste utilized as fill could be exposed. See 62 FR at 1994–95 (January 14, 1997). In addition, since the existing LDR standards are technology-based rather than risk-based, EPA does not believe that they are an adequate surrogate for determining that threats have been minimized when one takes into account the uncontrolled use as fill. 60 FR at 14473.

EPA is planning to further identify and assess risks from major current uses of High Temperature Metal Recovery (HTMR) slags from treatment of K061, K062, and F006 wastes. However, EPA is concerned that use of any hazardous waste, including HTMR slag, as a fill material represents a marginal use for which regulatory authorities would lose the ability to understand where it is placed or how much is used, making generic risk analysis extremely difficult. Fill material might be used in any setting, without any controls. While road construction projects at least include supervision of activities with regard to, for example wetlands and waterways, fill could be placed directly in sensitive areas without any type of regulatory agency approval. Further, fill may be placed in virtually unlimited amounts, while use in road construction (whether road bed or top coating) often is limited by the extent of road being built, as well as supervision by highway agencies. As such, exposures and risks posed by use as fill are extremely dependent on site specific circumstances, and we do not think at this time that the Agency will be able to set national levels of toxic constituents that would be safe in all fill settings.

C. Site Specific Approval Process

This is not to say, however, that it is impossible to utilize a treated hazardous waste as a fill material. EPA's current thinking is that the current treatment standards are inadequate, and that EPA is unable to develop other standards that would be sufficient to assure protection, absent further site-specific investigation. EPA noted in the March 2, 1995 proposal that if someone could show that a specific use as fill was safe, it would be allowed. EPA is proposing revised, more detailed regulatory language to require, in addition to requiring these wastes (like all other prohibited wastes) to meet LDR standards before disposal, that a site-specific demonstration (for each intended fill site) be made showing that the treatment has minimized all potential threats posed by the placement of the waste fill material, and assured ultimate safety of the disposal. This demonstration would be made either to the EPA Region where the fill site is located, or, in the case of States authorized to operate this part of the program, to the authorized State. The demonstration would have to address all potential exposure pathways posed by the particular fill site, would specifically have to address the land disposal protectiveness factors set out in the statute at section 3004(d)(1) (A), (B), and (C), plus address all exposure pathways to humans or to the environment that are reasonably likely to occur, and would have to demonstrate safety ''to a reasonable degree of certainty.'' The burden of making the demonstration is on the applicant. See RCRA section 3004(d)(1) likewise assigning the burden of proof to the applicant in the case of no-migration petitions.[13] Comments are

[13] There are similarities in this type of demonstration and the no-migration test required to show that it is safe to dispose of hazardous wastes

requested on the revised regulatory language.

D. Application of the Ban To Decharacterized Wastes

Further, EPA wishes to make clear that the proposed rule would apply to all hazardous wastes subject to Land Disposal Restriction prohibitions. This includes all wastes that are identified or listed as hazardous at the point they are generated, and thus includes wastes that are listed as a result of the mixture and derived from rules. In addition, the rule applies to wastes that initially exhibit a characteristic but no longer exhibit that characteristic at the point they are land disposed (i.e., used as fill material). This means that if a person intends to utilize a characteristic hazardous waste as fill material, and treats the waste so that it no longer exhibits a characteristic, the rule nevertheless applies. See *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 12–14 (land disposal prohibitions apply to wastes that are hazardous when generated; thus, the prohibition—i.e., the substantive LDR requirements—continues to attach to characteristic wastes that no longer exhibit a characteristic when they are land disposed). These so-called decharacterized wastes could nevertheless continue to pose the same types of substantial harm when utilized as fill material as wastes still identified or listed as hazardous at the point of disposal. This is because decharacterization does not necessarily remove or immobilize hazardous constituents. *Id.*, 55 FR 22655. Consequently the proposed prohibition would apply to all initially hazardous wastes.

E. Clarification of Scope of Ban (definition of ''fill'')

Commenters indicated some confusion over the definition of ''fill.'' EPA has slightly altered the definition of ''fill material'' from that proposed in the March 2, 1995 notice. That definition stated essentially that fill material was used as a substitute for low-grade materials to raise land levels, fill in depressions, and so forth. Today's supplemental language preserves the key concept that fill material raises land levels, fills in significant depressions (such as gullies or ditches) but removes any suggestion that there is an intent test associated with the definition. EPA wishes to avoid situations where hazardous waste fills in areas but some other use is claimed for the material that arguably makes it a different type of activity. As stated at original proposal, the Agency is acting to stop prohibited hazardous wastes from being used in an uncontrolled manner, in substantial volumes to fill in space (at least without a detailed demonstration and finding that the use is protective). The reference in the definition to filling in significant spaces makes clear that uses which have the incidental effect of filling or leveling, such as use as road-base or use a fertilizer or other uses that are subject to commercial specifications or physical constraints but incidentally fill in space in addition to other functions, are not included within the definition of ''fill material.'' Also, the prohibition does not apply to materials used as legitimate ingredients in asphalt or concrete.

Some significant concerns were raised by producers of K061-slag over the scope of the proposed ban, in particular as it would apply to road building operations. EPA wishes to clarify that (as noted above), use as road bed, and use as road ''top coat'' are not intended to be banned under the proposed fill provisions. While there may be some ambiguity in these terms, EPA intends to allow further study use of legitimate road construction materials, meeting any specification set by the highway department in the State in which the material is used. While some filling of depressions may of course occur in road construction, EPA would not consider this use as fill, unless the depressions were well beyond what is necessary for road construction. EPA has provided some new regulatory language to clarify the scope of the proposal and welcomes further comment to help refine the definition.

In addition, EPA is proposing to add the prohibition to 40 CFR 268.40, as well as to the use constituting disposal provision in 40 CFR 266.20. This would make clear that this action both implements the LDR provisions and modifies the existing treatment standards to the extent prohibited wastes are used as fill material.

F. Other Clarifications

A commenter maintained that the proposed ban should not apply to vitrified material, arguing that by definition vitrified materials do not pose a threat to human health and the environment. This cannot be presumed *a priori*, however. Vitrification technology, for example, does not reduce total metal concentrations in treatment residue in which metals could be available to the environment via many of the exposure pathways present when the wastes are placed on the land without control, i.e. utilized as fill material. See the discussion above indicating why total metal concentrations remain critical in evaluating the protectiveness of this type of land disposal. Likewise, vitrified wastes may contain undestroyed organics, or insufficiently immobilized metals which likewise are capable of posing harm when placed on the land in this uncontrolled manner. For these reasons, at this time EPA does not believe vitrified material should be exempt from the ban.

Finally, a number of commenters questioned whether the prohibition would apply to situations where prohibited wastes are landfilled, or whether it would apply to remediation activities, including those carried out pursuant to RCRA corrective action or Superfund authorities. EPA wishes to clarify that the prohibition would only apply to situations where recycling is involved, ''use as fill'' being a term of art referring to a situation where prohibited wastes are being legitimately recycled in a manner constituting disposal through use as a fill material. *United States* v. *Marine Shale Processors*, 81 F.3d at 1365. (As noted above, see fn. 4 *supra*, EPA is skeptical that this claimed use is legitimate recycling.) Thus, the rule would not apply to situations where prohibited wastes are land disposed and an incidental effect of the disposal is to fill in depressions (as in remediation situations where treated soils are returned to the ground and raise a gradient). The policy basis for the distinction is that disposal of prohibited wastes is typically heavily regulated (for example, through subtitle C unit standards, or, in remediation situations, through site specific regulatory oversight; see 61 FR 18782 (April 29, 1996)). In these situations, the existing LDR treatment standards should be sufficient to assure that the threats posed by land disposal of wastes are being minimized. Thus, the only situation covered by the prohibition would be the uncontrolled placement of prohibited hazardous wastes (including treatment residues from these wastes) outside the system of safeguards which normally would ensure that threats to human health and the environment are minimized. This situation is where the prohibited wastes are being recycled legitimately as fill material—assuming it is possible to make this showing—pursuant to 40 CFR 266.20(b).

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that are not treated to satisfy the treatment standards that EPA establishes. However, because the wastes have been treated, the demonstration need not satisfy the no-migration test. Rather, ultimate safety would have to be demonstrated, taking into account the specific factors Congress noted as essential to ultimate land disposal safety determinations and considering all exposure pathways that are reasonably likely to occur.

IX. Capacity Determination

A. TC Metal Wastes

EPA is not proposing to revise any capacity variance decision for TC metal wastes. However, after considering new information and comments in response to the originally proposed rule (August 22, 1995; 60 FR 43654) and Notice of Data Availability (May 10, 1996; 61 FR 21418), EPA has performed an updated capacity analysis to better reflect the current available and required capacity for the universe of wastes that would now be subject to the standards. For background information on data sources, methodology, and details of the capacity analysis for these wastes covered in this rule, see ''Background Document for Capacity Analysis for Land Disposal Restrictions—Phase IV (Second Supplemental): Toxicity Characteristic Metal Wastes and Newly Identified Mineral Processing Wastes (Proposed Rule).'' Based on the results of the capacity analysis, EPA proposes to not grant a national capacity variance for the TC metal wastes, including soil and debris, covered by today's proposed rule.

B. Mineral Processing Wastes

As discussed in Section IV, Proposal of New Options for Mineral Processing, EPA is considering several regulatory options for the newly identified recycled mineral processing wastes. Two of these options are expected to significantly increase the estimate of required capacity discussed in the proposed rule. One option, which would require storage of materials to be recycled in the equivalent of RCRA regulated tanks, containers, or buildings prior to recycling, is expected to result in a moderate increase in required capacity. The other option, which would prohibit the introduction of any secondary material into any mining or mineral processing unit that generates a Bevill-exempt waste, is expected to result in a larger increase in required capacity. Nevertheless, the Agency expects that any such increases can be readily met by available on-site or off-site capacity, and therefore is not changing the proposed national capacity variance determination for most of these wastes.

Three waste streams that now appear to be lacking adequate capacity are Medusa scrubber blowdown, Anderson filter media rinsate, and furnace building washdown as generated by the elemental phosphorus processing industry. A major generator of these waste streams, the FMC Corporation's Pocatello, Idaho facility, has stated that these waste streams pose unique treatability problems and that a two-year national capacity variance is needed to develop and construct treatment capacity (Phase IV Notice of Data Availability, 61 FR 21418, May 10, 1996). On August 21, 1996, FMC submitted additional data to the docket for the supplemental proposed rule (61 FR 2338, January 25, 1996, RCRA Docket F–95–PH4A–FFFFF). After careful review of the additional data, the Agency has initially determined that these wastes would require a national capacity variance, and therefore is proposing to grant a two-year national capacity variance for these three waste streams.

Regarding characteristically hazardous arsenic nonwastewaters and High Mercury Subcategory nonwastewaters (i.e., 260 mg/kg and above total mercury), EPA had proposed to grant a one-year national capacity variance. However, treatment data submitted by commenters and data collected by the Agency from site visits to commercial waste treatment facilities indicate that the newly identified mineral processing wastes do not contain arsenic and mercury at levels that could not be treated to UTS. Thus, the Agency is no longer proposing to grant a capacity variance for these wastes.

Details of the methodology and estimates of affected facilities and waste quantities are provided in the capacity analysis background document.

C. Phase IV Mineral Processing and TC Metal Wastes Injected Into Underground Injection Control (UIC) Class I Wells

Class I injection wells currently inject approximately 10 to 11 million tons of newly identified mineral processing and TC metals waste (D004–D011). These waste volumes vary in amounts from facility to facility and are generally disposed on-site. None of the mineral processing facilities transport their waste off-site or currently have the necessary capacity to treat their waste on-site by BDAT. Some facilities generating TC metal waste that are unable to dispose or treat their waste on-site may send their waste to a commercial facility. However, these commercial facilities must be approved for the disposal of these restricted waste. For those facilities affected by the prohibitions which are unable to make a successful no-migration demonstration, constructing a treatment facility on-site would be the only permissible alternative in meeting LDR treatment standards for their hazardous wastes. The Agency remains steadfast in its belief that for those facilities affected by the Land Band prohibitions which are unable to make a successful no-migration demonstration, constructing a treatment facility on-site would require a substantial amount of economic resources and effort. The EPA believes that, at this time, a reasonable amount of time should be given to construct necessary treatment facilities. Therefore, the Agency is granting a two-year capacity variance for these wastes. The Agency requested comments on capacity determinations, generation, characteristics, and management of these wastes at Class I injection well facilities in the proposed supplemental rule on January 25, 1996. However, no specific applicable comments on potentially affected Class I facilities were received for the mineral processing or for TC wastes in the August 22, 1995 proposed rule. The Agency is again requesting this information and additionally asks that it include mixed-radioactive waste. This information may assist the Agency in determining whether the Land Disposal Program Flexibility Act of 1996 may further minimize the impact of this rulemaking on Class I injection well facilities disposing decharacterized waste that is presently being treated as Phase IV hazardous. The Agency estimates that the 10 to 11 million tons of this currently injected waste may be reduced by as much as 4 to 5 million tons annually at Class I nonhazardous facilities.

X. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Parts of today's rule are proposed pursuant to sections 3004(d) through (k), and 3004(m) (42 U.S.C. 6924(d) through (k), and 6924(m)) of RCRA, a section added by HSWA. These parts are those provisions regarding the treatment standards for metal bearing wastes and mineral processing wastes. Therefore, the Agency is proposing to add the requirement to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all states regardless of their authorization status. States may apply for interim or final authorization for the HSWA provisions in Table 1, as discussed in the following cection of this preamble. The Agency is also proposing to modify Table 2 in 40 CFR 271.1(j) to indicate that the treatment standards are self-implementing provisions of HSWA.

Other parts of today's proposed rule would not be effective in authorized States since the requirements would not be imposed pursuant to HSWA. These parts relate to the definition of solid waste and include storage of mineral processing secondary materials, the type of feedstocks used in Bevill-exempt mining units, and the exclusion of certain wood preserving wastewaters and spent wood preserving solutions. Thus, these requirements will be applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

B. Abbreviated Authorization Procedures

In the Phase IV proposal dated August 22, 1995, EPA proposed a set of streamlined authorization procedures that would apply to new rules that were minor or routine in nature. This procedure was designed to expedite the authorization process by reducing the scope of a State's sebmittal for authorization, to a State certification and copies of applicable regulations and statutes. EPA would then conduct a short review of the State's request, primarily consisting of a completeness check (see 60 FR 43686 for a full description of the proposed procedures).

In the HWIR-Media proposed rule, EPA proposed another set of abbreviated authorization procedures for more significant rulemakings, called Category 2 (see 61 FR 18780, April 29, 1996). In this latter proposal, EPA designated the procedures outlined in the August 1995 Phase IV proposal as Category 1. EPA in this notice, also presented an expanded discussion on the need for and the intent of the streamlined procedures.

Today, EPA is requesting comment regarding under which Category should the authorization of States for the proposed provisions be placed. EPA believes that the proposed revisions to the universal treatment standards, and the new waste exclusions should be placed in Category 1. EPA believes that these provisions will not significantly expand the scope of the RCRA program, and will be easily adopted by States. EPA proposed modified Category 1 authorization process for mineral processing wastes on January 25, 1996 (61 FR 2364). Today's proposal modifies the management scheme for these materials from what was proposed in the January 25, 1996 notice, but does not propose new authorization procedures, except that the procedures in the January 1996 notice would apply only to situations in which the mineral processing waste volumes are high enough to be eligible for the special conditional exclusion made available to them at 261.4 in this proposed rule. EPA will consider public comments on that proposal when finalizing the authorization procedures. EPA will address which authorization procedures will apply to this rule either in the final HWIR-Media rule or the final Phase IV rule, whichever is promulgated first.

C. Effect on State Authorization

As noted above, EPA would implement today's proposal in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because parts of the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24 and 57 FR 60132, December 18, 1992.)

Section 271.21(e)(2) requires that States with final authorization must modify their programs to reflect Federal program changes and to subsequently submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule in accordance with § 271.21(e). This deadline can be extended in certain cases (see section § 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In most cases, EPA expects that it will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a State must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

D. Less Stringent Requirements

Section 3009 of RCRA allows States to impose standards that are more stringent than the Federal program (see 40 CFR 270.1(I)). Thus, for those Federal changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. The parts of the rule that EPA views as less stringent are the exclusion for processed wood preserving wastewaters, and the revised universal treatment standards for antimony, barium, beryllium, cadmium, lead, nickel, selenium, thallium, and vanadium. However, EPA believes that these proposed changes improve the RCRA program, thus EPA will strongly encourage States to adopt and become authorized for these provisions when they are finalized.

XI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''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 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; 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 Agency estimated the costs of today's proposed rule to determine if it is a significant regulation as defined by the Executive Order. The analysis considered compliance cost and economic impacts for newly listed and identified wastes affected by this rule. Newly identified mineral processing wastes covered under this rule include 118 mineral processing wastes identified as potentially characteristically hazardous. Also covered under this rule are TC metal wastes including foundry sands and secondary lead slags. Finally, this rule covers a conditional exclusion from the definition of solid waste for wood preserving wastewaters and spent wood preserving solutions that are recycled on-site for their original purpose. EPA estimates the total compliance cost of the rule is $55 million annually, and concludes that this rule is significant according to the definition in E.O. 12866. The Office of Management and Budget has reviewed this rule.

Detailed discussions of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's proposed rule for newly identified mineral processing wastes, followed by a presentation of the cost, economic impact and benefit results may be found in the background document, ''Regulatory Impact Analysis of the Phase IV Land Disposal Restrictions Second Supplemental Proposed Rule for Newly Identified Mineral Processing Wastes and TC Metal Wastes,'' which was placed in the docket for today's proposed rule.

1. Methodology Section

The Agency estimated the volumes of waste affected by today's rule to determine the national level incremental costs (for both the baseline and post-regulatory scenarios), economic impacts (including first-order measures such as the estimated percentage of compliance cost to industry or firm revenues), and benefits (including estimation of pollutant loadings reductions, estimation of reductions in exceedences of health-based levels, and qualitative description of the potential benefits.) The procedure for estimating the volumes of formerly Bevill-exempt mineral processing wastes, and TC metal wastes affected by today's proposed rule is detailed in the background document ''Regulatory Impact Analysis of the Proposed Phase IV Land Disposal Restrictions Rule for Newly Identified Mineral Processing Wastes and TC Metal Wastes,'' which was placed in the docket for today's proposed rule.

2. Results

a. Volume Results. EPA estimates that there are 29 mineral commodity sectors potentially affected by today's rule, including an estimated 136 facilities that generate 118 streams of newly identified mineral processing wastes. The estimated volume is 20 million tons. Based on public comment and Agency research, the Agency believes that the potentially affected TC metal universe (other than mineral processing wastes) is limited to certain lead-bearing D008 hazardous wastes. Of the affected TC metal universe, the Agency estimates there are 791 non-ferrous foundries that generate approximately 300,000 tons of hazardous foundry sands. EPA did not prepare an estimate of volumes of potentially excluded wood preserving wastewaters and spent wood preserving solutions for this rulemaking.

b. Cost Results. For the option presented in today's rule that prohibits land storage of mineral processing residues (below the high volume threshold) prior to being recycled, EPA estimates these expected case compliance costs to be $8.4 million. The estimated cost range for this option is between a minimum of $5.2 million and a maximum of $13 million. This range reflects uncertainty surrounding both the quantity of these materials generated and the proportion of that quantity that is considered characteristically hazardous by EPA.

For the option in today's rule that limits the Bevill exemption to wastes generated exclusively from the use of Bevill raw materials, EPA estimates the expected compliance costs of this option are $36.6 million. The range of compliance costs for this option varies from a minimum of $31.8 million to a maximum of $42 million.

Together, the expected case compliance costs for both options related to mineral processing are $45 million with a range between $37 million and $55 million.

For comparison, EPA evaluated two additional alternative options to the first EPA option in today's rule prohibiting land storage of mineral processing residues above high volume threshold. The first alternative option would require that in addition to prohibiting land storage, mineral processing residues would be required to be stored in units such as tanks, containers and buildings that meet RCRA Subtitle C Part 264 standards (Subpart I standards for containers, Subpart J standards for tanks and Subpart DD standards for containment buildings). In addition, this option assumed that the Bevill exemption is limited to wastes generated exclusively from the use of Bevill raw materials. EPA estimates expected case compliance costs for this option to be $58 million with a range of $46 million to $75 million.

The second alternative option for which EPA estimated compliance costs for today's rule models the placement of newly identified mineral processing residues into land based units such as surface impoundments and waste piles. This option models no design or performance standards for the units and no legitimacy or ''significantly affects'' test for the placement of mineral processing residues into either Bevill process units or non-Bevill process units. EPA estimates expected case compliance costs for this alternative option to be $0.2 million.

The cost results for these options are a function of two factors: (1) The expense associated with purchasing new storage units or upgrading existing storage units, and (2) the transfer of some mineral processing residues either from recycling to disposal resulting in increased costs or from disposal to recycling resulting in a cost savings.

For TC metal hazardous wastes, the Agency estimates that incremental costs resulting from the promulgation of the proposed treatment standards for TC nonwastewaters are $10 million annually. Based on public comment and data collected from commercial hazardous waste treaters EPA believes that the many D008 TC lead wastes are already treated to these proposed levels when waste handlers treat to the current treatment standards. Therefore, no additional treatment reagent or capital equipment associated with treatment is required with these wastes. Other data submitted by the American Foundrymen's Society indicates that additional treatment reagents may be required to meet proposed UTS for foundry wastes. EPA has evaluated these data and determined that additional reagent may be required for foundry wastes such as sands and baghouse dusts to treat cadmium to the proposed levels. Detailed information on EPA's estimate of costs associated with this treatment of foundry sands can be found in the regulatory impact analysis placed in the docket.

For conditionally excluded wood preserving wastewaters and spent wood preserving solution, EPA believes that the conditional exclusion from the definition of solid waste will result in cost savings rather than imposing costs on wood preserving facilities. First, this conditional exclusion retains existing regulatory alternatives for the wood preserving industry. It is likely that the exclusion will provide regulatory relief to wood preserving facilities that as a result of not having to count spent wastewasters in their monthly hazardous waste generation rate are able to classify themselves as small quantity generators (SQGs) that generate between 100 and 1000 kilograms per month. For wood preserving facilities that are able to qualify as SQGs, no Biennial Reporting System reporting requirements apply. 40 CFR 262.41. Furthermore, SQGs have longer accumulation times of 180 days compared to 90 days with large quantity generators. 40 CFR 262.34(d). Longer accumulation times mean less expensive transportation for off-site shipments. Wood preserving facilities that are able to qualify as conditionally-exempt small quantity generators (CESQGs) would be subject to even fewer regulatory requirements. See 40 CFR 261.5.

c. Economic Impact Results. Economic impacts from today's rule for mineral processing facilities may or may not be substantial for selected mineral processing sectors depending on the actual storage and management of mineral processing residues prior to being recycled. First order economic impacts are expressed in terms of a percentage of compliance costs to the economic value of the minerals that are produced. In the expected case scenario of the two proposed options combined to limit the exclusion from RCRA jurisdiction of wastes from Bevill process units to those process units to those that receive only virgin materials and to condition the exclusion from RCRA for mineral processing residues being recycled to those residues which are stored in non-land based units up to 5 of the 29 commodity sectors are expected to incur compliance costs equal to or greater than 3 percent of the economic value of the mineral commodities produced under the Agency's proposed option in today's rule. These sectors include: cadmium, lead, mercury, pyrobitumens, mineral waxes & natural asphalt, and selenium. The range of percentages in these sectors is between 3 percent (selenium) and 173 percent (mercury). Because many of these sectors are actually co-processed with other mineral commodity sectors, these impacts may be distributed over the economic value of the other minerals, rather than concentrated solely on the mineral commodity associated with generating the waste. The exception is the primary lead sector would incur expected case compliance costs equal to approximately 13 percent of that sector's sales. EPA solicits comment on the economic impacts to the primary lead sector and other affected sectors resulting from this combined option and each option separately. EPA solicits specific public comment on the potential for lost revenues to mineral processing facilities with Bevill process units (e.g., beneficiation units and high volume mineral processing units) that are unable to receive secondary materials as alternative feedstocks that are generated from outside of the mineral processing industry.

Because the Agency believes that there are no incremental costs associated with today's proposed rule for handlers of many D008 TC metal hazardous wastes and wood preserving facilities that recycle wood preserving wastewaters and spent wood preserving solutions, EPA believes that there are no economic impacts to generators of these materials. For TC hazardous foundry sands, EPA estimates that incremental costs attributable to this rule are less than one percent of industry revenues and therefore should not create a significant impact to these facilities. More detailed information on this estimate can be found in the regulatory impact analysis placed into today's docket.

d. Risk Screen Estimate Results. The Agency has estimated the quantifiable individual results for newly identified mineral processing wastes associated with today's proposed rule to be above levels of concern for cancer and noncancer risks for specific mineral processing streams in both groundwater and nongroundwater pathways. Screening risk results suggest that individual cancer and non-cancer risks may be decreased below 1 x 10 -5 and below a reference dose ratio of 1 in a number of mineral processing facilities. These screening results are linked primarily with mineral processing wastewaters stored in surface impoundments prior to reuse. The data used to calculate these results are based on the groundwater pathway as well as other potential routes of exposure such as air or surface water. The risk screening results indicate that the highest individual risks are associated with exposure through groundwater and surface water pathways. These results are also limited to a subset of the mineral processing universe being regulated today where the Agency has collected data from individual mineral processing facilities. EPA also notes that in completing these individual risk results that the entire mass of hazardous constituents available for release in the waste management unit was available for release through pathway. This results in overestimation in risk due to double counting of constituent mass. To address this factor, EPA conducted mass balance calculations for all non-groundwater release pathways. These calculations indicate that this potential overestimate would result in negligible bias because only a very small percentage of hazardous constituents in the waste mass is available for release. In addition, EPA did not conduct these mass balance calculations for the groundwater pathway because limitations in the methodology for which individual groundwater risks were calculated. The Agency believes that the potential bias in risk results for both surface impoundments and waste piles is low.

EPA requests comment on how constituents' mass should be partitioned across pathways to yield more accurate risk estimates. As stated above the Agency's efforts to evaluate benefits for mineral processing wastes was limited to calculations for central tendency and high-end individual risk. Due to data limitations, the Agency was unable to evaluate benefits including population benefits. In general, the Agency's experience has been that it is unusual to predict high population risks unless there is an unusually large water well supply impacted by the facility because ground water contamination generally moves slowly and locally.

Although the regulatory impact analysis completed for today's rule does not address benefits associated with ecological risk reduction and a decrease in natural resource damages, based on a review of available information on damage incidents associated with mining and mineral processing operations,[14] the Agency's experience is that, while these types of benefits are extremely difficult to quantify, this rule may produce benefits in the area of ecological risk reduction and reduced natural resource damage.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions).

With respect to mineral processing facilities that are small entities, EPA believes that EPA's proposed option in today's rule will not pose a significant impact to a substantial number of these facilities. EPA identified 22 firms owning 24 mineral processing facilities that are small businesses based on the number of employees in each firm. Under the Agency's proposed option, zero firms out of the 24 identified incurred estimated compliance costs that exceed 1 percent of reported firm revenues. In assessing the regulatory approach for dealing with small entities affected by the TC metal treatment standards in today's proposed rule, the Agency had to consider that due to the statutory requirements of the RCRA LDR program, no legal avenues exist for the Agency to provide relief from the LDR's for small entities. The only relief available for small entities is the existing small quantity generator provisions and conditionally exempt small quantity generator exemptions found in 40 CFR 262.11–12, and 261.5, respectively. These exemptions basically prescribe 100 kilograms (kg) per calendar month generation of hazardous waste as the limit below which one is exempted from complying with the RCRA standards.

Given this statutory constraint, the Agency was unable to frame a series of small entity options from which to select the lowest cost approach; rather, the Agency was legally bound to regulate the land disposal of the hazardous wastes covered in today's rule without regard to the size of the entity being regulated.

Notwithstanding these statutory constraints, for the reasons discussed above in the economic impact section on nonferrous foundries, the Agency does not believe that today's proposed rule will have a significant impact on a substantial number of small entities in TC metals sector based on the results discussed above in the economic impact section.

EPA has also clarified in today's rule that petitioners of restricted wastes that wish to obtain a treatment variance do not have to show technical infeasibility when the treatment technology is not appropriate to the waste. Because this clarification does not impose an adverse economic impact to any small entity that is either generator of restricted waste or an owner/operator of a treatment, storage or disposal facility managing such waste that is petitioning the Agency for a variance from the treatment standard, EPA is certifying that there is no significant impact to a substantial number of small entities potentially affected by this clarification.

Finally, with respect to wood preserving facilities that recycle spent wood preserving solutions and wood preserving wastewaters on-site for their original purpose, EPA believes that today's conditional exclusion for these materials will not pose a significant impact on a substantial number of these firms. As stated above, the conditional exclusion does not alter existing regulatory alternatives and provides greater flexibility for wood preservers in calculating monthly generation rates of hazardous wastes. EPA believes that this will result in a cost savings to these firms rather than imposing additional waste management costs.

C. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with the statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA does not believe that today's proposed rule will result in significant impacts to small governments and moreover that this rule 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. As stated above, the private sector is not expected to incur costs exceeding $100 million per year. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA: OSWER ICR No. 1442.15 would amend the existing ICR approved under OMB Control No. 2050–0085. This ICR has not been approved by OMB and the information collection requirements are not enforceable until OMB approves the ICR. EPA will publish a document in the **Federal Register** when OMB approves the information collection requirements showing the valid OMB control number. Until then, persons are not required to respond to collections of information in this ICR.

Copies of this ICR may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, D.C. 20460 or by calling (202) 260–2740. Include the ICR number in any request.

The annual public reporting and recordkeeping burden for this collection of information is estimated to be 16 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

[14] See Human Health and Environmental Damages from Mining and Mineral Processing Wastes, Technical Background Document Supporting the Supplemental Proposed Rule Applying Phase IV Land Disposal Restrictions to Newly Identified Mineral Processing Wastes, U.S. Office of Solid Waste, U.S. Environmental Protection Agency, December 1995; Ecological Risk Assessment Southshore Wetlands for the Kennecott Utah Copper Salt Lake City, Utah. Working Draft March 4, 1996; May 7, 1996 letter from Max H. Dodson, Assistant Regional Administrator for Ecosystem Protection and Remediation, U.S.E.P.A, Region VIII to Michael Shapiro, Director, Office of Solid Waste, U.S.E.P.A.

and maintaining information, and 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.

Send comments on the Agency's burden reduction, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection of techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

XII. Environmental Justice

A. Applicability of Executive Order 12898

EPA is committed to address environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agencies goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Potential Effects

Today's proposed rule covers high-metal wastes (''TC metal wastes,'' hazardous mineral processing wastes, and mineral processing materials. The rule involves not one site, but will possibly affect many facilities nationwide, with the potential for impacts to minority or low-income communities. Today's proposal is intended to reduce risks to human health and the environment, and to benefit all populations. It is not expected to cause any disproportionate impacts to minority or low income communities versus affluent or non-minority communities.

The Agency is soliciting comment and input from all stakeholders, including members of the environmental justice community and members of the regulated community. The Agency is interested in receiving additional information and/or comment on the following:

1. Information on facilities with surface impoundments that have evaluated potential ecological, human health (taking into account subsistence patterns and sensitive populations) and socioeconomic impacts to minority or low-income communities.

2. Information on hazardous materials stored, used, and transported in the community.

XIII. Appendices

Appendix 1—Sampling Procedures for Horsehead Resource Development Company, Inc.

EPA has established the following procedures which will be used by Horsehead Resource Development Company, Inc. (''HRD'') to demonstrate compliance with RCRA treatment standards for K061, K062, and F006 residuals (''the residuals''). U.S. EPA enforcement of the treatment standards applicable will be either on the basis of the Phase I and Phase II procedures, or on the Sampling Protocol below. Nothing in this document should be read to in any way affect EPA's ability to obtain samples or other information under Section 3007 of RCRA.

Phase I Procedure

U.S. EPA may collect an 8-hour composite sample of dhe residuals as they are produced. The 8-hour composite sample will be based on eight grab samples, one taken every hour, with compositing and testing performed in accordance with the Sampling Protocol. Upon request, HRD will be supplied on-site with splits of all samples. U.S. EPA will perform a TCLP test on the 8-hour composite sample of the residuals. If the results of the TCLP test do not exceed the applicable numerical limits specified in 40 CFR 268.40 or 268.48, the residuals will be determined to be in compliance with the applicable treatment standards set forth in those provisions.

If the results of the test exceed any of the applicable numerical limits specified in 40 CFR 268.40 or 268.48, such results will only be used to initiate the Phase II Procedure to be followed as described below, and will not be the basis for any determination of noncompliance.

Phase II Procedure

If further action is required as a result of the Phase I Procedure, the following Phase II Procedure will be conducted:

a. U.S. EPA will inform HRD of the results of the Phase I testing and concurrently provide HRD with copies of such results and all supporting information.

b. HRD will provide to U.S. EPA, upon request, the TCLP results of a composite sample of the residuals collected by HRD that includes the period during which U.S. EPA collected the 8-hour composite sample. The sampling preparation and testing procedure used by HRD for this requested composite sample will be in accordance with the Sampling Protocol.

c. If the results of the TCLP tests on the HRD composite sample do not exceed the applicable numerical limits specified in 40 CFR 268.40 or 268.48, the residuals will be determined to be in compliance with the applicable treatment standards set forth in those provisions.

Sampling and Analysis Protocol

HRD will use the following sampling and analysis protocol for K061, K062, or F006 residuals produced at its facilities.

1. Grab samples of the wastes are taken every two hours of operation from the product stream.

2. All of the two-hour interval samples are blended to form a daily composite.

3. The daily composite is riffled down to approximately 100 grams, which is added to the sample container used for the production lot composite.

4. When the production composite is completed (four to seven days), the residuals in the composite sample container are riffled to produce approximately 300 grams composite, which is prepared for TCP testing.

5. The TCLP and QA/QC procedures utilized are those described in Method 1311 (TCLP) of *SW–846—Test Methods for Evaluating Solid Waste* (U.S. EPA Office of Solid Waste and Emergency Response).

Appendix 2—Sampling Procedures For International Metals Reclamation Company, Inc.

EPA has established the following procedures which will be used by International Metals Reclamation Company, Inc. (''INMETCO'') to demonstrate compliance with RCRA treatment standards for K061, K062, and F006 (''slag''). U.S. EPA enforcement of the treatment standards applicable will be either on the basis of Procedures I and II, or on the Sampling Protocol or as described below. Such demonstration will be deemed sufficient for compliance purposes. To the extent that U.S. EPA may exercise jurisdiction to determine the compliance of INMETCO's slag with applicable treatment standards, the compliance determination will be based either on the attached Sampling Protocol or on the procedures described below. Nothing in these procedures should be read to in any way affect EPA's ability to obtain samples or other information under Section 3007 of RCRA.

Phase I Procedure

U.S. EPA may collect or direct the collection of a composite sample of INMETCO's slags as they are produced during a period of up to 24 hours. If U.S. EPA representatives wish to collect the samples themselves, they will comply with all safety requirements and procedures specified by INMETCO. The composite sample will be based on grab samples, one taken from each slag tap that occurs during the period of up to 24 hours specified by EPA, with compositing and testing performed in accordance with the Sampling Protocol. EPA understands that slag is tapped from INMETCO's furnace most frequently during nighttime hours. Upon request, INMETCO will be supplied on-site with splits of all samples taken by EPA. U.S. EPA will perform a TCLP test on the composite sample of the slag. If the results of the TCLP test do not exceed the applicable numerical limits specified in 40 CFR 268.40 or 268.48, the slag will be determined in compliance with the applicable treatment standards set forth in those provisions.

If the results of the test exceed any of the applicable numerical limits specified in 40 CFR 268.40 or 268.48, such results will be used, if at all, only to initiate the Phase II Procedure described below, and will not be the basis for any determination of noncompliance.

Phase II Procedure

If further action is required as a result of the Phase I Procedure, the following Phase II Procedure will be conducted:

a. U.S. EPA will inform INMETCO of the results of the Phase I testing and concurrently provide INMETCO with copies of such results and all supporting information.

b. Upon request, INMETCO will provide to U.S. EPA, the TCLP results for a composite sample of slags produced by INMETCO during a period not to exceed one month, which period may be selected by INMETCO provided that it will include the day on which U.S. EPA collected the composite sample tested during Phase I. The sample preparation and testing procedure used by INMETCO for this requested composite sample will be in accordance with the Sampling Protocol.

c. If the results of the TCLP tests on the composite sample described in paragraph 2.b. above do not exceed the applicable numerical limits specified in 40 CFR 268.40 or 268.48, the slag will be determined to be in compliance with the applicable treatment standards set forth in those provisions.

Sampling and Analysis Protocol

INMETCO will use the following sampling and analysis protocol for high temperature metals recovery slag produced at its facility.

1. A grab sample of INMETCOs slag will be taken from every slag tap.

2. The grab samples from slag taps occurring during a period not to exceed one month will be blended to form a composite sample of at least 100 grams in weight. The composite sample will be prepared for TCLP testing.

3. The TCLP and QA/QC procedures utilized will be those described in Method 1311 (TCLP) of *SW–846: Test Methods for Evaluating Solid Waste* (U.S. EPA Office of Solid Waste and Emergency Response).

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Energy, Hazardous waste, Recycling, Reporting and recordkeeping

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: April 18, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for Part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*

2. Section 148.18 is amended by redesignating paragraphs (a) through (c) as (b) through (d) respectively, and by adding paragraph (a) to read as follows:

§ 148.18 Waste specific prohibitions—newly listed and identified wastes.

(a) Effective [*Insert date 2 years from date of publication of the final rule*], the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers D004—D011 (as measured by the Toxicity Characteristic Leaching Procedure); mixed D004-D011 TC/radioactive wastes; characteristic hazardous wastes from mineral processing operations; and mixed characteristic hazardous mineral processing wastes/radioactive wastes are prohibited from underground injection.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

3. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

4. Section 261.2(c) is amended by revising paragraph (c) (3) to read as follows:

§ 261.2 Definition of Solid Waste.

* * * * *

(c) * * *

(3) *Reclaimed*. Materials noted with a "*" in column 3 of Table 1 are solid wastes when reclaimed. However, all secondary materials generated within the primary mineral processing industry (other than hazardous wastes listed in Subpart D of this part) are solid wastes when reclaimed unless excluded under § 261.4(a) (15) and (16).

* * * * *

4. Section 261.3(a) is amended by revising the first sentence of paragraph (a)(2)(i), and by revising paragraph (a)(2)(iii) to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(i) It exhibits any of the characteristics of hazardous waste identified in Subpart C. * * *

* * * * *

(iii) It is a mixture of a solid waste and a hazardous waste that is listed in subpart D of this part solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C of this part. (However, nonwastewater mixtures are still subject to the requirements of part 268 of this chapter, even if they no longer exhibit a characteristic at the point of land disposal.)

* * * * *

6. Section 261.4 is amended by adding paragraphs (a)(9)(iii), (a)(15), and (a)(16), and by revising paragraph (b)(7) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(9) * * *

(iii) Wood preserving wastewaters and spent wood preserving solutions that are recycled and reused on-site in the production process for their original intended purpose at wood preserving plants; provided that these wastewaters and spent wood preserving solutions are managed to prevent release to the land and the groundwater and that the units can be visually or otherwise determined to prevent such releases; and provided that if these wastewaters are collected or managed on drip pads, those pads are in compliance with the regulatory drip pad standards, regardless of whether the plant would generate less than 100 kg per month of hazardous waste once such wastewaters and spent wood preserving solutions are excluded under this provision.

* * * * *

(15) Large volume streams of secondary materials (other than hazardous wastes listed in Subpart D of this Part) generated within the primary mineral processing industry from which minerals, acids, or water values are recovered by a primary mineral processing industry production process, provided that:

(i) The material contains recoverable amounts of minerals, acids, or water;

(ii) The materials are not accumulated speculatively (as defined at § 261.1(c)(8));

(iii) The secondary material is generated in a quantity over 45,000 tons per year per waste stream as generated for solid wastes and one million tons per year per waste stream as generated for liquids wastes.

(iv) The owner or operator provides a notice to the Regional Administrator or State Director, identifying the following information: the types of materials to be recycled and the location of the recycling process; and the annual quantities expected to be placed in land-based units; and,

(v) The materials are stored or otherwise managed in process units. A ''process unit'' is a tank, container, containment building or other unit that is not land-based. A process unit also can include a pile or surface impoundment that:

(A) Is designed and operated so as to satisfy any of the following alternative performance conditions:

(1) The owner or operator ensures that the unit satisfies a groundwater protection standard not exceeding: the maximum contaminant level (MCL) for metals in Appendix VIII of Part 261 (antimony, arsenic, barium, beryllium, cadmium, chromium (total), lead, mercury, nickel, selenium, silver, and thallium); weak acid dissociable cyanide level of 0.2 ppm; the corrosivity standard in § 261.22 (an aqueous solution with a pH equal to or less than 2.0 or equal to or greater than 12.5); and the ignitability standard in § 261.21 at a location no further than 150 meters from the unit boundary. To demonstrate that this condition is satisfied, the unit must have a groundwater monitoring system consisting of a minimum of one upgradient well and three downgradient wells. Such monitoring wells must be capable of detecting, sampling, and assessing whether the groundwater protection standard is satisfied pursuant to the provisions of 40 CFR 258.51 (except for 40 CFR 258.51(b), 258.53, and 258.54). If a release is detected at levels exceeding the groundwater protection standard, the owner/operator must perform corrective action which attains the groundwater protection standard. During the time when the standard is exceeded, no further mineral processing secondary materials may be placed in the unit; or,

(2) Satisfies any of the following design standards: for surface impoundments or piles containing free liquids, is constructed to have the equivalent transmissivity of a liner comprised of a 40 mil geomembrane liner on 12 inches of soil with at least 10<-5> cm/sec hydraulic conductivity; and for piles not containing free liquids, is located on concrete, asphalt, or soil any of which have the equivalent transmissivity of three feet of clay with 10<-7> cm/sec hydraulic conductivity; or

(3) Receives a site-specific determination from the Regional Administrator or the State Director that the unit is a process unit and not a waste disposal unit because the unit is designed and operated to minimize releases to the environment and generally is not part of the waste disposal problem. This determination shall consider prevention of adverse affects on ground-water quality, surface water quality, and air quality considering the factors set out in 40 CFR 267.10.

(B) However, process units do not include any wastewater treatment surface impoundment whose discharge is ultimately regulated under either section 402 or 307(b) of the Clean Water Act (including facilities which have eliminated the discharge of wastewater).

(16) Secondary materials generated within the primary mineral processing industry from which minerals, acids, or water are recovered and are stored in tanks, containers or buildings meeting the following minimum integrity standards: the tank or containment unit should be an engineered structure with a man-made floor, walls, and a roof all of which are made of non-earthen materials providing structural support, the tank or container must be free standing and not a surface impoundment (as defined in 40 CFR 260.10), be manufactured of a material suitable for storage of its contents, and meet appropriate specifications such as those established by either ASTM, API, or UL standards. The minimum criteria for a building is that the structure must be man-made, constructed from non-earthen materials, and have a roof suitable for diverting rainwater away from the foundation.

* * * * *

(b) * * *

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate, rock, and overburden from the mining of uranium ore), except as provided by § 266.112 of this chapter for facilities that burn or process hazardous waste. Solid wastes from the beneficiation of ores and minerals must be uniquely associated with and originate from the extracted ore or mineral that undergoes one or more of the following activities in preparation for mineral processing: crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining to remove water and/or carbon dioxide, roasting, autoclaving and/or chlorination in preparation for leaching (except where the roasting and/or autoclaving sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation, ion exchange; solvent extraction/electrowinning; precipitation, amalgamation, and heap, dump, vat, tank, and in situ leaching. For purposes of § 261.4(b)(7), alternative feedstocks, which are secondary materials or materials not naturally occurring in the extracted ore or mineral undergoing beneficiation, are not eligible for the hazardous waste exclusion. For the purposes of § 261.4(b)(7), solid waste from the processing of ores and minerals originate solely from a beneficiation activity and includes only the following wastes as generated:

(i) Slag from primary copper processing;

(ii) Slag from primary lead processing;

(iii) Red and brown muds from bauxite refining;

(iv) Phosphogypsum from phosphoric acid production;

(v) Slag from elemental phosphorous production ;

(vi) Gasifier ash from coal gasification;

(vii) Process wastewater from coal gasification; (viii) Calcium sulfate wastewater treatment plant sludge from primary copper production;

(ix) Slag tailings from primary copper processing;

(x) Fluorogypsum from hydrofluoric acid production;

(xi) Process wastewater from hydrofluoric acid production;

(xii) Air pollution control dust/sludge from iron blast furnaces; (xiii) Iron blast furnace slag;

(xiv) Treated residue from roasting/ leaching of chrome ore;

(xv) Process wastewater from primary magnesium processing by the anhydrous process;

(xvi) Process wastewater from phosphoric acid production;

(xvii) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(xviii) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(xix) Chloride process waste solids from titanium tetrachloride production;

(xx) Slag from primary zinc processing.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

7. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

8. Section 266.20(b) is amended by redesignating the existing paragraph (b) as (b)(1), and adding a new paragraph (b)(2) to read as follows:

§ 266.20 Applicability.

* * * * *

(b) * * *

(2) In addition, prohibited hazardous waste (including wastes that exhibit a characteristic at the point they are generated but no longer exhibit a characteristic at the point they are used as fill material) may be used as a fill material only if the Regional Administrator or State Director first finds, on a site-specific basis, to a reasonable degree of certainty, that the fill material will be used in a manner protective of human health and the environment and which minimizes short-term and long-term threats posed by the land disposal of the waste as fill, considering the following factors:

(i) The long term uncertainties associated with land disposal;

(ii) The goal of managing hazardous waste in an appropriate manner in the first instance;

(iii) The persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous waste and their hazardous constituents;

(iv) All pathways of exposure to hazardous constituents to which human or environmental receptors could reasonably be exposed; and,

(v) Other factors relating to protectiveness of human health and the environment, as appropriate.

(vi) This approval is unnecessary if the fill area is a regulated unit. By, ‘‘fill material,’’ EPA means any prohibited hazardous waste used in place of such materials as natural soil or sand, the man-made addition of which to land levels the land, occupies space in the land, or fills in man-made or naturally occurring significant depressions in land (for example, ditches, gullies, channels, holes, ruts, trenches or the like), whether or not the addition of the prohibited hazardous waste is intended to achieve a purpose unrelated to the leveling land, occupying space in the land, or filling in man-made or naturally occurring depressions in land.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

9. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—Prohibitions on Land Disposal

10. Section § 268.32 is added to read as follows:

§ 268.32 Waste specific prohibitions—toxicity characteristic metal wastes.

(a) Effective August 11, 1997, the following wastes are prohibited from land disposal: the wastes specified in 40 CFR 261 as EPA Hazardous Waste numbers D004—D011 (as measured by the Toxicity Characteristic Leaching Procedure) and soil and debris contaminated with these wastes; characteristic hazardous wastes from mineral processing operations; and, soil and debris contaminated with characteristic hazardous wastes from mineral processing operations.

(b) Effective May 12, 1999, the following wastes are prohibited from land disposal: soil and debris contaminated with radioactive wastes mixed with EPA Hazardous waste numbers D004—D011 (as measured by the Toxicity Characteristic Leaching Procedure) and with characteristic mineral processing wastes.

(c) Between May 12, 1997 and May 12, 1999, radioactive waste mixed with D004—D011 (as measured by the Toxicity Characteristic Leaching Procedure) wastes and/or soil and debris, or mixed with characteristic mineral processing wastes, may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2) of this Part.

(d) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under § 268.44; or

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents (including underlying hazardous constituents in characteristic wastes) in excess of the applicable Universal Treatment Standard levels of § 268.48 of this Part, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

* * * * *

Subpart D—Treatment Standards

11. Section 268.40 is amended by revising paragraph (e), adding paragraph (h), and amending the Table of Treatment Standards by revising the entries D004—D011; F006; F007; F008; F009; F011; F012; F019; F024; F032; F034; F035; F037; F038; F039; K001; K002; K003; K004; K005; K006; K007; K008; K015; K021; K022; K028; K046; K048; K049; K050; K051; K052; K061; K062; K069; K086; K087; K088; K100; K115; K161; P013; PO73; P074; P099; P103; P104; P110; P114; U032; U051; U144; U145; U146; U204; and U205 to read as follows:

§ 268.40 Applicability of Treatment Standards.

* * * * *

(e) For characteristic wastes (D001–D043) that are subject to treatment standards in the following table ‘‘Treatment Standards for Hazardous Wastes,’’ and are not managed in a wastewater treatment system that is regulated under the Clean Water Act (CWA), that is CWA-equivalent, or that is injected into a Class I nonhazardous deep injection well, all underlying hazardous constituents (as defined in § 268.2(i)) must meet Universal Treatment Standards, found in § 268.48, ''Table UTS,'' prior to land disposal as defined in § 268.2(c) of this part.

* * * * *

(h) The hazardous wastes included in the ''Treatment Standards for Hazardous Wastes'' table are prohibited from use as a fill material, as defined at § 266.20(b) of this Part, unless and until the placement of the waste or waste residue is demonstrated and determined to be protective of human health and the environment as set out in § 266.20(b) of this Part, or the fill area is a regulated unit.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l[3]; or technology code [4]	Concentration in mg/kg [5] unless noted as ''mg/l TCLP''; or technology code [4]
*	* *	*	*	*	*
D004 [9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Arsenic	7440–38–2	1.4 and meet § 268.48 standards [8].	5.0 mg/l TCLP and meet § 268.48 standards.[8]
D005 [9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Barium	7440–39–3	1.2 and meet § 268.48 standards [8].	21 mg/l TCLP and meet § 268.48 standards.[8]
D006 [9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Cadmium	7440–43–9	0.69 and meet § 268.48 standards [8].	0.20 mg/l TCLP and meet § 268.48 standards.[8]
	Cadmium Containing Batteries Subcategory. (Note: This subcategory consists of nonwastewaters only).	Cadmium	7440–43–9	NA	RTHRM
D007 [9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Chromium (Total)	7440–47–3	2.77 and meet § 268.48 standards [8].	0.85 mg/l TCLP and meet § 268.48 standards.[8]
D008 [9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Lead	7439–92–1	0.69 and meet § 268.48 standards [8].	0.75 mg/l TCLP and meet § 268.48 standards.[8]
	Lead Acid Batteries Subcategory (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80). This subcategory consists of nonwastewaters only).	Lead	7439–92–1	NA	RLEAD
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organolead materials that can be incinerated and stabilized as ash. This subcategory consists of nonwastewaters only).	Lead	7439–92–1	NA	MACRO.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code [4]
D009 [9]	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory).	Mercury	7439–97–6	NA	IMERC; OR RMERC.
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory).	Mercury	7439–97–6	NA	RMERC.
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain less than 260 mg/kg total mercury. (Low Mercury Subcategory).	Mercury	7439–97–6	NA	0.025 mg/l TCLP and meet § 268.48 standards.[8]
	All D009 wastewaters	Mercury	7439–97–6	0.15 and meet § 268.48 standards [8].	NA.
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only).	Mercury	7439–97–6	NA	AMLGM.
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (Note: This subcategory consists of nonwastewaters only).	Mercury	7439–97–6	NA	IMERC.
D010 [9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Selenium	7782–49–2	0.82 and meet § 268.48 standards [8].	5.7 mg/l TCLP and meet § 268.48 standards [8]
D011 [9]	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Silver	7440–22–4	0.43 and meet § 268.48 standards [8].	0.11 mg/l TCLP and meet § 268.48 standards [8]
*	* *	*	*	*	*
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440–43–9	0.69	0.20 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		Silver	7440–22–4	NA	0.11 mg/l TCLP.
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440–43–9	NA	0.20 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l[3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code [4]
		Silver	7440–22–4	NA	0.11 mg/l TCLP.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440–43–9	NA	0.20 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		Silver	7440–22–4	NA	0.11 mg/l TCLP.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440–43–9	NA	0.20 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		Silver	7440–22–4	NA	0.11 mg/l TCLP.
*	* *	*	*	*	*
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440–43–9	NA	0.20 mg/l TCLP.
		Chromium (Total) [7]	7440–47–3	2.77	0.85 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		Silver	7440–22–4	NA	0.11 mg/l TCLP.
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440–43–9	NA	0.20 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		Silver	7440–22–4	NA	0.11 mg/l TCLP.
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Cyanides (Total)[7]	57–12–5	1.2	590
		Cyanides (Amenable)[7].	57–12–5	0.86	30
*	* *	*	*	*	*
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.31 or § 261.32.)	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l[3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code [4]
*	* *	*	*	*	*
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or penta-chlorophenol.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code [4]
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		*	*	*	*
		Nickel	7440–02–0	NA	13.6 mg/l TCLP.
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air floatation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		*	*	*	*
		Nickel	7440–02–0	NA	13.6 mg/l TCLP.
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	*	*	*	*
		Antimony	7440–36–0	1.9	0.07 mg/l TCLP.
		*	*	*	*
		Barium	7440–39–3	1.2	21 mg/lTCLP.
		Beryllium	7440–41–7	0.82	NA.
		Cadmium	7440–43–9	0.69	0.20 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l[3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code [4]
		*	*	*	*
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		*	*	*	*
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		Selenium	7782–49–2	0.82	5.7 mg/l TCLP.
		Silver	7440–22–4	0.43	0.11 mg/l TCLP.
		*	*	*	*
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	*	*	*	*
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
K005	Wastewater treatment sludge from the production of chrome green pigments.	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
	Wastewater treatment sludge from the production of chrome oxide green pigments (hydrated).	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	NA
K007	Wastewater treatment sludge from the production of iron blue pigments.	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590
K008	Oven residue from the production of chrome oxide green pigments.	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
	*	* *	*	* *.	
K015	Still bottoms from the distillation of benzyl chloride.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/lTCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
*	* *	*	*	*	*
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	Carbon tetrachloride	56–23–5	0.057	6.0.
		Chloroform	67–66–3	0.046	6.0.
		Antimony	7440–36–0	1.9	0.07 mg/l TCLP.
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
*	* *	*	*	*	*
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
*	* *	*	*	*	*
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	Lead	7439–92–1	0.69	0.75 mg/l TCLP.
*	* *	*	*	*	*
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	*	*	*	*

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l[3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code [4]
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		*	*	*	*
		Nickel	7440–02–0	NA	13.6 mg/l TCLP.
K049	Slop oil emulsion solids from the petroleum refining industry.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		*	*	*	*
		Nickel	7440–02–0	NA	13.6 mg/l TCLP.
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		*	*	*	*
		Nickel	7440–02–0	NA	13.6 mg/l TCLP.
K051	API separator sludge from the petroleum refining industry.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		*	*	*	*
		Nickel	7440–02–0	NA	13.6 mg/l TCLP.
K052	Tank bottoms (leaded) from the petroleum refining industry.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		*	*	*	*
		Lead	7439–92	10.69	NA
		Nickel	7440–02–0	NA	13.6 mg/l TCLP.
*	*	*	*	*	* *
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Antimony	7440–36–0	NA	0.07 mg/l TCLP.
		Arsenic	7440–38–2	NA	5.0 mg/l TCLP.
		Barium	7440–39–3	NA	21 mg/l TCLP.
		Beryllium	7440–41–7	NA	0.02 mg/l TCLP.
		Cadmium	7440–43–9	0.69	0.20 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Mercury	7439–97–6	NA	0.025 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		Selenium	7782–49–2	NA	5.7 mg/l TCLP.
		Silver	7440–22–4	NA	0.11 mg/l TCLP.
		Thallium	7440–28–0	NA	0.20 mg/l TCLP.
		Zinc	7440–66–6	NA	4.3 mg/l TCLP.
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Nickel	7440–02–0	3.98	NA.
K069	Emission control dust/sludge from secondary lead smelting.—Calcium Sulfate (Low Lead) Subcategory.	Cadmium	7440–43–9	0.69	0.20 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
	Emission control dust/sludge from secondary lead smelting.—Non-Calcium Sulfate (High Lead) Subcategory.	NA	NA	NA	RLEAD.
*	*	*	*	*	* *
K086	Solvent wastes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	*	*	*	*
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead 7439–92–1	0.69	0.75 mg/l TCLP..	
K087	Decanter tank tar sludge from coking operations.	*	*	*	*
		Lead 7439–92–1	0.69	0.75 mg/l TCLP..	

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l[3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code [4]
K088	Spent potliners from primary aluminum reduction.	*	*	*	*
		Antimony	7440–36–0	1.9	0.07 mg/l TCLP.
		*	*	*	*
		Barium	7440–39–3	1.2	21 mg/l TCLP.
		Beryllium	7440–41–7	0.82	0.02 mg/l TCLP.
		Cadmium	7440–43–9	0.69	0.20 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		*	*	*	*
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		Selenium	7782–49–2	0.82	5.7 mg/l TCLP.
		Silver	7440–22–4	0.43	0.11 mg/l TCLP.
		*	*	*	*
*	* *	*	*	*	*
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	Cadmium	7440–43–9	0.69	0.20 mg/l TCLP.
		Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
		Lead 7439–92–1	0.69	0.75 mg/l TCLP..	
*	* *	*	*	*	*
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		NA	NA	CARBN; or CMBST	CMBST.
*	* *	*	*	*	*
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts.[10].	Antimony	7440–36–0	1.9	0.07 mg/l TCLP.
		Arsenic	7440–38–2	1.9	5.0 mg/l TCLP.
		Carbon disulfied	75–15–0	3.8	4.8 mg/l TCLP.
		Dithiocarbamates (total).	NA	0.028	28.
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
		Selenium	7782–49–2	0.82	5.7 mg/l TCLP.
*	* *	*	*	*	*
P013	Barium cyanide	Barium	7440–39–3	NA	21 mg/l TCLP.
		Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
*	* *	*	*	*	*
P073	Nickel carbonyl	Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
P074	Nickel cyanide	Cyanides (Total [7]	57–12–5	1.2	590
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
		Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
*	* *	*	*	*	*
P099	Potassium silver cyanide	Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
		Silver	7440–22–4	0.43	0.11 mg/l TCLP.
*	* *	*	*	*	*
P103	Selenourea	Selenium	7782–49–2	0.82	5.7 mg/l TCLP.
P104	Silver cyanide	Cyanides (Total) [7]	57–12–5	1.2	590.
		Cyanides (Amenable) [7].	57–12–5	0.86	30.
		Silver	7440–22–4	0.43	0.11 mg/l TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l[3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code [4]
*	* *	*	*	*	*
P110	Tetraethyl lead	Lead	7439–92–1	0.69	0.75 mg/l TCLP.
*	* *	*	*	*	*
P114	Thallium selenite	Selenium	7782–49–2	0.82	5.7 mg/l TCLP.
*	* *	*	*	*	*
U032	Calcium chromate	Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
	* *	* *		*	*
U051	Creosote	*	*	*	*
		Lead	7439–92–1	0.69	0.75 mg/l TCLP.
	* *	* *		*	*
U144	Lead acetate	Lead	7439–92–1	0.69	0.75 mg/l TCLP.
U145	Lead phosphate	Lead	7439–92–1	0.69	0.75 mg/l TCLP.
U146	Lead subacetate	Lead	7439–92–1	0.69	0.75 mg/l TCLP
	* *	* *		*	*
U204	Selenium dioxide	Selenium	7782–49–2	0.82	5.7 mg/l TCLP
U205	Selenium sulfide	Selenium	7782–49–2	0.82	5.7 mg/l TCLP.
	* *	* *		*	*

Footnotes to Treatment Standards Table 268.40:

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in § 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in § 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[6] Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[8] These wastes, when rendered nonhazardous and then subsequently managed in CWA, or CWA-equivalent systems are not subject to treatment standards. (See § 268.1(c)(3)and (4)).

[9] These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well are not subject to treatment standards. (See 40 CFR part 148.1(d)).

[10] Between August 26, 1996, and August 26, 1997, the treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technolgy code CMBST at § 268.42 Table 1 of this part, for nonwastewaters; and, biodegradation as defined by the technolgy code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technolgy code CMBST at § 268.42 Table 1 of this part, for wastewaters.

[11] For these wastes, the definition of CMBST is limited to: (1) combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR Part 264, Subpart O, or (3) combustion units operating under 40 CFR 265, Subpart O, which have obtained a determination of equivalent treatment under 268.42 (b).

* * * * *

12. Section 268.44 (a) and (h) are revised to read as follows:

§ 268.44 Variance from a treatment standard.

(a) EPA may grant a treatability variance if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differs significantly from waste analyzed in developing the treatment standard, the waste cannot be so treated; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible.

* * * * *

(h) EPA may grant a treatability variance if:

(1) It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the

physical or chemical properties of the waste differs significantly from waste analyzed in developing the treatment standard, the waste cannot be so treated; or

(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible.

* * * * *

13. The universal treatment standards table in § 268.48 is amended by revising the entries in the column under ''II. Inorganic constituents'' for antimony, barium, beryllium, cadmium, chromium, lead, nickel, selenium, silver, thallium, vanadium, and zinc to read as follows:

§ 268.48 Universal treatment standards

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable]

Regulated constituent common name	CAS[1] No.	Wastewater standard — Concentration in mg/l[2]	Nonwastewater standard — Concentration in mg/kg[3] unless noted as ''mg/l TCLP''
* * * *	*	*	*
II. Inorganic Constituents:			
Antimony	7440–36–0	1.9	0.07 mg/l TCLP.
* * * *	*	*	*
Barium	7440–39–3	1.2	21 mg/l TCLP.
Beryllium	7440–41–7	0.82	0.02 mg/l TCLP.
Cadmium	7440–43–9	0.69	0.20 mg/l TCLP.
Chromium (Total)	7440–47–3	2.77	0.85 mg/l TCLP.
* * * *	*	*	*
Lead	7439–92–1	0.69	0.75 mg/l TCLP.
* * * *	*	*	*
Nickel	7440–02–0	3.98	13.6 mg/l TCLP.
Selenium[5]	7782–49–2	0.82	5.7 mg/l TCLP.
Silver	7440–22–4	0.43	0.11 mg/l TCLP.
* * * *	*	*	*
Thallium	7440–28–0	1.4	0.20 mg/l TCLP.
Vanadium[5]	7440–62–2	4.3	1.6 mg/l TCLP.
Zinc[5]	7440–66–6	2.61	4.3 mg/l TCLP.

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

[3] Except for Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[4] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[5] These constituents are not ''underlying hazardous constituents'' in characteristic wastes, according to the definition at § 268.2(i).

[6] Between August 26, 1996, and August 26, 1997, these constituents are not ''underlying hazardous constituents'' as defined at § 268.2(i) of this Part.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

14. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

Subpart A—Requirements for Final Authorization

15. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	FEDERAL REGISTER reference	Effective date
* * * * * * *			
[*Insert date of publication of final rule in the* FEDERAL REGISTER [FR].	Land Disposal Restrictions Phase IV Second Supplemental Proposal.	[*Insert FR page numbers*].	[*Insert date of 90 days from date of publication of final rule*].
* * * * * * *			

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
* * * * * * *			
[*Insert date 90 days from date of publication of final rule*].	Prohibition on land disposal of TC-metal wastes and wastes from mineral processing.	3004(g)(4)(c) and 3004(m)	[*Insert date of publication of final rule] [Insert FR volume and page numbers*]. [Same as above]
[*Insert date 2 years from date of publication of final rule*].	....	3004 (m).	
* * * * * * *			

* * * * *

16. Section 271.28 is added to read as follows:

§ 271.28 Streamlined authorization procedures.

(a) The procedures contained in this section may be used by a State when revising it program by applying for authorization for the requirements in part 268 that are in effect as of (insert effective date of final rule), provided a State is authorized for Land Disposal Restrictions rules up to and including those in effect as of May 8, 1990.

(b) An application for a revision of a State's program for the provisions stated in paragraph (a) of this section shall consist of:

(1) A certification from the State that its laws provide authority that is equivalent to and no less stringent than the provisions specified in paragraph (a), and which includes references to the specific statutes, administrative regulations and where appropriate, judicial decisions. State statutes and regulations cited in the State certification shall be fully effective at the time the certification is signed;

(2) Copies of all applicable State statutes and regulations; and

(3) Certification from the State that its laws provide authority that is equivalent to and no less stringent than the provisions specified in paragraph (c) of this section.

(c) Within 30 days of receipt by EPA of a State's application for final authorization to implement a rule specified in paragraph (a) of this section, if the Administrator determines that the application is not complete, the Administrator shall notify the State that the application is incomplete. This notice shall include a concise statement of the deficiencies which form the basis for this determination. The State must also include a written assurance that the State has the legal authority to implement the key requirements of this rule. The State program must demonstrate:

(1) That it can distinguish land-based units receiving mineral processing residuals from those units operating as waste disposal units, based in part on factors set out in 40 CFR 261.4(a)(14) and 40 CFR 267.10;

(2) That it imposes preventive measures (including design and operating conditions) on these units;

(3) That it establishes groundwater protection criteria;

(4) That it requires groundwater monitoring;

(5) That it detects and remediate releases of hazardous constituents from the unit to groundwater should such releases occur; and

(6) The State program must provide for public participation in the process of developing requirements for particular land-based units.

(d) For purposes of this section, an incomplete application is one where:

(1) Copies of applicable statutes or regulations were not included;

(2) The statutes or regulations relied on by the State to implement the program revisions are not yet in effect;

(3) The State is not authorized to implement the prerequisite RCRA rules as specified in paragraph (a) of this section; or,

(4) In the certification, the citations to the specific statutes, administrative regulations and where appropriate, judicial decisions are not included or incomplete.

(e) Within 60 days after receipt of a complete final application from a State for final authorization to implement a rule or rules specified in paragraph (a) of this section, absent information in the possession of EPA, the Administrator shall publish an immediate final notice of the decision to grant final authorization as follows:

(1) In the **Federal Register**;

(2) In enough of the largest newspapers in the State to attract Statewide attention; and,

(3) By mailing to persons on the State agency mailing list and to any other persons whom the Agency has reason to believe are interested.

(f) The public notice under paragraph (e) of this section shall summarize the State program revision and provide for an opportunity to comment for a period of 30 days.

(g) Approval of State program revisions under this section shall become effective 60 days after the date of publication in the **Federal Register** in accordance with paragraph (e) of this section, unless a significant adverse comment pertaining to the State program revision discussed in the document is received by the end of the comment period. If a significant adverse comment is received, the Administrator shall so notify the State and shall, within 60 days after the date of publication, publish in the **Federal Register** either:

(1) A withdrawal of the immediate final decision; or

(2) A document containing a response to comments and either affirming that the immediate final decision takes effect or reversing the decision.

[FR Doc. 97–11637 Filed 5–9–97; 8:45 am]

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federal register

Monday
May 12, 1997

Part III

Postal Service

39 CFR Part 111

Special Services Reform; Implementation Standards; Final Rule; Changes in Domestic Mail Classifications and Fees; Notice

POSTAL SERVICE

39 CFR Part 111

Special Services Reform; Implementation Standards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule presents the full text of the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Special Services Fees and Classifications, Docket No. MC96–3. This final rule affects only the fees for, and certain attributes of, the following special services and their users: post office box and caller service, certified mail, insurance (insured mail and Express Mail), parcel airlift, postal cards, registered mail, return receipt, return receipt for merchandise, and special delivery. As appropriate, clarifications are included.

DATES: This final rule is effective at 12:01 a.m., Sunday, June 8, 1997. Comments allowed herein must be received on or before May 27, 1997.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2405. 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: Neil Berger, (202) 268–2859, or John Nagla, (202) 268–4686.

SUPPLEMENTARY INFORMATION: On June 7, 1996, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on several special service reform proposals. The PRC designated the filing as Docket No. MC96–3. The PRC published a notice of the filing, with a description of the Postal Service's proposals, on June 21, 1996, in the **Federal Register** (61 FR 31968–31979).

Pursuant to 39 U.S.C. 3624, on April 2, 1997, the PRC issued its Recommended Decision on the Postal Service's Request to the Governors of the Postal Service. The PRC's Recommended Decision made revisions to some of the restructuring of the post office box fees requested by the Postal Service. In other areas, the PRC's Recommended Decision generally followed the requests made by the Postal Service to increase the fee for certified mail, merge the two options for return receipt service, merge the two options for return receipt for merchandise, increase the maximum available indemnity for insured mail to $5,000, add optional insurance for Express Mail and refine the current available indemnity structure, simplify the fee schedule for registered mail, and eliminate special delivery. Although the PRC did not recommend a fee for postal cards (renamed stamped cards), it did suggest that the Postal Service remove costs unique to stamped cards from total postal and postcard subclass costs to support any proposed fee in addition to the face value of the cards.

Based on extensive analysis of the PRC's Recommended Decision and deliberation as to its consequences to the Postal Service and its customers, and pursuant to 39 U.S.C. 3625, the Governors acted on the PRC's recommendations on May 5, 1997. Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Special Services Fees and Classifications, Docket No. MC96–3.

The Governors determined to approve the PRC's recommendations, and the Board of Governors set an implementation date of June 8, 1997, for those rate and classification changes to take effect. A notice announcing the Governors' Decision and the issuance of final Domestic Mail Classification Schedule and Rate Schedule changes is published elsewhere in this issue of the **Federal Register**.

This final rule contains the DMM standards adopted by the Postal Service to implement the Governors' decision. As appropriate, clarifications are included.

In its testimony before the PRC, the Postal Service presented extensive evidence concerning the prudence and necessity of certain pricing and classification reforms that it was seeking for post office box service and certain special services. Despite the differences between the Postal Service's Request and the PRC's Recommended Decision, which the Governors have approved, the value and efficacy of many elements of the Request remain undiminished.

Using new data and analysis obtained since the last omnibus rate case, the Postal Service, with its filing, sought the reform of several special services to improve customer satisfaction and to account for cost and customer demand. The final rule does not encompass any changes to the rates or preparation standards for the classes and subclasses of mail or to the fees for other special services, none of which were included in the filing.

Post Office Box Service

Under the final rule, the Postal Service establishes new fee groups and adjusts certain post office box fees to recover a greater proportion of cost. The changes to post office box service and fees pursue the policy of providing each customer with one form of free delivery. In post offices that do not provide carrier delivery, the final rule eliminates box fees for customers who are ineligible for any form of carrier delivery (from any post office). Fees are also eliminated for box customers who are ineligible for carrier service at delivery offices, except for those customers who reside in the immediate vicinity of the office. These latter customers will be afforded continued access to general delivery service.

Caller Service

Under the final rule, the Postal Service extends caller service to Group D post offices (formerly categorized as Group II offices) for those customers, especially commercial mailers, who desire this service. The Group D caller service fee is set at the Group C (formerly categorized as Group IC) annual rate of $450. The fees for Groups A, B, and C do not change from the current fees.

Certified Mail

Under the final rule, the Postal Service raises the certified mail fee from $1.10 to $1.35 to align its price more appropriately with the cost of providing this service.

Insured Mail and Insured Express Mail

Under the final rule, the Postal Service increases from $600 to $5,000 the maximum indemnity available for insured mail. It should be noted that the handling of insured mail is not changed and the distinction is maintained between ''unnumbered insured mail'' (i.e., mail insured for $50 or less) and ''numbered insured mail'' (i.e., mail insured for more than $50). The Postal Service increases from $500 to $5,000 the maximum indemnity for merchandise sent by Express Mail. This increase to $5,000 will enable the Postal Service to compete more effectively in the parcel market for higher value items such as electronic and computer equipment.

Several other reforms and clarifications are made to describe payable and nonpayble claims. In addition, for negotiable items, currency, or bullion, mailed as Express Mail, the maximum indemnity is $15.

Concurrently, the indemnity for Express Mail document reconstruction is reduced from $50,000 to $500 per piece and $500,000 to $5,000 per occurrence in response to industry changes from exclusive reliance on paper documents to the growing use of electronically generated documents that can be reconstructed easily. Indemnity will be paid according to value for items valued at $15 or less.

Parcel Airlift

Under the final rule, the Postal Service increases from $25 to $50 the minimum insurance amount required on a parcel airlift (PAL) package if return receipt or restricted delivery service is requested.

Registered Mail

Under the final rule, the Postal Service simplifies the registered mail fee schedule by eliminating the uninsured schedule for declared values of more than $100 for the reasons that most mailers of registered mail want insurance and the dual fee schedules differ by less than $1 in the lower ranges to no more than $2.70 in the topmost range of coverage. The elimination of two parallel fee schedules also conforms to the overall Postal Service goal of simplifying its services and products for consumers. The maximum insurance coverage for registered mail service remains at the current limit of $25,000.

Return Receipt Services

Under the final rule, the two basic service offerings for return receipt service are merged and made into one service offering, available for a fee of $1.10 (the current fee for the service showing to whom, signature, and date delivered). For return receipt for merchandise, the two basic service offerings are also merged and made into one service, available for a fee of $1.20 (the current fee for showing to whom, signature, and date delivered). The enhanced return receipt service includes the address of delivery if different from the address on the mailpiece.

Also a classification change for return receipt for merchandise limits the availability of service in the First-Class Mail classification structure to Priority Mail. In addition, a clarification specifies the subclasses of Standard Mail for which return receipt for merchandise service is currently available.

Special Delivery Service

Under the final rule, the Postal Service eliminates domestic special delivery service because the demand for it has virtually disappeared. Consumers who request expedited delivery service most frequently use Priority Mail or Express Mail. A 2-pound Priority Mail package costs only $3, compared with $12.95 for the same Priority Mail package sent as special delivery ($3 postage plus $9.95 special delivery fee). A 2-pound Express Mail Post Office to Addressee package costs $15.00. Express Mail, unlike special delivery service and Priority Mail, includes a delivery guarantee and insurance at no additional charge.

Stamped Cards

Under the final rule, the Postal Service renames postal cards as stamped cards. Unlike stamped envelopes, stamped cards will continue to be sold at no additional charge above their face value of postage. The designation stamped cards emphasizes the similar nature of this stationery item with stamped envelopes.

Scope of Changes

To the extent that this final rule establishes standards that were not previously published for public comment, the Postal Service has determined to seek and consider comments from customers. This opportunity for public comment is restricted to matters concerning implementing policies that are not determined directly from the PRC's Recommended Decision and the Governors' Decision. The provisions for which comments are solicited are as follows:

1. Standards for post office box service as provided in DMM D910, including eligibility for box service in offices that offer no form of carrier delivery.
2. Standards for indemnity as provided in DMM S010, S500, and S913, including the revised rate schedules for insured mail service and for Express Mail.
3. Standards for return receipt service and return receipt service for merchandise in DMM S915 and S917, including the merger of the options currently available.

After considering the potential effect of these provisions, the Postal Service has determined to allow 15 days for public comment. Although a longer comment period is usually provided, the Postal Service concluded that a 15-day comment period was warranted in this case for two reasons. First, the list of provisions on which comment is sought is short and straightforward. Customers and mailers should have little difficulty evaluating the effect of these provisions on their personal or commercial mailing requirements. Second, the Postal Service wants to ensure that customers and mailers have sufficient time after the close of the comment period and publication of any possible revisions to this final rule to make the necessary changes to their operations before the June 8, 1997, implementation date. After review of the comments received, the Postal Service will modify the corresponding standards if such modification is determined to be appropriate.

Although exempt by 39 U.S.C. 410(a) from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding rulemaking, the Postal Service invites comment on the revisions of sections D910, S010, S500, S913, S915, and S917 of 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. In view of the foregoing, amend the following sections of Domestic Mail Manual Issue 51 as set forth below:

A ADDRESSING

A000 Basic Addressing

A010 General Addressing Standards

[In 1.2d, replace ''postal cards'' with ''stamped cards''; no other change to text.]

* * * * *

A900 Customer Support

A910 Mailing List Services

[In 1.5, 3.2, and 5.2, replace ''postal card[s]'' with ''stamped card[s]''; no other change to text.]

* * * * *

C CHARACTERISTICS AND CONTENT

C000 General Information

* * * * *

C020 Restricted or Nonmailable Articles and Substances

* * * * *

C022 Perishables

[In 3.1f, remove ''special delivery or''; in 3.7, remove ''special delivery or''; no other change to text.]

* * * * *

C030 Nonmailable Written, Printed, and Graphic Matter

C031 Written, Printed, and Graphic Matter Generally

[In 3.2 and 5.6, replace ''postal card'' with ''stamped card or postcard''; no other change to text.]

* * * * *

C100 First-Class Mail

[In 2.1, 2.3, and 2.9, replace ''postal card[s]'' with ''stamped card[s]''; no other change to text.]

* * * * *

C600 Standard Mail

[In 2.2, remove ''special delivery or''; no other change to text.]

* * * * *

DEPOSIT, COLLECTION, AND DELIVERY

* * * * *

D900 Other Delivery Services

D910 Post Office Box Service

1.0 BASIC INFORMATION

[Amend 1.0 by revising 1.1; by removing current 1.7; by redesignating current 1.6 as 1.7; and by adding new 1.6 to read as follows:]

1.1 Purpose

Post office box service is a premium service offered for a fee to any customer requiring more than free carrier delivery or general delivery and for no fee to certain customers who are not eligible for carrier delivery. The service allows a customer to obtain mail during the hours the box lobby is open. Post office box service does not include alternate means of delivery established to replace, simplify, or extend carrier delivery service. A postmaster and a box customer may not make any agreement that contravenes the regulations on post office box service or its fees.

* * * * *

1.6 Box Availability

When no box of the appropriate size is available, an application for box service may be handled, at the postmaster's discretion, in any one or more of the following ways: by referring the customer to another postal facility with available capacity; by placing the customer's name on a waiting list for box service; by providing general delivery service until an appropriate size box becomes available; by offering a smaller or larger box at its fee; or by offering caller service.

* * * * *

2.0 SERVICE

[Amend 2.0 by revising 2.2 and 2.3 and adding new 2.4 to read as follows:]

* * * * *

2.2 Transferring Service

Post office box service may be transferred, without payment of an additional fee, to any box of the same size and fee group at a different facility of the same post office. To transfer service, the box customer must submit a new application either to the facility where service is currently provided or to the facility where service is desired. A box customer may transfer service no more than once in any semiannual payment period and must submit a completed Form 3575 or Form 3575-WWW at the time of transfer.

2.3 Minor

Post office box service may be provided to a minor (a person under 18 years of age) unless the minor's parent or guardian submits a written objection to the appropriate postmaster.

2.4 Proof of Physical Address

An applicant for post office box service or a current box customer seeking renewal must identify his or her physical address (i.e., an individual's residence or a business's location) to the postmaster of the office where service is sought or provided. If the postmaster cannot confirm the physical address, the applicant or box customer must provide proof of the physical address (e.g., a utility bill, current lease, mortgage, deed of trust, a driver's license, or voter registration card). A business with multiple locations may, on providing appropriate evidence, use any one or more of such location(s) as its physical address.

3.0 CONDITIONS OF USE

[Amend 3.0 by revising 3.2, 3.3, and 3.7 to read as follows:]

* * * * *

3.2 Updating

When any information required to be provided by the box customer on Form 1093 changes, the customer must notify the post office of such changes.

3.3 Mail Only

Only mail and official USPS notices may be placed into a post office box.

* * * * *

3.7 Forwarding

A post office box may not be used when the primary purpose is, through change-of-address orders, to have the USPS forward or transfer mail to another address free of charge.

* * * * *

[Revise 4.0 to read as follows:]

4.0 BASIS OF FEES AND PAYMENT

4.1 General

Post office box fees are based on the size of box provided and the fee group of the administering facility as identified in 5.0.

4.2 Box Size

Box sizes are standardized and the fees for boxes increase with box size. The following chart describes approximate box capacities and frontal dimensions.

Box size	Capacity (cubic inches)	Width and height (linear inches)
1	Under 296	3 by 5.5.
2	296 through 499	5 by 5.5.
3	500 through 999	11 by 5.5.
4	1,000 through 1,999.	11 by 11.
5	2,000 or more	22.5 by 12.

4.3 Definitions of Facilities for Fee Groups

All facilities administered by a single independent post office (including any classified or contract station or branch, community post office, or detached post office box unit) belong to the same fee group as that post office and use a single fee schedule, except as provided in 5.3. Additionally, the type of carrier delivery service available at any one facility administered by a post office determines the fee group applicable to all of that post office's facilities, as provided in 5.1. All box locations administered by a single mail processing facility belong to the same fee group as identified in 5.2 and use a single fee schedule, except as provided in 5.3.

4.4 Fee Changes

A change in post office box service fees can arise from a general fee change, an administrative change in carrier service, a change in definitions in 4.3, or a change in facility groupings in 5.0. Any change in post office box service fees takes effect on the date of the action that caused the change unless an official announcement specifies another date. If a post office box service fee is increased, no customer must pay at the new rate until the end of the period already paid, and no retroactive adjustment is to be made for a payment received before the date of the change.

4.5 Payment

All fees are for a semiannual (6-month) period, and must be paid in advance for no less than one but no more than two semiannual periods, except as provided under 4.7, 4.8, and 4.11. Fees may be paid using cash, credit or debit card, or check or money order payable to the postmaster. A mailed payment must be received by the postmaster on or before the due date.

4.6 Payment Period

Except under 4.8, the beginning date for a box fee payment period is determined by the approval date of the application. The period begins on the first day of either the same month if the application is approved on or before the 15th of the month, or the next month if approved after the 15th of the month. After that, box fees for service renewal may be paid any time during the last 30 days of the service period, but no later than the last day of the service period.

4.7 U.S. Agencies

Federal agencies whose payment period coincides with the federal fiscal year may pay their box fees during the first quarter rather than in advance.

4.8 Exception for Group D and E Offices

Postmasters at Group D and Group E offices with fewer than 500 post office boxes may set April 1 and October 1 as the beginning of payment periods for box customers in their offices. Payment periods beginning other than April 1 or October 1 are brought into alignment with these respective dates by adjusting fees as follows:

a. New service, one-sixth of the semiannual fee is charged for each remaining month between the beginning of the new payment period and the next April 1 or October 1.

b. Existing service, one-sixth of the semiannual fee is charged for each remaining month between the end of all currently paid periods and the next April 1 or October 1.

c. Next one or two semiannual payment periods, an adjustment may be accepted in addition to fees.

4.9 Change of Payment Period

Except for customers at post offices subject to 4.8, a box customer of record may change the payment period by submitting a new application noting the month to be used as the start of the revised payment period. The date selected must be before the end of the current payment period. The unused fee for the period being discontinued may be refunded under 6.0, and the fee for the new payment period must be fully paid in advance. A change of payment period date may not be used to circumvent a change in box fees.

4.10 Academic Institutions

The USPS does not set or collect fees for boxes owned by an academic institution if the boxes are separate from designated USPS areas and serviced by employees or agents of the institution.

4.11 Adjusting Fees

In postal facilities primarily serving academic institutions or their students, box fees may be adjusted to fit the semester schedules, using the matrix below. Charges are rounded up to the next multiple of $0.10. No refund is made for discontinued service when a box is obtained under this standard.

Service period	Adjusted fee
95 days or less.	½ semiannual fee (or ¼ annual fee).
96 to 140 days.	¾ semiannual fee (or ⅜ annual fee).
141 to 190 days.	Full semiannual fee (or ½ annual fee).
191 to 230 days.	1¼ semiannual fee (or ⅝ annual fee).
231 to 270 days.	1½ semiannual fee (or ¾ annual fee).
271 days to full year.	2 semiannual fees (or full annual fee).

[Add new 5.0 and redesignate current 5.0 through 7.0 as 6.0 through 8.0, respectively.]

5.0 FEE GROUP ASSIGNMENTS

5.1 Post Offices

For purposes of fee group assignment, and as defined in 4.3, a post office includes all subordinate facilities or units administered by that post office, such as classified stations, classified branches, and contractor-operated facilities. Additionally, the type of carrier delivery service available at any one facility administered by a post office determines the fee group applicable to all facilities of that post office as follows:

a. *Post Office With City Delivery.* A post office that provides city carrier delivery at any of its administered facilities applies Group C fees, except as provided in 5.3. A customer whose physical residence or business location is within the geographic boundaries of any delivery area ZIP Code administered by that city delivery post office, who is ineligible for any form of carrier delivery service from that post office and who does not receive carrier delivery via an out-of-bounds delivery receptacle, may obtain one box of the smallest available size at the Group E fee (no fee).

b. *Post Office With Only Rural or Highway Contract Carrier Delivery.* A post office that does not provide city carrier delivery but provides only rural carrier or highway contract carrier delivery at any of its administered facilities applies Group D fees, except as provided in 5.3, with two exceptions:

(1) A customer whose physical residence or business location is within the geographic boundaries of any delivery area ZIP Code administered by that non-city delivery post office, who is ineligible for any form of carrier delivery service, who does not receive carrier delivery via an out-of-bounds delivery receptacle, and who resides outside the immediate vicinity of the post office as specified in *Postal Operations Manual* 653, may obtain one box of the smallest available size at the Group E fee (no fee).

(2) A customer whose ineligibility for carrier service arises from residing in the immediate vicinity of the post office as specified in *Postal Operations Manual* 653 is afforded continued access to general delivery service.

c. *Post Office Without Any Carrier Delivery.* A post office that does not provide any form of carrier delivery (i.e., a nondelivery post office) exists within the geographic delivery boundaries of other post offices. A nondelivery post office applies Group D fees or Group E fees (no fees), based on the box customer's physical residence or business location relative to the geographic boundaries of the post office containing the nondelivery office, as follows:

(1) If the box customer's physical residence or business location is inside the geographic ZIP Code boundaries of the post office containing the nondelivery office, and the customer is eligible for carrier delivery service, a box at the nondelivery office is provided at the Group D fee. If the customer is not eligible for carrier delivery service and does not receive carrier delivery via an out-of-bounds delivery receptacle, a box at either the nondelivery office or the containing delivery office is provided at the Group E fee (no fee).

(2) If the box customer's physical residence or business location is outside the geographic ZIP Code boundaries of the post office containing the nondelivery office, a box is provided at the Group D fee.

5.2 Mail Processing Facilities

Mail processing facilities with post office boxes apply Group C fees to post office boxes, except as provided in 5.3.

5.3 Facilities Assigned Location-Based Box Fees

The facilities defined by the ZIP Codes in Exhibit 5.3 constitute exceptions to the fee groupings described in 5.1 and 5.2. Group A or B fees apply as identified.

EXHIBIT 5.3.—FACILITIES ASSIGNED LOCATION-BASED BOX FEES

Group	Location	ZIP codes
A	New York, NY	10001–10299.
B	Boston, MA	02113, 02115, 02117, 02128, 02134, 02135, 02139, 02140, 02142, 02146, 02158–02162, 02164–02168, 02178, 02179, 02181, 02205, 02214–02216, 02218, 02238.
	Staten Island, NY	10301–10399.
	Long Island City, NY	11101–11199.
	Brooklyn, NY	11201–11299.
	Queens (Flushing), NY	11301–11399.
	Queens (Jamaica), NY	11401–11499.
	Queens (Far Rockaway), NY	11601–11699.
	Philadelphia, PA	19101–19104, 19105, 19107.
	Washington, DC	20004–20009, 20013, 20026, 20033, 20035, 20036, 20037, 20038, 20043, 20044, 20050, 20056
	Bethesda, MD	20813, 20824, 20825, 20827
	Arlington, VA	22202, 22209, 22210, 22216.
	McLean, VA	22103.
	Chicago, IL	60606, 60610, 60611, 60654, 60664, 60680, 60681, 60684, 60690.
	Los Angeles, CA	90019, 90024, 90025, 90034, 90035, 90048, 90049, 90064, 90067, 90069.
	Beverly Hills, CA	90210–90212.
	Santa Monica, CA	90401–90405.
	San Francisco, CA	94101, 94107, 94108, 94126, 94133, 94147, 94159, 94164.
	Honolulu, HI	96801–96815, 96830.

[Revised redesignated 6.0 to read as follows:]

6.0 FEE REFUND

6.1 Calculation

When post office box service is terminated or surrendered, the unused portion of the fee may be refunded as follows. For the current semiannual payment period, if service is discontinued any time within the first 3 months of the payment period, one-half the fee is refunded; if discontinued after the third month of the payment period, none of the fee is refunded. The entire fee is refunded for any semiannual payment period that begins after the termination or surrender date.

6.2 Discontinued Postal Facility

When a postal facility is discontinued or relocated, a box customer at that facility may obtain a refund of unused box fees if box service at that location is discontinued and additional travel of ¼ mile or more (from the physical address on the customer's Form 1093) is required to obtain equivalent service. For this purpose, one-sixth of a semiannual fee is refunded for each month left in the payment period. The refund is computed from the first day of that month (if the effective date of the facility discontinuance is on or before the 15th of the month) or from the first day of the next month (if the effective date is after the 15th of the month).

7.0 KEYS

[No change to redesignated 7.0.]

[Revise redesignated 8.0 to read as follows:]

8.0 SERVICE REFUSAL OR TERMINATION

8.1 Refusal

A postmaster may refuse to approve post office box service if: the applicant submits a falsified or incomplete application for box service; within the 2 years immediately before submitting the application, the applicant physically abused a box or violated a standard on the care or use of a box; or there is substantial reason to believe that the box is to be used for activities as described in 3.6 or 3.7.

8.2 Termination

A postmaster may terminate post office box service, including that of a customer paying a Group E fee, if the box customer or its representative falsifies the application for the box; physically abuses the box; refuses to update information on the box application; violates any standard on the care or use of the box; conducts himself or herself in a violent, threatening, or otherwise abusive manner on postal premises; or uses it for any unlawful activity as described in 3.6. The customer is notified of the postmaster's determination to refuse or terminate service and of the appeal procedures for that determination.

8.3 Customer Appeal

The applicant or box customer may file a petition appealing the postmaster's determination to refuse or terminate service within 20 calendar days after notice, as specified in the postmaster's determination and 39 CFR 958. The filing of a petition prevents the postmaster's determination from taking effect and transfers the case to the USPS Judicial Officer. The Administrative Law Judge's or the Judicial Officer's decision under 39 CFR 958 constitutes the final USPS decision.

8.4 Surrendered Box

A post office box is deemed surrendered if the box customer submits a permanent change-of-address order, refuses or fails to pay the appropriate fees by the due date, or submits a written notice to discontinue service. A box is *not* considered surrendered if the box customer dies or disappears before the end of the period for which the box is issued, the box customer submits a temporary change-of-address order, or any person other than the box customer submits a change-of-address order for mail going to the box.

D920 Caller Service

[Revise 1.0 to read as follows:]

1.0 BASIC INFORMATION

1.1 Purpose

Caller service is a premium service available for a fee to any customer requiring more than free carrier service or the largest installed box size, or to any customer who is required to use caller service by standard. The service allows a customer to pick up mail at a post office call window or loading dock when the office is open. Caller service does not include general delivery service. A customer may obtain caller service for receiving the mail of a client, subject to D042. A postmaster and a caller may not make any agreement that contravenes the regulations on caller service or its fees.

1.2 Caller

A *caller* is the person signing the application as an individual, or the organization represented by the individual signing the application.

1.3 Service Types

Destination caller service is caller service provided at the postal facility to which the caller's mail is addressed. *Origin caller service* (accelerated reply mail) is described in 7.0.

1.4 Caller Service Number

Except for origin caller service, the customer (including a customer using a post office box number) is assigned a caller service number before caller service may begin. A caller number is assigned for each separation used. Except under 1.5, mail addressed to a caller service customer must include ''Post Office Box'' or ''PO BOX'' followed by the assigned number in the mailing address immediately above the city, state, and ZIP Code. A caller of record may reserve caller numbers for future use. The postmaster determines the reserved numbers and may restrict this service.

1.5 Exemption

A postmaster may exempt any customer continuously receiving firm holdout service since July 3, 1994, from the standard in 1.4 that correspondents must use the assigned post office box (caller service) number in the address.

1.6 Restriction

The USPS may restrict caller service if such service adversely affects postal operations.

1.7 Required Use

Subject to D910, when mail for a customer's post office box(es) exceeds the capacity of the box(es) on 12 of any 20 consecutive business days (excluding Saturdays, Sundays, and national holidays), or when the customer seeks multiple caller service separations, the postmaster can require the customer to use caller service, change to a larger box, or use one or more additional boxes (subject to availability) to which mail will be addressed. A customer required to use caller service because of the mail volume received may, once per semiannual payment period, make a written request to the postmaster for a new determination of whether current mail volume requires continued use of caller service.

1.8 U.S. Agencies and Schools

Federal agencies and the various schools and departments within educational institutions are considered separate customers for 1.7.

1.9 Eligible Customers

Caller service may be provided to the following:

a. A new customer planning to receive an incoming volume of mail that cannot fit into the largest available post office box.

b. A customer wanting a post office box when a box is unavailable, and the postmaster determines that such service does not adversely affect postal operations.

c. A customer formerly receiving firm holdout service.

[Revise 2.0 to read as follows:]

2.0 SERVICE

2.1 Application

To apply for caller service, the applicant must complete all relevant spaces on Form 1093 and submit it to any postal facility that provides public window service. The facility need not be the one where destination caller service is desired. An incomplete or falsified application is sufficient reason to deny or discontinue service. An application is not considered approved until the USPS verifies the applicant's identity.

2.2 Transferring Service

Caller service may be transferred, without payment of an additional fee, to a different facility of the same post office if that facility has caller service. To transfer service, the caller must submit a new application either to the facility where service is currently provided or to the facility where service is desired. A caller may transfer service no more than once in any semiannual payment period and must submit a completed Form 3575 or Form 3575–WWW at the time of transfer.

2.3 Minor

Caller service may be provided to a minor (a person under 18 years of age) unless the minor's parent or guardian submits a written objection to the postmaster.

[Revise 3.0 to read as follows:]

3.0 CONDITIONS OF USE

3.1 Mail Receipt

An individual caller or organization may receive mail properly addressed to the caller number. Mail addressed only to a caller number is delivered to the caller so long as no improper or unlawful business is conducted. A caller who, as a regular practice, wants to call for mail at a postal facility more than once in any 24-hour period must obtain the postmaster's approval of the pickup schedule.

3.2 Updating

When any information required to be provided by the caller on Form 1093 changes, the caller must notify the post office of such changes.

3.3 Unlawful Activity

Caller service may not be used for, or in connection with, a scheme or enterprise that violates any federal, state, or local law; breaches an agreement between the caller and a federal, state, or local agency for the caller to discontinue a specified activity; or violates or attempts to evade any order of a court or administrative body.

3.4 Forwarding

A caller number may not be used when the primary purpose is, through change-of-address orders, to have the USPS forward or transfer mail to another address free of charge.

[Revise 4.0 to read as follows:]

4.0 BASIS OF FEES AND PAYMENT

4.1 Basic Caller Fee

The caller service fee groups are shown in Exhibit 4.1 and are charged per semiannual (6-month) period. The fee must be paid for each caller number or separation used, with two exceptions:

a. If a caller uses many caller numbers, but receives only a bulk delivery of mail not separated to those numbers either because this mail is sorted to the customer's unique 5-digit ZIP Code or because sortation is made by caller name or other identification, the basic caller fee is charged only for each separation actually made. The reserved number fee is charged for each of the caller numbers to which mail received by the caller is addressed.

b. Caller service is available in box fee Group D post offices on the same basis and fee as Group C offices. The one exception is when a box service applicant is provided a single caller service separation instead of a box because of a shortage of available boxes (see D910), in which case the fee charged is the fee for the largest installed box rather than the fee for caller service.

EXHIBIT 4.1.—CALLER SERVICE GROUPS

Group	Location	ZIP Codes
A	New York, NY	10001–10299.
B	Boston, MA	02113, 02115, 02117, 02128, 02134, 02135, 02139, 02140, 02142, 02146, 02158–02162, 02164–02168, 02178, 02179, 02181, 02205, 02214–02216, 02218, 02238.
	Staten Island, NY	10301–10399.
	Long Island City, NY	11101–11199.
	Brooklyn, NY	11201–11299.
	Queens (Flushing), NY	11301–11399.
	Queens (Jamaica), NY	11401–11499.
	Queens (Far Rockaway), NY	11601–11699.
	Philadelphia, PA	19101–19104, 19105, 19107.
	Washington, DC	20004–20009, 20013, 20026, 20033, 20035, 20036, 20037, 20038, 20043, 20044, 20050, 20056.
	Bethesda, MD	20813, 20824, 20825, 20827.
	Arlington, VA	22202, 22209, 22210, 22216.
	McLean, VA	22103.
	Chicago, IL	60606, 60610, 60611, 60654, 60664, 60680, 60681, 60684, 60690.
	Los Angeles, CA	90019, 90024, 90025, 90034, 90035, 90048, 90049, 90064, 90067, 90069.
	Beverly Hills, CA	90210–90212..
	Santa Monica, CA	90401–90405.
	San Francisco, CA	94101, 94107, 94108, 94126, 94133, 94147, 94159, 94164.
	Honolulu, HI	96801–96815, 96830.
C	All post offices with city delivery and all nondelivery mail processing facilities not listed in Group A or B.	
D	All post offices with no city delivery but with only rural or highway contract delivery and not listed in Group A or B.	

4.2 Reserved Number

The required fee is charged per calendar year or any part of such a calendar year for each number reserved by a customer.

4.3 Fee Changes

A change in caller service fees can arise from a general fee change, a change in customer eligibility under 4.1b, or a change in facility groupings in 4.1. Any change in caller service fees takes effect on the date of the action that caused the change unless an official announcement specifies another date. If a caller service fee is increased, no customer must pay at the new rate until the end of the period already paid, and no retroactive adjustment is to be made for a payment received before the date of the change.

4.4 Box Number

If a caller uses a physical post office box to obtain a caller number, the applicable fees for both post office box service and caller service must be paid.

4.5 Payment

Caller fees are charged for a semiannual (6-month) period and must be paid in advance for no less than one but no more than two semiannual periods. Fees may be paid using cash, credit or debit card, or check or money order payable to the postmaster. A mailed payment must be received by the postmaster on or before the due date.

4.6 Payment Period

The beginning date for a caller fee payment period is determined by the approval date of the application. The period begins on the first day of either the same month if the application is approved on or before the 15th of the month, or the next month if approved after the 15th of the month. After that, caller fees for renewal of service may be paid any time during the last 30 days of the service period, but no later than the last day of the service period.

4.7 Change of Payment Period

A caller of record may change the payment period by submitting a new application noting the month to be used as the start of the revised payment period. The date selected must be before the end of the current payment period. The unused fee for the period being discontinued may be refunded under 5.0, and the fee for the new payment period must be fully paid in advance. A change of payment period date may not be used to circumvent a change in caller service fees.

[Revise 5.0 to read as follows:]

5.0 FEE REFUND

5.1 Discontinued Number

When a destination caller service number is discontinued or surrendered, the unused portion of the fee for that number may be refunded. The entire fee is refunded for any semiannual payment period after that in which the service is discontinued. For the current semiannual payment period, if service is discontinued any time within the first 3 months of the payment period, one-half the fee is refunded; if discontinued after the third month of the payment period, none of the fee is refunded.

5.2 Discontinued Postal Facility

When a postal facility is discontinued or relocated, a caller service customer at that facility may obtain a refund of unused caller service fees if caller service at that location is discontinued and additional travel of ¼ mile or more (from the physical address on the caller's Form 1093) is required to obtain equivalent service. For this purpose, one-sixth of a semiannual fee is refunded for each month left in the payment period. The refund is computed from the first day of that month (if the effective date of the facility discontinuance is on or before the 15th of the month) or from the first day of the next month (if the effective date is after the 15th of the month).

[Revise 6.0 to read as follows:]

6.0 SERVICE REFUSAL OR TERMINATION

6.1 Refusal

A postmaster may refuse to approve caller service if the applicant submits a falsified or incomplete application for caller service; within the 2 years immediately before submitting the application, the applicant violated a standard on the use of the service; or there is substantial reason to believe that the service is to be used for activities described in 3.3 or 3.4.

6.2 Termination

A postmaster may terminate caller service if the caller or its representative falsifies the application for the service; refuses to update information on the application; violates any standard on the use of the service; conducts himself or herself in a violent, threatening, or otherwise abusive manner on postal premises; or uses it for any unlawful activity as described in 3.3. The caller is notified of the postmaster's determination to refuse or terminate service and of the appeal procedures to that determination.

6.3 Customer Appeal

The applicant or caller may file a petition opposing the postmaster's determination to refuse or terminate service within 20 calendar days after notice, as specified in the postmaster's determination and 39 CFR 958. The filing of a petition prevents the postmaster's determination from taking effect and transfers the case to the USPS Judicial Officer. The Administrative Law Judge's or Judicial Officer's decision under 39 CFR 958 constitutes the final USPS decision.

6.4 Surrendered Service

Caller service is deemed surrendered if the caller submits a permanent change-of-address order, fails or refuses to pay the appropriate fees by the due date, or submits a written notice to discontinue service.

* * * * *

D930 General Delivery and Firm Holdout

1.0 GENERAL DELIVERY

[Amend 1.0 by revising 1.1 and 1.2 to read as follows:]

1.1 Purpose

General delivery is intended primarily as a temporary means of delivery:

a. For transients and customers not permanently located.

b. For customers who want post office box service when boxes are unavailable.

c. For customers whose eligibility for carrier delivery is restricted by *Postal Operations Manual* 653.

1.2 Service Restrictions

General delivery is available at only one facility under the administration of a multifacility post office. A postmaster may refuse or restrict general delivery:

a. To a customer who is unable to present suitable identification.

b. To a customer whose mail volume or service level (e.g., mail accumulation) cannot reasonably be accommodated.

* * * * *

E ELIGIBILITY

E000 Special Eligibility Standards

* * * * *

E020 Department of State Mail

[In 2.3, remove ''special delivery''; no other change to text.]

E030 Mail Sent by U.S. Armed Forces

[In 2.6, remove the second sentence; no other change to text.]

* * * * *

E060 Official Mail (Penalty)

[In 9.2 and 9.6d, replace ''postal card[s]'' with ''stamped card[s]''; no other change to text.]

* * * * *

E100 First-Class Mail

E110 Basic Standards

[In 3.1, 3.2, and 3.2a, replace ''postal card[s]'' with ''stamped card[s]''; no other change to text.]

* * * * *

E600 Standard Mail

E610 Basic Standards

* * * * *

E612 Additional Standards for Standard Mail (A)

[In 4.1, remove ''special delivery'' in the third sentence; no other change to text.]

* * * * *

E620 Nonautomation Nonpresort Rates

[In 2.2d, remove ''special delivery''; in 2.5 introductory text, remove ''special delivery or''; no other change to text.]

E630 Nonautomation Presort Rates

[In 3.1, remove ''special delivery'' in the last sentence; no other change to text.]

* * * * *

F FORWARDING AND RELATED SERVICES

F000 Basic Services

F010 Basic Information

[In 3.0a, remove ''special delivery''; in 4.5, remove 4.5c and redesignate current 4.5d and 4.5e as 4.5c and 4.5d, respectively; in 5.1, replace ''postal cards'' with ''stamped cards''; no other change to text.]

F020 Forwarding

[In 3.3, replace ''postal cards'' with ''stamped cards''; in 3.7, remove the second sentence; no other change to text.]

F030 Address Correction, Address Change, FASTforward[SM], and Return Services

[In 5.3, replace ''postal cards'' with ''stamped cards''; no other change to text.]

G GENERAL INFORMATION

G000 The USPS and Mailing Standards

G010 Basic Business Information

G011 Post Offices and Postal Services

[Amend Exhibit 1.5 by replacing the seventh column heading ''Special Delivery'' with ''Express Mail''; replacing ''Holiday schedule'' with ''Holiday''; and by adding under ''Definition of Terms,'' ''Holiday—Service determined by national, area, and/or district guidelines''; no other change to text.]

G013 Trademarks and Copyrights

[In 2.1, replace ''postal cards'' with ''stamped cards''; no other change to text.]

* * * * *

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

* * * * *

P014 Refunds and Exchanges

1.0 STAMP EXCHANGES

[In 1.5, 1.6, 1.6c, 1.6d, 1.8b, 1.8c, and 1.8d, replace ''postal card[s]'' with ''stamped card[s]''; no other change to text.]

2.0 POSTAGE AND FEES REFUNDS

* * * * *

2.4 Full Refund

[In 2.4f, remove ''special delivery,''; no other change to text.]

* * * * *

2.7 Unallowable Refunds

[Amend 2.7 by revising 2.7b to read as follows:]

Refunds are not made for the following:

* * * * *

b. Collect on delivery (COD), Express Mail insurance, insured, and registered fees after the USPS accepts the article, even if the article is later withdrawn from the mail.

* * * * *

P020 Postage Stamps and Stationery

P021 Stamped Stationery

[In 3.1, revise the heading to read ''Stamped Card'' and replace ''P[p]ostal cards'' with ''S[s]tamped cards''; in 4.0, replace ''postal cards'' with ''stamped cards (formerly called postal cards)''; no other change to text.]

P022 Adhesive Stamps

[In 2.2d, replace ''postal cards'' with ''stamped cards''; no other change to text.]

P023 Precanceled Stamps

[In 1.1 and 1.3, replace ''P[p]ostal cards'' with ''S[s]tamped cards''; in 3.1, replace ''postal cards'' with ''stamped cards''; no other change to text.]

P030 Postage Meters and Meter Stamps

[In 4.8, remove ''special delivery,''; in 4.10, remove ''or special delivery mail,''; in 5.4b, remove ''special delivery mail or''; no other change to text.]

* * * * *

P100 First-Class Mail

[In 2.1, replace ''postal cards'' with ''stamped cards''; no other change to text.]

* * * * *

R RATES AND FEES

R000 Stamps and Stationery

* * * * *

[Revise the heading and text of 3.0 to read as follows:]

3.0 STAMPED CARDS

Stamped cards are priced as follows:

Configuration	Postage	Fee	Total price
Cut single card	$0.20	$0.00	$0.20
Sheet of 40 cards	8.00	0.00	8.00
Double reply-paid card	0.40	0.00	0.40

* * * * *

R100 First-Class Mail

[In 1.1 and in the Summary of First-Class Rates, replace ''postal cards'' with ''stamped cards''; no other change to text.]

* * * * *

R900 Services

[Remove current 19.0; renumber current 7.0 through 18.0 as 8.0 through 19.0, respectively; add new 7.0; and revise other sections to read as follows:]

* * * * *

[Revise 3.0 to read as follows:]

3.0 CALLER SERVICE

Fees are charged as follows:

a. For service provided, per semiannual period:

Fee group	Fee
A	$250.00
B	240.00
C	225.00
D	225.00

b. For each reserved call number, per calendar year (all post offices): $30.00.

* * * * *

[Revise 5.0 to read as follows:]

5.0 CERTIFIED MAIL

Fee, in addition to postage and other fees, per mailpiece: $1.35.

* * * * *

[Add new 7.0 to read as follows:]

7.0 EXPRESS MAIL INSURANCE

Fee, in addition to postage and other fees, for additional Express Mail insurance:

a. For amount of merchandise insurance liability:

Insurance coverage desired	Fee
$0.01 to 500.00	None
500.01 to 5,000.00	$0.90 for each $100 or fraction thereof over $500 in insurance coverage desired
Merchandise maximum liability: $5,000.00.	

b. Document reconstruction maximum liability: $500.00.

[Revise redesignated 8.0 to read as follows:]

8.0 INSURED MAIL

Fee, in addition to postage and other fees, for merchandise insurance liability:

Insurance coverage desired	Fee
$0.01 to 50.00	$0.75
50.01 to 100.00	1.60
100.01 to 5,000.00	1.60 plus $0.90 for each $100 or fraction thereof over first $100 in insurance coverage desired
Insured mail maximum liability: $5,000.00.	

9.0 MAILING LIST SERVICE

[No change to redesignated 9.0.]

10.0 MERCHANDISE RETURN SERVICE

[No change to redesignated 10.0.]

11.0 METER SERVICE

[No change to redesignated 11.0.]

12.0 MONEY ORDER

[No change to redesignated 12.0.]

13.0 PARCEL AIRLIFT (PAL)

[No change to redesignated 13.0.]

14.0 PERMIT IMPRINT

[No change to redesignated 14.0.]

[Revise redesignated 15.0 to read as follows:]

15.0 POST OFFICE BOX SERVICE

For service provided as described in D910:

a. Deposit per key issued: $1.00.

b. Box fee per semiannual (6-month) period:

Fee group	Box size and fee				
	1	2	3	4	5
A	$24.00	$37.00	$64.00	$121.00	$209.00
B	22.00	33.00	56.00	109.00	186.00
C	20.00	29.00	52.00	86.00	144.00
D	6.00	10.00	18.00	26.50	41.50
E	0.00	0.00	0.00	0.00	0.00

[Revise redesignated 16.0 to read as follows:]

16.0 REGISTERED MAIL

The mailer must declare the full value of the article at the time of mailing and must pay the appropriate fee based on that value as shown in Exhibit 16.0. Any article sent as registered mail is insured, except that the mailer may elect not to insure articles valued up to and including $100.

EXHIBIT 16.0.—REGISTRY FEES

Declared value (dollars)	Fee (in addition to postage)
(Without Insurance):	
0.00 to 100.00	$ 4.85
(With Insurance):	
0.00 to 100.00	4.95
100.01 to 500.00	5.40
500.01 to 1,000.00	5.85
1,000.01 to 2,000.00	6.30
2,000.01 to 3,000.00	6.75
3,000.01 to 4,000.00	7.20
4,000.01 to 5,000.00	7.65
5,000.01 to 6,000.00	8.10
6,000.01 to 7,000.00	8.55
7,000.01 to 8,000.00	9.00
8,000.01 to 9,000.00	9.45
9,000.01 to 10,000.00	9.90
10,000.01 to 11,000.00	10.35
11,000.01 to 12,000.00	10.80
12,000.01 to 13,000.00	11.25
13,000.01 to 14,000.00	11.70
14,000.01 to 15,000.00	12.15
15,000.01 to 16,000.00	12.60
16,000.01 to 17,000.00	13.05
17,000.01 to 18,000.00	13.50
18,000.01 to 19,000.00	13.95
19,000.01 to 20,000.00	14.40
20,000.01 to 21,000.00	14.85
21,000.01 to 22,000.00	15.30
22,000.01 to 23,000.00	15.75
23,000.01 to 24,000.00	16.20
24,000.01 to 25,000.00	16.65
	(Additional fees for articles valued over $25,000 are for handling only.)
25,000.01 to 1,000,000.00	$16.65 plus handling charge of $0.45 per $1,000 or fraction over first $25,000.
1,000,000.01 to 15,000,000.00	$455.40 plus handling charge of $0.45 per $1,000 or fraction over first $1,000,000.
Over 15,000,000.00	$6,755.40 plus additional charges may be made based on weight, space, and value.
Registered mail maximum insurance liability: $25,000.00.	

17.0 RESTRICTED DELIVERY

[No change to redesignated 17.0.]

[Revise redesignated 18.0 to read as follows:]

18.0 RETURN RECEIPT

Fee, in addition to postage and other fees, per mailpiece:

Type	Fee
Requested at time of mailing showing to whom, signature, date, and addressee's address (if different)	$1.10
Requested after mailing showing only to whom and date delivered	6.60

[Revise redesignated 19.0 to read as follows:]

19.0 RETURN RECEIPT FOR MERCHANDISE

Fee, in addition to postage and other fees, per mailpiece:

Type	Fee
Showing to whom, signature, date, and addressee's address (if different)	$1.20

Type	Fee
Delivery record	6.60

20.0 SPECIAL HANDLING

[No change to 20.0.]

S SPECIAL SERVICES

S000 Miscellaneous Services

S010 Indemnity Claims

* * * * *

2.0 GENERAL FILING INSTRUCTIONS

* * * * *

2.5 Evidence of Insurance

[Revise 2.5 to read as follows:]

For a claim involving insured, COD, registered, or Express Mail service, the customer must present any of the following evidence showing that the particular service was purchased:

a. The original mailing receipt issued at the time of mailing (reproduced copies are not acceptable).

b. The wrapper showing the names and addresses of the sender and the addressee and the proper mail endorsement, tag, or label showing that the article was sent insured, COD, registered with postal insurance, or Express Mail. If only the wrapper is submitted, indemnity can be limited to $100 for insured, $50 for COD, $100 for registered mail, and $500 for Express Mail.

* * * * *

2.9 Proof of Loss

[Revise 2.9 to read as follows:]

To file a claim, the sender must provide proof of loss of insured or registered mail. Proof of loss is not required for COD or Express Mail claims. Any one of these documents is acceptable:

a. A letter or statement from the addressee, dated at least 30 days (15 days for registered mail) after the date that the article was mailed, reporting that the addressee did not receive the article. The statement or a copy of it must be attached to the claim.

* * * * *

2.11 Payable Claim

[Amend 2.11 by revising 2.11d to read as follows:]

Insurance for loss or damage to insured, registered, or COD mail within the amount covered by the fee paid or within the indemnity limits for Express Mail explained in 2.12 is payable for the following:

* * * * *

d. Reasonable costs incurred duplicating documents such as:

* * * * *

2.12 Payable Express Mail Claims

[Revise 2.12 to read as follows:]

In addition to the payable claims in 2.11, the following are payable for Express Mail:

a. For Express Mail insurance, nonnegotiable documents are insured against loss, damage, or rifling while in transit. Coverage is limited to $500 per piece (the unit on which postage is paid), subject to a maximum limit per occurrence as provided in 2.12a(4). Claims for document reconstruction insurance must be supported by a statement of expense incurred in reconstruction. For this standard, *while in transit* begins when the USPS receives custody of the insured material and ends when the material is delivered to the addressee or, if undeliverable, when the sender receives the material on return. Nonnegotiable documents include audit and business records, commercial papers, and such other written instruments for the conduct and operation of banks and banking institutions that have not been made negotiable or cannot be negotiated or converted into cash without forgery. Nonnegotiable documents can be in hard copy, disk, tape, microfilm, or other forms of data storage. Articles such as artwork, collector or antique items, books, pamphlets, readers proofs, repro proofs, separation negatives, engineering drawings, blueprints, circulars, advertisements, film, negatives, and photographs are considered merchandise, not documents. Indemnity for document reconstruction is paid as follows:

(1) For payments made (or which are payable) for reasonable costs incurred in the reconstruction of the exact duplicate of a lost or damaged nonnegotiable document. Indemnity is not paid for the cost of preparing the document mailed, or for the mailer's time in preparing the document mailed or reconstructed. Except for the per page copying cost, indemnity is not paid for documents if copies of the lost document are available or if they could have been made before mailing.

(2) Reasonable reconstruction expenses incurred or obligated between the time of guaranteed or scheduled delivery and actual delivery.

(3) Loss sustained by the use of funds to maintain cash balances during the period of document reconstruction (based on the applicable Federal Reserve discount rate). The period begins at the scheduled delivery time and may not exceed 15 days.

(4) Catastrophic loss for multiple Express Mail items, such as a major fire, limited to $5,000, regardless of the number of Express Mail items, or the identity or number of customers involved. Each claim resulting from a catastrophic loss first is adjudicated individually. If the preliminary adjudication exceeds $5,000, the percentage of the sum represented by each individual settlement is applied to the $5,000 to determine each claimant's pro rata share of the final settlement, not to exceed $500 per piece.

b. Merchandise insurance coverage is provided against loss, damage, or rifling and is limited to $500. (Additional insurance, up to a maximum liability of $5,000, may be purchased for merchandise valued at more than $500.)

c. For negotiable items, currency, or bullion, the maximum indemnity is $15.

* * * * *

2.14 Nonpayable Claims

[Amend 2.14 by revising the introductory text and 2.14r, 2.14s, and 2.14t to read as follows:]

Indemnity is not paid for collect on delivery (COD), insured, or registered service or for Express Mail in these situations:

* * * * *

r. Negotiable items (defined as instruments that can be converted to cash without resort to forgery), currency, or bullion valued in total at more than $15 per shipment sent by Express Mail, except under 2.12c.

s. Consequential loss of Express Mail claimed, except under 2.12a(3).

t. Nonmailable items, prohibited items, or restricted items not prepared and mailed according to postal standards, or any item packaged in such a manner that it could not have reached its destination undamaged in the normal course of the mail.

* * * * *

S070 Mixed Classes

1.0 BASIC INFORMATION

[Revise 1.1 to read as follows:]

For a Priority Mail drop shipment, enclosed First-Class Mail may be sent certified; enclosed Standard Mail may be sent special handling. Enclosed mail, regardless of class, may not be sent registered, insured, or collect on delivery (COD). No special services may be given to the Priority Mail segment of the drop shipment.

[Revise the heading and text of 1.2 to read as follows:]

1.2 Special Handling

A combination mailpiece sent as a Standard Mail parcel may be sent using special handling; only one special handling fee applies to the parcel.

* * * * *

S500 Special Services for Express Mail

1.0 AVAILABLE SERVICES

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1.5 Insurance and Indemnity

[Amend 1.5 by removing current 1.5a, 1.5d, and 1.5e and redesignating and revising current 1.5b as 1.5a, current 1.5c as 1.5b, current 1.5f as 1.5c, and current 1.5g as 1.5d to read as follows:]

Express Mail is insured against loss, damage, or rifling, subject to these standards:

a. Insurance coverage for Express Mail drop shipment ends on receipt at the destination postal facility.

b. All Express Mail signed for by the addressee, the addressee's agent, or the delivery employee constitutes a valid delivery, and no indemnity for loss is paid. A waiver of signature may not be used for Express Mail COD or Express Mail with additional insurance.

c. Merchandise insurance coverage is provided against loss, damage, or rifling and is limited to $500. (Additional insurance under 1.6 may be purchased, up to a maximum liability of $5,000, for merchandise valued at more than $500.) Nonnegotiable documents are insured against loss, damage, or rifling, up to $500 per piece, subject to the maximum limit per occurrence as defined in S010.

d. Additional terms, coverage, and procedures of indemnity claims are in S010.

[Add new 1.6 to read as follows:]

1.6 Additional Insurance

Additional insurance, up to a maximum coverage of $5,000, may be purchased for merchandise valued at more than $500 sent by Express Mail. The insurance fee is entered in the block marked ''Insurance'' on the mailing label. If the label does not contain this specific block, the mailer uses the ''COD'' block by crossing out ''COD,'' writing ''INS'' to the right, and entering the fee for the applicable coverage. Coverage is limited to the actual value of the contents, regardless of the fee paid, or the highest insurance value increment for which the fee is fully paid, whichever is lower. If a waiver of signature is requested, additional insurance coverage is void.

* * * * *

[Revise 3.0 to read as follows:]

3.0 EXPRESS MAIL DROP SHIPMENT

Mail enclosed in an Express Mail drop shipment may be sent certified (if First-Class Mail) or special handling (if Standard Mail). The enclosed mail may not be sent collect on delivery (COD), insured, or registered. For Express Mail indemnity coverage, the content of each Express Mail pouch is considered one mailpiece.

S900 Special Postal Services

S910 Security and Accountability

S911 Registered Mail

1.0 BASIC INFORMATION:

[Revise 1.1 to read as follows:]

1.1 Description

Registered mail is the most secure service that the USPS offers. It incorporates a system of receipts to monitor the movement of the mail from the point of acceptance to delivery. Registered mail service provides the sender with a mailing receipt, and a delivery record is kept at the post office of address.

* * * * *

2.0 FEES AND LIABILITY

* * * * *

[Remove current 2.4 and redesignate current 2.5 as 2.4, current 2.6 as 2.5, current 2.7 as 2.6, and current 2.8 as 2.7; revise 2.3 and redesignated 2.4 to read as follows:]

2.3 Postal Insurance

Postal insurance is provided for articles valued at more than $100, up to a maximum insured value of $25,000, and is included in the fee. For articles valued at $100 or less, postal insurance may be purchased by the sender at the time of mailing, subject to the standards for registered mail and payment of the corresponding fee.

2.4 Refund

A fee for registered mail is not refunded after the USPS accepts the mail even if the sender later withdraws the mail under 3.9. A fee for return receipt service or restricted delivery service is not refunded unless the USPS fails to provide the service. The sender must present the registered mail receipt showing payment for these services.

* * * * *

S912 Certified Mail

1.0 BASIC INFORMATION

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[Revise 1.2 to read as follows:]

1.2 Eligible Matter

Only mailable matter on which postage is paid at a First-Class Mail rate (including Priority Mail) may be accepted as certified mail.

* * * * *

2.0 MAILING

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[Amend 2.5 by revising 2.5b and 2.5c to read as follows:]

2.5 Procedure

A mailer of certified mail must:

* * * * *

b. If a return receipt is requested, check the block on the mailing receipt to show the fee. Near the certified mail endorsement on the address side, add the endorsement ''Return Receipt Requested.'' Enter the certified mail number on the return receipt card, address it to himself or herself, and attach it to the back of a small envelope or on the front of a package or large envelope, if the card does not cover the address. Enter the name and delivery address on the reverse of the return receipt to show where the receipt is to be sent. When a return receipt is requested, a complete return address (sender's name and delivery address) is required on the mailpiece. The name and delivery address entered on the reverse of the return receipt do not have to match the sender's name and return address on the mailpiece.

c. Affix to the envelope enough postage to pay for the certified mail fee and First-Class Mail rate and, if requested, the return receipt fee.

* * * * *

S913 Insured Mail

1.0 BASIC INFORMATION

[Revise 1.1 and 1.5 to read as follows:]

1.1 Description

Insured mail provides up to $5,000 indemnity coverage for a lost, rifled, or damaged article, subject to the standards for the service and payment of the applicable fee. No record of insured mail is kept at the office of mailing. Insured mail service provides the sender with a mailing receipt. For mail insured for more than $50, a delivery record is kept at the post office of address. Insured mail is dispatched and handled in transit as ordinary mail.

* * * * *

1.5 Additional Services

Subject to applicable standards and fees, special handling, parcel airlift, and merchandise return services may also be used with insured mail. Restricted delivery service and return receipt service (Form 3811) may be obtained for parcels insured for more than $50.

* * * * *

S915 Return Receipt

1.0 BASIC INFORMATION

[Revise the heading of 1.3 and text of 1.1, 1.2, and 1.3 to read as follows:]

1.1 Description

Return receipt service provides a mailer with evidence of delivery. A return receipt also supplies the recipient's actual delivery address if it is different from the address used by the sender. A return receipt may be requested before or after mailing.

1.2 Availability

The service is available only for Express Mail and mail sent as certified, collect on delivery (COD), insured for more than $50, or registered mail. After delivery, the USPS mails the return receipt to the sender.

1.3 Endorsement

Mail for which return receipt service is requested must be endorsed ''Return Receipt Requested'' above the delivery address and to the right of the return address.

* * * * *

S917 Return Receipt for Merchandise

1.0 BASIC INFORMATION

[Revise the heading of 1.4 and text of 1.1, 1.2, 1.3, and 1.4 to read as follows:]

1.1 Description

Return receipt for merchandise service is a form of return receipt service that provides the sender with a mailing receipt and a return receipt. A delivery record is kept at the post office of address, but no record is kept at the office of mailing. A return receipt for merchandise also supplies the recipient's actual delivery address if it is different from the address used by the sender. Mail using this service is dispatched and handled in transit as ordinary mail. This service does not include insurance coverage. A return receipt for merchandise may not be requested after mailing, and restricted delivery service is not available.

1.2 Availability

The service is available only for merchandise sent at the postage rates for Priority Mail, Single-Piece Standard Mail, Parcel Post, Bound Printed Matter, Special Standard Mail, or Library Mail. This service may not be used on international mail.

1.3 Additional Services

Special handling is available for Single-Piece Standard Mail, Parcel Post, Bound Printed Matter, Special Standard Mail, and Library Mail, subject to payment of the applicable fee.

1.4 Endorsement

Form 3804 is used for return receipt for merchandise service. The form and the endorsement ''Return Receipt Requested'' must be placed above the address and to the right of the return address.

* * * * *

2.0 MAILING

[In 2.2d, remove ''special delivery or''; no other change to text.]

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S930 Handling

[Remove current 1.0; renumber 2.0 and 3.0 as 1.0 and 2.0, respectively, and revise redesignated 1.1, 1.2, and 1.5 to read as follows:]

1.0 SPECIAL HANDLING

1.1 Description

Special handling service provides preferential handling, but not preferential delivery, to the extent practicable in dispatch and transportation. The service does not itself insure the article against loss or damage. Special handling service is mandatory for material that requires extra care in handling, transportation, and delivery. Unless the special handling fee is paid, a nonmachinable surcharge applies to certain categories of items mailed at Parcel Post inter-BMC rates as required in E620.

1.2 Availability

Special handling service is available only for Single-Piece Standard Mail, Parcel Post, Bound Printed Matter, Special Standard Mail, and Library Mail.

* * * * *

1.5 Fee and Postage

The applicable special handling fee must be paid in addition to postage for each addressed piece for which special handling service is desired. Except for official mail, the special handling fee must be paid at the time of mailing. For official mail, the special handling fee is collected under established reimbursement procedures.

* * * * *

2.0 PARCEL AIRLIFT (PAL)

* * * * *

[Redesignate current 3.3 and 3.4 as 2.4 and 2.5, respectively; add new 2.3 to read as follows:]

2.3 Additional Services

The following services are available if the applicable standards for the services are met and the additional service fees paid:

a. Certificate of mailing.

b. Insured mail.

c. Restricted delivery (if insured for more than $50).

d. Return receipt (if insured for more than $50).

e. Special handling.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–12209 Filed 5–7–97; 9:57 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Special Services Reform; Changes in Domestic Mail Classifications and Fees

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to the Domestic Mail Classification Schedule and accompanying fee changes.

SUMMARY: This notice sets forth the changes to the Domestic Mail Classification Schedule and the accompanying fee changes to be implemented as a result of the May 5, 1997 Decision of the Governors of the United States Postal Service on Special Services Fees and Classifications.

EFFECTIVE DATE: June 8, 1997.

FOR FURTHER INFORMATION CONTACT: David Rubin, (202) 268–2986.

SUPPLEMENTARY INFORMATION: On June 7, 1996, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on several special service reform proposals. The PRC designated the filing as Docket No. MC96–3. The PRC published a notice of the filing, with a description of the Postal Service's proposals, on June 21, 1996, in the **Federal Register** (61 FR 31968–31979).

On April 2, 1997, pursuant to its authority under 39 U.S.C. 3624, the PRC issued its Recommended Decision on the Postal Service's Request to the Governors of the Postal Service. The PRC recommended most of the proposed mail classification changes and some of the fee changes requested by the Postal Service.

Pursuant to 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's recommendations on May 5, 1997. Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Special Services Fees and Classifications, Docket No. MC96–3. The Governors determined to approve the PRC's recommendations, and the Board of Governors set an implementation date of June 8, 1997, for those fee and classification changes to take effect. A copy of the attachments to that Decision, setting forth the classification and fee changes approved by the Governors, is set forth below.

Also on May 5, 1997, the Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to make the fee and classification changes approved by the Governors effective at 12:01 a.m. on June 8, 1997 (Resolution No. 97–7).

In accordance with the Decision of the Governors and Resolution No. 97–7, the Postal Service hereby gives notice that the classification and fee changes set forth below will become effective at 12:01 a.m. on June 8, 1997. Implementing regulations also become effective at that time, as noted elsewhere in this issue.

Stanley F. Mires,

Chief Counsel, Legislative.

BILLING CODE 7710–12–P

ATTACHMENT A TO THE DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE RECOMMENDED DECISION OF THE POSTAL RATE COMMISSION ON SPECIAL SERVICES FEES AND CLASSIFICATIONS, DOCKET NO. MC96-3

(MAY 5, 1997)

CHANGES IN THE DOMESTIC MAIL CLASSIFICATION SCHEDULE

The following material represents changes in the Domestic Mail Classification Schedule (DMCS) approved by the Governors of the United States Postal Service in response to the Commission's Recommended Decision in Docket No. MC96-3. Changes are generally identified by underlining additions to the DMCS, striking deletions, or substituting new text for old. Certain editorial revisions that do not affect the substance of the recommendations are included without special notation.

Amend the Expedited Mail Classification Schedule by deleting the text that is stricken and inserting the text that is underlined:

EXPEDITED MAIL CLASSIFICATION SCHEDULE

110 DEFINITION

Expedited Mail is mail matter entered as Express Mail in accordance with the provisions of this Schedule. Any matter eligible for mailing may, at the option of the mailer, be mailed as Express Mail. Insurance is either included in Express Mail postage or is available for an additional charge, depending on the value and nature of the item sent by Express Mail.

* * * * *

160 ANCILLARY SERVICES

The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Service	Schedule
a.	Address correction	SS-1
b.	Return receipts	SS-16
c.	COD	SS-6
d.	Express Mail Insurance	SS-9

* * * * *

~~180 INSURANCE AND INDEMNITY~~

~~181 Insurance Coverage~~

~~Express Mail is insured against loss, damage or rifling at no additional charge.~~

~~182 Indemnity Coverage~~

~~182.1 **Payment of Indemnity.** Indemnity will be paid by the Postal Service as follows:~~

~~a. For document reconstruction the maximum liability is $50,000 per piece, up to $500,000 per occurrence regardless of the number of claimants, to be paid under terms and conditions prescribed by the Postal Service.~~

~~b. For merchandise the maximum liability is $500 to be paid under terms and conditions prescribed by the Postal Service.~~

~~c. For mailings valued at $15 or less, for negotiable items, or currency or bullion, the indemnity is $15 to be paid under terms and conditions prescribed by the Postal Service.~~

~~182.2 **Indemnity Not Available.** Indemnity will not be paid by the Postal Service for loss, damage or rifling:~~

~~a. Of nonmailable matter;~~

~~b. Due to improper packaging;~~

~~c. Seizure by any agency of government; or,~~

~~d. Due to war, insurrection or civil disturbances.~~

~~183 **Insurance Claims And Procedures**~~

180 **Refunds**

181 **Procedure**

Claims for refunds of postage ~~or insurance~~ must be filed within the period of time and under terms and conditions prescribed by the Postal Service.

~~184 **Refunds**~~

182 **Availability**

~~184.1~~ 182.1 **Same Day Airport.** The Postal Service will refund the postage for Same Day Airport Express Mail not available for claim by the time specified, unless the delay is caused by:

a. Strikes or work stoppage;

b. Delay or cancellation of flights; or

c. Governmental action beyond the control of Postal Service or air carriers.

~~184.2~~ 182.2 **Custom Designed**. Except where a service agreement provides for claim, or delivery, of Custom Designed Express Mail more than 24 hours after scheduled tender at point of origin, the Postal Service will refund postage for such mail not available for claim, or not delivered, within 24 hours of mailing, unless the item was delayed by strike or work stoppage.

~~184.3~~ 182.3 **Next Day.** Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Next Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) prescribed by the Postal Service, of the next delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) prescribed by the Postal Service, of the next delivery day in the case of Post Office-to-Addressee service.

~~184.4~~ 182.4 **Second Day.** Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Second Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Addressee service.

Amend the First-Class Mail Classification Schedule by deleting the text that is stricken and inserting the text that is underlined:

FIRST-CLASS MAIL
CLASSIFICATION SCHEDULE

* * * * *

222 **~~Postal and~~ Stamped Cards and Post Cards Subclass**

222.1 **Definition**

222.11 **~~Postal~~ Stamped Card.** A ~~postal~~ Stamped Card is a card with postage imprinted or impressed on it and supplied by the Postal Service for the transmission of messages.

222.12 **Post Card.** A post card is a privately printed mailing card for the transmission of messages. To be eligible to be mailed as a First-Class post card, a card must be of uniform thickness and must not exceed any of the following dimensions:

a. 6 inches in length;

b. 4¼ inches in width;

c. 0.016 inch in thickness.

222.13 **Double Cards.** Double ~~postal~~ Stamped Cards or post cards may be mailed as ~~postal~~ Stamped Cards or post cards. A double ~~postal~~ Stamped Card or post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single ~~postal~~ Stamped Card or post card.

222.2 **Restriction.** A mailpiece with any of the following characteristics is not mailable as a ~~postal~~ Stamped Card or post card unless it is prepared as prescribed by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing in the address portion of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

222.3 **Regular Rate Categories**

222.31 **Single Piece Rate Category.** The single piece rate category applies to regular rate ~~Postal~~ Stamped Cards and Post Cards subclass mail not mailed under section 222.32.

222.32 **Presort Rate Category.** The presort rate category applies to ~~Postal~~ Stamped Cards and Post Cards subclass mail that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as prescribed by the Postal Service; and

c. Meets the addressing and other preparation requirements prescribed by the Postal Service.

222.4 **Automation Rate Categories**

222.41 **General.** The automation rate categories consist of ~~Postal~~ Stamped Cards and Post Cards subclass mail that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as specified by the Postal Service;

c. Bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service; and

d. Meets the machinability, addressing, barcoding, and other preparation requirements prescribed by the Postal Service.

* * * * *

260 ANCILLARY SERVICES

First-Class Mail, except as otherwise noted, will receive the following additional services upon payment of the fees prescribed in the corresponding schedule:

	Service	Schedule
a.	Address correction	SS-1
b.	Business reply mail	SS-2
c.	Certificates of mailing	SS-4
d.	Certified mail	SS-5
e.	COD	SS-6
f.	Insured mail	SS-9
g.	Registered mail	SS-14
~~h.~~	~~Special delivery~~	~~SS-17~~
~~i.~~ h.	Return receipt (limited to merchandise sent by Priority Mail ~~only~~)	SS-16
~~j.~~ i.	Merchandise return	SS-20

270 RATES AND FEES

The rates and fees for First-Class Mail are set forth in the following ~~rate~~ schedules:

		Schedule
a.	Letters and Sealed Parcels	221
b.	~~Postal~~ Stamped Cards and Post Cards	222
c.	Priority Mail	223
d.	Fees	SS-19A and 1000

* * * * *

Amend the Standard Mail Classification Schedule by deleting the text that is stricken and inserting the text that is underlined:

STANDARD MAIL CLASSIFICATION SCHEDULE

* * * * *

360 ANCILLARY SERVICES

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362 Single Piece, Parcel Post, Bound Printed Matter, Special, and Library Subclasses

Single Piece, Parcel Post, Bound Printed Matter, Special, and Library subclass mail will receive the following additional services upon payment of the appropriate fees:

	Service	Schedule
a.	Certificates of mailing	SS-4
b.	COD	SS-6
c.	Insured mail	SS-9
~~d.~~	~~Special delivery~~	~~SS-17~~
~~e.~~ d.	Special handling	SS-18
~~f.~~ e.	Return receipt (merchandise only)	SS-16
~~g.~~ f.	Merchandise return	SS-20

Insurance, ~~special delivery,~~ special handling, and COD services may not be used selectively for individual pieces in a multi-piece Parcel Post subclass mailing unless specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

* * * * *

Amend the Periodicals Classification Schedule by deleting the text that is stricken:

PERIODICALS
CLASSIFICATION SCHEDULE

* * * * *

~~460 **ANCILLARY SERVICES**~~

~~Periodicals class mail will receive the following additional service upon payment of the appropriate fee:~~

~~**Service**~~	~~**Schedule**~~
~~Special delivery~~	~~SS-17~~

* * * * *

Amend the General Definitions, Terms and Conditions section of the DMCS by deleting the text that is stricken and inserting the text that is underlined:

GENERAL DEFINITIONS, TERMS AND CONDITIONS

* * * * *

3000 POSTAGE AND PREPARATION

* * * * *

3080 Refund of Postage

When postage and special service fees have been paid on mail for which no service is rendered for the postage or fees paid, or collected in excess of the lawful rate, a refund may be made. There shall be no refund for registered, COD, ~~and insured~~ <u>general insurance, and Express Mail Insurance</u> fees when the article is later withdrawn by the mailer. In cases involving returned articles improperly accepted because of excess size or weight, a refund may be made.

* * * * *

Amend Classification Schedule SS–3, Caller Service, by deleting the text that is stricken and inserting the text that is underlined:

CLASSIFICATION SCHEDULE SS-3--CALLER SERVICE

3.01 **Definition**

3.010 Caller service is a service which permits a customer to obtain ~~his~~ mail addressed to ~~a~~ the customer's box number through a call window or loading dock.

3.02 **Description of Service**

* * * * *

3.022 Caller service is provided to customers on the basis of mail volume received~~,~~ and number of post office boxes ~~rented~~ used at any one facility.

* * * * *

Amend Classification Schedule SS–4, Certificate of Mailing, by deleting the text that is stricken and inserting the text that is underlined:

CLASSIFICATION SCHEDULE SS-4--CERTIFICATE OF MAILING

* * * * *

4.03 **Other Services**

4.030 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification Schedule
a. Parcel airlift	SS-13
~~b. Special delivery~~	~~SS-17~~
~~c.~~ b. Special handling	SS-18

* * * * *

Amend Classification Schedule SS–5, Certified Mail, by deleting the text that is stricken.

CLASSIFICATION SCHEDULE SS-5--CERTIFIED MAIL

* * * * *

5.04 **Other Services**

5.040 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification Schedule
a. Restricted delivery	SS-15
b. Return receipt	SS-16
~~c. Special delivery~~	~~SS-17~~

Amend Classification Schedule SS–6, Collect on Delivery Service, by deleting the text that is stricken and inserting the text that is underlined:

CLASSIFICATION SCHEDULE SS-6--COLLECT ON DELIVERY SERVICE

* * * * *

6.06 **Other Services**

6.060 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fee:

	Classification Schedule
a. Registered mail, if sent as First-Class	SS-14
b. Restricted delivery	SS-15
~~c. Special delivery~~	~~SS-17~~
~~d.~~ c. Special handling	SS-18

* * * * *

Delete Classification Schedule SS–9, Insured Mail, in its entirety and replace it with the following:

CLASSIFICATION SCHEDULE SS-9--INSURED MAIL

Part a - Express Mail Insurance

9a.01 **Definition**

9a.010 Express Mail Insurance is a service that provides the mailer with indemnity for loss of, rifling of, or damage to items sent by Express Mail.

9a.02 **Description of Service**

9a.020 Express Mail Insurance is available only for Express Mail.

9a.021 Insurance coverage is provided, for no additional charge, up to $500 per piece for document reconstruction, up to $5,000 per occurrence regardless of the number of claimants. Insurance coverage is also provided, for no additional charge, up to $500 per piece for merchandise. Insurance coverage for merchandise valued at more than $500 is available for an additional fee, as set forth in Rate Schedule SS-9. The maximum liability for merchandise is $5,000 per piece. For negotiable items, currency, or bullion, the maximum liability is $15.

9a.022 Indemnity claims for Express Mail must be filed within a specified period of time from the date the article was mailed.

9a.023 Indemnity will be paid under terms and conditions prescribed by the Postal Service.

9a.024 Among other limitations prescribed by the Postal Service, indemnity will not be paid by the Postal Service for loss, damage or rifling:

a. Of nonmailable matter;
b. Due to improper packaging;
c. Due to seizure by any agency of government; or,
d. Due to war, insurrection or civil disturbances.

9a.03 **Fees**

9a.030 The fees for Express Mail Insurance service are set forth in Rate Schedule SS-9.

Part b - General Insurance

9b.01 **Definition**

9b.010 General Insurance is a service that provides the mailer with indemnity for loss of, rifling of, or damage to mailed items.

9b.02 **Description of Service**

9b.020 The maximum liability of the Postal Service under this part is $5000.

9b.021 General Insurance is available for mail sent under the following classification schedules:

a. First-Class Mail, if containing matter which may be mailed as Standard Mail
b. Single Piece, Parcel Post, Bound Printed Matter, Special, and Library Standard Mail

9b.022 This service is not available for matter offered for sale, addressed to prospective purchasers who have not ordered or authorized their sending. If such matter is received in the mail, payment will not be made for loss, rifling, or damage.

9b.023 The mailer is issued a receipt for each item mailed. For items insured for more than $50, a receipt of delivery is obtained by the Postal Service.

9b.024 For items insured for more than $50, a notice of arrival is left at the mailing address when the first attempt at delivery is unsuccessful.

9b.025 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

9b.026 A claim for damage or loss on a parcel sent merchandise return (SS-20) may only be filed by the purchaser of the insurance.

9b.027 Indemnity claims must be filed within a specified period of time from the date the article was mailed.

9b.028 Additional copies of the original mailing receipt may be obtained by the mailer, upon payment of the applicable fee set forth in Rate Schedule SS-9.

9b.03 **Deposit of Mail**

9b.030 Mail insured under this part must be deposited in a manner specified by the Postal Service.

9b.04 **Forwarding and Return**

9b.040 By insuring an item, the mailer guarantees forwarding and return postage unless instructions on the piece mailed indicate that it not be forwarded or returned.

9b.041 Mail undeliverable as addressed sent under this part will be returned to the sender as specified by the sender or by the Postal Service.

9b.05 **Other Services**

9b.050 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this part upon payment of the applicable fees:

		Classification Schedule
a.	Parcel Airlift	SS-13
b.	Restricted delivery (for items insured for more than $50)	SS-15
c.	Return receipt (for items insured for more than $50)	SS-16
d.	Special handling	SS-18
e.	Merchandise return (shippers only)	SS-20

9b.06 **Fees**

9b.060 The fees for General Insurance are set forth in Rate Schedule SS-9.

Amend Classification Schedule SS–10, Post Office Box Service, by deleting the text that is stricken and inserting the text that is underlined:

CLASSIFICATION SCHEDULE SS-10--POST OFFICE BOX SERVICE

10.01 **Definition**

10.010 Post office box service is a service which provides the customer with a private, locked receptacle for the receipt of ~~his~~ mail during the hours when the lobby of a postal facility is open.

10.02 **Description of Service**

* * * * *

10.021 A post office box holder may ~~request~~ ask the Postal Service to deliver to the post office box all mail properly addressed to the holder. ~~him through the post office box.~~ If the post office box is located at the post office indicated on the piece, it will be transferred without additional charge, in accordance with existing regulations.

* * * * *

10.03 **Fees**

* * * * *

10.031 In postal facilities primarily serving academic institutions or the students of such institutions, ~~periods of rental and~~ fees for post office boxes are administered as follows:

Period ~~for~~ of box ~~rentals~~ use	Fee
95 days or less	½ semi-annual fee
96 to 140 days	¾ semi-annual fee
141 to 190 days	Full semi-annual fee
191 to 230 days	1¼ semi-annual fee
231 to 270 days	1½ semi-annual fee
271 days to full year	Full annual fee

10.032 No refunds will be made for ~~boxes rented~~ post office box fees paid under section 10.031. For purposes of this classification schedule SS-10, the full annual fee is twice the amount of the semi-annual fee.

Amend Classification Schedule SS–11, Mailing List Services, by deleting the text that is stricken and inserting the text that is underlined:

CLASSIFICATION SCHEDULE SS-11--MAILING LIST SERVICES

11.01 **Definition**

* * * * *

11.02 **Description of Service**

* * * * *

11.0221 Gummed labels, wrappers, envelopes or ~~postal~~ <u>Stamped Cards</u> or post cards indicative of one-time use will not be accepted as mailing lists.

* * * * *

Amend Classification Schedule SS–13, Parcel Airlift, by deleting the text that is stricken and inserting the text that is underlined:

CLASSIFICATION SCHEDULE SS-13--PARCEL AIRLIFT (PAL)

* * * * *

13.07 **Other Services**

13.070 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification Schedule
a. Certificate of mailing	SS-4
b. Insured mail	SS-9
c. Restricted delivery (if insured for more than ~~$25~~ <u>$50</u>)	SS-15
d. Return receipt (if insured for more than ~~$25~~ <u>$50</u>)	SS-16
~~e. Special delivery (if mailed for delivery within the 48 contiguous states)~~	~~SS-17~~
~~f.~~ <u>e.</u> Special handling	SS-18

* * * * *

Amend Classification Schedule SS–14, Registered Mail, by deleting the text that is stricken and inserting the text that is underlined:

CLASSIFICATION SCHEDULE SS-14--REGISTERED MAIL

14.01 **Definition**

14.010 Registered mail is a service which provides added protection to mail sent under this Domestic Mail Classification Schedule and ~~optional~~ indemnity in case of loss or damage.

14.02 **Description of Service**

* * * * *

14.021 Registered mail service provides ~~optional~~ insurance up to a maximum of $25,000~~.~~, depending upon the actual value at the time of mailing, except that insurance is optional for articles valued $100 or less.

* * * * *

14.026 Indemnity claims for registered mail on which insurance is provided, or for articles valued $100 or less on which optional insurance has been elected, must be filed within a specified period of time from the date the article was mailed.

* * * * *

14.06 **Other Services**

14.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Collect on delivery	SS-6
b. Restricted delivery	SS-15
c. Return receipt	SS-16
~~d. Special delivery~~	~~SS-17~~
~~e.~~ d. Merchandise return (shippers only)	SS-20

14.07 **Fees**

14.070 The fees for registered mail ~~and related optional indemnity purchase~~ are set forth in Rate Schedule SS-14.

* * * * *

Amend Classification Schedule SS–16, Return Receipts, by deleting the text that is stricken and inserting the text that is underlined:

CLASSIFICATION SCHEDULE SS-16--RETURN RECEIPTS

* * * * *

16.02 **Description of Service**

16.020 Return receipt service is available for mail sent under the following classification schedules:

	Classification Schedule
a. Certified mail	SS-5
b. COD mail	SS-6
c. Insured mail (if insured for more than $50)	SS-9
d. Registered mail	SS-14
e. Express Mail	
f. ~~First-Class~~ Priority Mail (merchandise only)	
g. Standard Mail (limited to merchandise ~~only~~ sent by Single Piece, Parcel Post, Bound Printed Matter, Special, and Library Subclasses)	

16.021 Return receipt service is available at the time of mailing or, when purchased in conjunction with certified, COD, insured (if for more than $50), registered, or Express Mail, after mailing.

16.0211 Mailers requesting return receipt service at the time of mailing will be provided, as ~~appropriate:~~ appropriate,

~~a. The~~ the signature of the addressee or ~~his~~ addressee's agent, ~~and~~ the date delivered, ~~or~~
~~b. The signature of the addressee or his agent, the date delivered~~ and the address of delivery, if different from the address on the mailpiece.

* * * * *

*Amend Schedule SS-17, Special Delivery, by deleting the text in its entirety:

*This effectively eliminates Special Delivery from the Service's offerings.

~~CLASSIFICATION SCHEDULE SS-17 SPECIAL DELIVERY~~

~~17.01 Definition~~

~~17.01 Special delivery service is a service that provides for preferential handling in dispatch and transportation, and delivery of mail as soon as practicable after arrival at the addressee's post office.~~

~~17.02 Description of Service~~

~~17.020 Special delivery service is available for mail sent under the following classification schedules:~~

~~a. First-Class Mail~~
~~b. Periodicals~~
~~c. Single Piece, Parcel Post, Bound Printed Matter, Special, and Library Standard Mail~~

~~17.021 Special delivery is made only to addresses where it is known that such delivery can be made.~~

~~17.022 Special delivery mail is delivered during prescribed hours in addition to regular carrier delivery hours.~~

~~17.023 If delivery cannot be made a notice of arrival is left at the address.~~

~~17.03 Requirements of the Mailer~~

~~17.030 Mail sent under this classification schedule must be identified as prescribed by regulation.~~

~~17.04 Deposit of Mail~~

~~17.040 Special delivery mail must be deposited in a manner prescribed by the Postal Service.~~

~~17.05 Forwarding and Return~~

~~17.050 Special delivery mail which is forwarded or returned does not receive special delivery service unless the special delivery fee has been guaranteed, or if a forwarding order had been given by the addressee at the office of original address in advance of the arrival of the mail.~~

~~17.06 Other Services~~

~~17.060 The following services, if applicable to the class of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:~~

	~~Classification Schedule~~
~~a. Certificate of mailing~~	~~SS-4~~
~~b. Certified mail~~	~~SS-5~~
~~c. COD mail~~	~~SS-6~~
~~d. Insured mail~~	~~SS-9~~
~~e. Parcel airlift~~	~~SS-13~~
~~f. Registered mail~~	~~SS-14~~

~~17.07 Fees~~

~~17.070 The fees for special delivery service are set forth in Rate Schedule SS-17.~~

Amend Classification Schedule SS–18, Special Handling, by deleting the text that is stricken and inserting the text that is underlined:

CLASSIFICATION SCHEDULE SS-18--SPECIAL HANDLING

* * * * *

18.02 **Description of Service**

* * * * *

18.021 Special handling ~~(or special delivery)~~ service is mandatory for matter which requires special attention in handling, transportation and delivery.

* * * * *

Amend the Domestic Mail Classification Schedule by inserting the following:

CLASSIFICATION SCHEDULE SS–19A — STAMPED CARDS

19A.01 **Definition**

19A.010 **Stamped Cards.** Stamped Cards are cards with postage imprinted or impressed on them and supplied by the Postal Service for the transmission of messages.

19A.011 **Double Stamped Cards.** Double Stamped Cards consist of two attached cards, one of which may be detached by the receiver and returned by mail as a single Stamped Card.

19A.020 **Description of Service.** Stamped Cards are available for First-Class Mail.

19A.030 **Fees.** The fees for Stamped Cards are set forth in Rate Schedule SS-19A.

ATTACHMENT B TO THE

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE RECOMMENDED DECISION OF THE POSTAL RATE COMMISSION ON SPECIAL SERVICES FEES AND CLASSIFICATIONS, DOCKET NO. MC96-3

(MAY 5, 1997)

CHANGES TO DOMESTIC RATES AND FEES

The following material represents changes in the domestic rate and fee schedules approved by the Governors of the United States Postal Service in response to the Commission's Recommended Decision in Docket No. MC96-3. Changes are generally identified by underlining additions and striking deletions, or substituting new text for old.

Amend Rate Schedule 222 by deleting the text that is stricken and inserting the text that is underlined.

FIRST-CLASS MAIL
RATE SCHEDULE 222
~~Postal~~ STAMPED CARDS and POST CARDS

* * * * *

Delete Schedule SS–5, Certified Mail, in its entirety and replace it with the following:

Schedule SS-5 — Certified Mail

Description	*Fee (in addition to postage)*
Service (per mailpiece)	$1.35

Delete Schedule SS–9, Insured Mail, in its entirety and replace it with the following:

Schedule SS-9 — Insured Mail

Part a — Express Mail Insurance

Document Reconstruction

Coverage	*Fee (in addition to postage)*
$0.01 to $500	no charge

Merchandise

Declared Value	*Fee (in addition to postage)*
$ 0.01 to $ 500	no charge
500.01 to 5000	$0.90 for each $100 (or fraction thereof) over $500 in value

Part b —General Insurance

Declared Value	*Fee (in addition to postage)*
$ 0.01 to $ 50	$0.75
50.01 to $ 100	1.60
100.01 to $5000	1.60 ***plus*** $0.90 for each $100 (or fraction thereof) over $100 in declared value

Delete Schedule SS-10, Post Office Boxes and Caller Service, in its entirety and replace it with the following:

Schedule SS-10 — Post Office Boxes and Caller Service

I. Semi-annual Box Fees[1]

	Fee Group			
Box Size[2]	**A**	**B**	**C**	**D and E**[3]
1	$24	$22	$20	$6.00
2	37	33	29	10.00
3	64	56	52	18.00
4	121	109	86	26.50
5	209	186	144	41.50

[1] A customer ineligible for carrier delivery may obtain a post office box at no charge, subject to administrative decisions regarding customer's proximity to post office.

[2] Box Size 1 = under 296 cubic inches; 2 = 296-499 cubic inches; 3 = 500-999 cubic inches; 4 = 1000-1999 cubic inches; 5 = 2000 cubic inches and over.

[3] Group E post office box customers subject to these fees are those eligible for carrier delivery.

II. Semi-annual Caller Service Fees

Fee Group	***Fee***
A	$250
B	$240
C	$225
D	$225

III. Annual Call Number Reservation Fee

(all applicable Fee Groups) . . . . $ 30

Delete Schedule SS–14, Registered Mail, in its entirety and replace it with the following:

Schedule SS-14 — Registered Mail

Declared Value of Article[1]		*Fees*[2] *(in addition to postage)*	*Handling Charge*
$0.00 to	$100	$4.85 *(without insurance)*	None
0.00 to	100	4.95 *(with insurance)*	"
100.01 to	500	5.40	"
500.01 to	1,000	5.85	"
1,000.01 to	2,000	6.30	"
2,000.01 to	3,000	6.75	"
3,000.01 to	4,000	7.20	"
4,000.01 to	5,000	7.65	"
5,000.01 to	6,000	8.10	"
6,000.01 to	7,000	8.55	"
7,000.01 to	8,000	9.00	"
8,000.01 to	9,000	9.45	"
9,000.01 to	10,000	9.90	"
10,000.01 to	11,000	10.35	"
11,000.01 to	12,000	10.80	"
12,000.01 to	13,000	11.25	"
13,000.01 to	14,000	11.70	"
14,000.01 to	15,000	12.15	"
15,000.01 to	16,000	12.60	"
16,000.01 to	17,000	13.05	"
17,000.01 to	18,000	13.50	"
18,000.01 to	19,000	13.95	"
19,000.01 to	20,000	14.40	"
20,000.01 to	21,000	14.85	"
21,000.01 to	22,000	15.30	"
22,000.01 to	23,000	15.75	"
23,000.01 to	24,000	16.20	"
24,000.01 to	25,000	16.65	"

Schedule SS- 14 — Registered Mail
(continued)

25,000.01 to $1 million	16.65	*plus* 45 cents for each $1,000 (or fraction thereof) over $25,000
Over $1 million to $15 million	455.40	*plus* 45 cents for each $1,000 (or fraction thereof) over $1 million
Over $15 million	6,755.40	*plus* amount determined by the Postal Service based on weight, space and value

[1] Articles with a declared value of more than $25,000 can be registered, but compensation for loss or damage is limited to $25,000.

[2] Fees for articles with declared values of more than $100 include insurance.

Delete Schedule SS–16, Return Receipts, in its entirety and replace it with the following:

Schedule SS-16 — Return Receipts

Description	*Fee (in addition to postage)*
Receipt Issued at Time of Mailing[1]	
Items other than Merchandise	$1.10
Merchandise (without another special service)	$1.20
Receipt Issued after Mailing[2]	$6.60

[1] This receipt shows the signature of the person to whom the mailpiece was delivered, the date of delivery and the delivery address, if such address is different from the address on the mailpiece.

[2] This receipt shows to whom the mailpiece was delivered and the date of delivery.

Delete Schedule SS–17, Special Delivery, in its entirety:

~~SCHEDULE SS-17~~
~~Special Delivery~~

	~~Fee (in addition to postage)~~
~~First Class and Priority Mail~~	
~~Not more than 2 pounds~~	~~9.95~~
~~Over 2 pounds but not over 10 pounds~~	~~10.35~~
~~Over 10 pounds~~	~~11.15~~
~~All Other Classes~~	
~~Not more than 2 pounds~~	~~10.45~~
~~Over 2 pounds but not over 10 pounds~~	~~11.25~~
~~Over 10 pounds~~	~~12.10~~

Amend Schedule SS-19, Stamped Envelopes, by inserting the underlined text:

Schedule SS-19 — Stamped Envelopes

Description	***Fee (in addition to postage)***
Single Sale	$0.06

* * * * *

Amend the Domestic Mail Classification Schedule by inserting the following:

Schedule SS-19A — Stamped Cards

Description	*Fee (in addition to postage)*
Stamped Card	$0.00
Double Stamped Card	0.00

[FR Doc. 97–12208 Filed 5–7–97; 9:57 am]

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federal register

Monday
May 12, 1997

Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–501]

RIN 1904–AA45

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended, requires the Department of Energy (DOE or the Department) to administer an energy conservation program for certain major household appliances and commercial equipment. Among other program elements, the Act requires that standard methods of testing be prescribed for each covered product. Today's final rule amends the test procedures for furnaces and boilers, vented home heating equipment, and pool heaters.

EFFECTIVE DATE: This rule is effective November 10, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 1997.

ADDRESSES: The Department is incorporating by reference test standards from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and the American National Standards Institute, Inc. (ANSI). These standards are listed below:

American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1993, ''Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' and American National Standards Institute Standard Z21.56–1994, ''Gas-Fired Pool Heaters.''

Copies of these standards may be viewed at the Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Copies of the ANSI/ASHRAE Standard 103–1993 can be obtained from ASHRAE Publication Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329, (1–800–5–ASHRAE). Copies of the ANSI Standard Z21.56–1994 can be obtained from the ANSI, Inc., 11 West 42nd Street, New York, N.Y. 10036, (212) 642–4936.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE–43, 1000 Independence Avenue, SW, Washington, D.C. 20585–0121, (202) 586–9142, FAX (202) 586–4617.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW, Washington, D.C. 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, as amended by the National Energy Conservation Policy Act (NECPA) Pub. L. 95–619, the National Appliance Energy Conservation Act (NAECA) of 1987, Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357 and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles (Program).[1] The 13 consumer household products currently subject to this Program (referred to hereinafter as ''covered products'') include furnaces/boilers, vented home heating equipment, and pool heaters, the subjects of today's notice.

Under the EPCA, the Program consists essentially of three parts: Testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST), is required to amend or establish new test procedures as appropriate for each of the covered products. EPCA section 323, 42 U.S.C. 6293. Test procedures appear at 10 CFR part 430, subpart B. The purpose of the test procedures is to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The procedures must not be unduly burdensome to conduct. EPCA section 323(b)(3), 42 U.S.C. 6293 (b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. EPCA section 323(d)(1), 42 U.S.C. 6293(d)(1).

One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by, the product, except as reflected in tests conducted according to the DOE procedure. EPCA section 323(c)(2), 42 U.S.C. 6293(c)(2). However, the 180-day period referred to in section 323(c)(2) may be extended for up to an additional 180 days if the Secretary determines that the requirements of section 323(c)(2) would impose an undue burden. EPCA section 323(c)(3), 42 U.S.C. 6293 (c)(3).

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. If DOE determines that an amended test procedure would alter the measured efficiency or measured energy use of a covered product, DOE is required to amend the related energy conservation standard accordingly. In determining the amended standard, DOE is required to measure the energy efficiency or energy use of representative samples of covered products that minimally comply with the existing standard. The average efficiency of these representative samples, tested using the amended test procedure, constitutes the

[1] Part B of Title III of the Energy Policy and Conservation Act , as amended, is referred to in this final rule as the ''Act'' or EPCA. Part B of Title III is codified at 42 U.S.C. 6291–6309.

amended standard. EPCA section 323(e)(2), 42 U.S.C. 6293(e)(2).

B. Background

On March 28, 1984, the Department published in the **Federal Register** a final rule, hereinafter referred to as the 1984 Final Rule, amending the test procedures for furnaces, vented home heating equipment, and unvented home heating equipment. 49 FR 12148. For furnaces, the 1984 Final Rule referenced the ANSI/ASHRAE Standard 103–1982 entitled ''Methods of Testing for Heating Seasonal Efficiency of Central Furnaces and Boilers.'' In addition, it prescribed furnace test procedures for systems and issues that were not adequately covered by the ANSI/ASHRAE Standard 103–1982. Those included, for example, provisions for modulating and condensing furnaces and boilers. Particularly impacted were units with thermal stack dampers. Other deviations between the 1984 Final Rule and ANSI/ASHRAE Standard 103–1982 related to oversize factors, furnaces without draft relief or direct exhaust system, hot water boiler minimum return (inlet) water temperature and minimum water temperature rise, pump delay on boiler controls, an improved method for the determination of the S/F factor (the ratio of stack gas mass flow rate to flue gas mass flow rate) for furnaces and boilers, and the option of an assigned jacket loss value instead of actual measurement.

The Department originally published a test procedure for vented home heating equipment on May 2, 1978. 43 FR 20182. The Department amended this test procedure in the 1984 Final Rule, to include a simplified vented heater test procedure for heaters with modulating controls, manually controlled vented heaters, vented heaters equipped with thermal stack dampers, and floor furnaces. 49 FR 12169.

The Department published the pool heater test procedure final rule on February 7, 1989, referencing ANSI Standard Z21.56–1986 for gas pool heaters and extending the test procedure to cover oil-fired pool heaters. 54 FR 6076.

Since 1984, through cooperative efforts with the furnace industry and through the DOE test procedure waiver process, DOE has become aware of several additional issues regarding furnace and vented home heating equipment test procedures. On August 23, 1993, DOE published in the **Federal Register** a proposed rule and notice of public hearing, hereinafter referred to as the 1993 Proposed Rule, to amend the furnace, vented home heating equipment, and pool heater test procedures to address these issues. 58 FR 44538. A public hearing was held in Washington, DC on January 5, 1994.

After reviewing the comments presented at the public hearing on January 5, 1994, and additional written comments submitted following the public hearing, the Department decided to reopen the public comment period to solicit additional comments on one subject of particular concern to commenters in the 1993 Proposed Rule—the application of a multiplication factor to the auxiliary electricity consumption of a fossil-fueled appliance. The proposed multiplication factor in the 1993 Proposed Rule consisted of the ratio of the electrical ''source energy'' (the amount of energy used in producing the electricity consumed by the appliance) to the electrical ''site energy'' (the amount of electricity consumed by the appliance). The multiplication factor was used in the two proposed new energy descriptors, named Energy Factor (EF) and Annual Efficiency (AE), proposed by the Department to include the auxiliary electrical energy consumption by fossil-fueled appliances.

On January 20, 1995, the Department published a **Federal Register** notice, reopening the comment period to seek comments on a revision of the proposed definition of the multiplication factor. The new proposed definition was the ratio of the cost of electricity to the cost of fossil fuel to the consumer. 60 FR 4348. The 30-day public comment period was extended by an additional 30 days at the request of commenters and was closed on March 21, 1995.

Today's notice amends the test procedures for furnaces and boilers, vented home heating equipment, and pool heaters as follows:

(1) DOE is amending the test procedure for furnaces and boilers first, to incorporate provisions contained in test procedure waivers granted to different manufacturers from 1985 to 1996 and secondly, to include test procedures for new product designs. To accomplish this, the ANSI/ASHRAE Standard 103–1993 is incorporated by reference into the test procedure, in the place of ANSI/ASHRAE 103–1988 that was referenced in the 1993 proposed rule. (See below at II. a. 23. ''ANSI/ASHRAE Standard 103–1993.'') This incorporation establishes revised test procedures for the following furnaces and features: Atmospheric furnaces with burner air inlet dampers or flue dampers; the jacket loss measurement for downflow furnaces; and furnaces and boilers employing electro-mechanical stack dampers with delayed opening and power vented units employing post purge during the off-cycle. In addition, however, today's notice incorporates into DOE's test procedure provisions that are modifications of certain sections of ANSI/ASHRAE Standard 103–1993. Those modifications include the limit on air circulation blower delay time at burner shut-off for furnaces with unvarying control on blower delay time, deletion of the insulation requirement on the internal vent pipe of downflow furnace during the cool-down and heat-up tests, deletion of the requirement for the sealing of cabinet ventilation openings during the jacket loss measurement, longer allowed free post purge time for power vented units employing post purge, and input requirement on interrupted ignition device. In addition, today's final rule provides procedures for the calculation of the annual fossil fuel and auxiliary electrical energy consumptions.

(2) DOE is amending the test procedure for vented home heating equipment by, first, including modified calculation procedures for the weighted average steady-state efficiency and Annual Fuel Utilization Efficiency (AFUE) for certain manually-controlled heaters, and secondly, adding a procedure for calculating the annual energy consumption of fossil fuel and auxiliary electrical energy for vented home heating equipment.

(3) DOE is amending the test procedure for pool heaters by updating the referenced ANSI standard for pool heaters from ANSI Z21.56–1986 to ANSI Z21.56–1994. DOE is also adding a procedure for calculating the annual energy consumption of fossil fuel and auxiliary electrical energy for pool heaters and a pool heater heating seasonal efficiency descriptor that takes into account the energy consumption by the pilot light during the standby period of the pool heating season.

II. Discussion of Comments

A. Furnaces

In general, the comments received were supportive of the goals of the proposed amendments to incorporate provisions contained in waivers previously granted, to include test procedures for new product designs, and to capture the electrical consumption of furnaces. However, the comments by various organizations presented disagreements with DOE's proposal on the effect of some of the amendments on the measured AFUE. Additionally, many comments were received on the proposed formulation of energy descriptors to capture electrical consumption, on both the 1993 Proposed Rule and the January 20, 1995, **Federal Register** notice.

In its testimony and written statement, the Gas Appliance Manufacturers Association (GAMA) classified the proposed revisions to the current test procedure contained in the 1993 Proposed Rule into three categories. (GAMA, No. 8, at 2).[2]

The first category comprised changes that GAMA states would not lower the measured AFUE of most existing furnace and boiler models, including changes to bring the test procedures in line with waivers previously granted. GAMA stated its support for the immediate implementation of most of the first category of changes.

The second category included changes that GAMA states would lower the measured AFUE of most existing furnace and boiler models. Such a change, GAMA claimed, would require the Department to amend the furnace and boiler efficiency standards because of the impact on existing models that marginally meet the standard. According to GAMA, this would cause confusion in the marketplace, accustomed as it is to the current standard, a minimum AFUE of 78 percent for warm air furnaces. Additionally, GAMA asserted that a reduction in the measured AFUE would result in many units no longer qualifying for utility rebate programs that require an AFUE of at least 80 percent. GAMA stated the view that these changes would place a heavy burden on manufacturers and requested a delay in the implementation of the second category of changes until any revised efficiency standards went into effect. GAMA puts the following changes in this category: Revised calculation for the effectiveness of electro-mechanical stack dampers; power vented systems employing post purge after burner shut-off; sealing of cabinet ventilation openings during jacket loss test; insulation of horizontal mounted external draft diverters; insulation of the flue collector box for power vented units; insulation of the internal flue pipe for downflow furnaces during heat-up and cool-down tests; minimum values for the draft factor D_P and D_F; measurement of water pump energy consumption; and test requirement for modulating boilers.

The third category was the addition of the proposed AE energy descriptor. GAMA suggested further study on the third category before implementation.

Consolidated Industries, Carrier Corp., and Lennox Industries supported GAMA's statement. (Consolidated, No. 21, at 1; Carrier, No. 12, at 1; and Lennox, Transcript, at 77). Inter-City Products presented the same list of revisions regarding their potential impact on AFUE as GAMA did. Many of the other commenters referred to GAMA's classification of the three categories of proposed revisions to the DOE test procedure in their oral and written statements and these categories are referred to in the discussion of comments below.

The following discussion addresses the comments received on the proposed rule.

1. Furnaces and Boilers With Small Air Passage in the Flue

In the 1993 Proposed Rule, DOE proposed to change the limiting value of 10 percent from a flow rate ratio to an area ratio. Both GAMA and Inter-City Products supported the proposed revision. (GAMA, No. 8, at 2; and Inter-City, No. 7, at 4). No other commenters offered comment on this issue. The Department is adopting the change in sections 8.2.1.2.2 and 8.3.1.2 of ANSI/ASHRAE Standard 103–1993 in today's final rule.

2. Air Circulation Blower Delay at Burner Ignition

The 1993 Proposed Rule specified a minimum blower delay time of 20 seconds during the heat-up test for furnaces designed with non-adjustable, unvarying delay time that is less than 20 seconds. The current furnace test procedure requires a 1.5-minute delay between the ignition of the burner and the starting of the blower. Manufacturers have requested and been granted waivers from this requirement because of an unvarying time delay designed into their specific models. The designed time delay granted in the waivers varied from 20 seconds to 66 seconds among the specific models with 30 seconds as the predominant time delay. The manufacturers claimed increases in the AFUE value of from 0.4 to 2.0 percentage points if the designed time delays were used in the rating test instead of the 1.5 minutes specified in the current test procedure. The Department's granting of the waivers permitted those manufacturers to test units with blowers having unvarying time delay designed into them. In the 1993 Proposed Rule, the Department proposed test procedures to allow testing with an unvarying time delay, but also proposed a minimum blower delay time of 20 seconds during the heat-up test. This is achieved by bypassing the electronic control, if the designed non-adjustable, unvarying delay time is less than 20 seconds.

Both GAMA and Inter-City Products opposed the requirement of a minimum 20-second delay during the heat-up test for furnaces with designed, unvarying blower time delay at burner start-up. Amana Refrigeration, Inc., stated that DOE's reason of avoiding a cold draft in the occupied zone is an issue of comfort, not energy efficiency, and that DOE should let the competitive marketplace design products that fulfill consumers' desires. (Amana, No. 2, at 1). Inter-City Products stated that DOE should not define what occupant comfort is, and as advances in heat exchanger technology come about, low mass heat exchanger with very short heat-up characteristics will evolve allowing short on-time delays. Inter-City Products also stated that mandating time delays as to occupant comfort is to prescribe the design of a furnace and would not necessarily reflect the true operation and efficiency of current or future furnace designs. (Inter-City, No. 7, at 2). GAMA and York International Corp. gave similar reasons as Inter-City Products for opposing the 20-second requirement, and stated that DOE is acting outside its authority in factoring occupant comfort into the efficiency test procedure. Further they stated that it is for the marketplace, not DOE, to discourage the sale of furnaces that do not provide a reasonable level of occupant comfort. In addition, the complexity of the electronic controls used in today's furnaces makes it very difficult for a field installer or repairer to modify an unvarying blower time delay. (GAMA, No. 8, at 16; and York, No. 10, at 3.) Carrier Corp. and Consolidated Industries both supported GAMA's statement. (Carrier No. 12, at 1; and Consolidated, No. 21, at 1.) Mr. Woodworth stated that comfort should not be the basis for provisions being included in a laboratory test procedure. Further, he suggested that the procedure should be changed to agree with section 9.6.1 of ANSI/ASHRAE Standard 103–1993, that does not include the 20-second requirement. (Woodworth, No. 20, at 5).

In the current test procedure for furnaces, the 1.5-minute fan delay at burner ignition was specified on the basis of obtaining a low overall cost of combined fossil fuel and auxiliary electrical energy consumption.[3] This

[2] Written comments on the 1993 Proposed Rule were assigned docket numbers and are numbered consecutively. Comments presented at the January 5, 1994, public hearing are contained in the transcript.

[3] Unpublished National Bureau of Standards report, Joseph Chi, ''A Note on Effect of HX Weights

was balanced with the historically accepted industry practice in furnace operation of providing occupant comfort. In granting the waiver requests, the Department recognized the advances made by manufacturers on lighter weight heat exchanger designs with fan-assisted combustion systems over the past decade. These advances permitted a faster heat-up of the heat exchanger and a shorter fan delay time while still achieving the desired low overall energy consumption. In the 1993 proposed rule, the Department believed that there is a limit to reducing the weight of the heat exchanger and, in turn, a limit to the achievable minimum fan delay time. This is evident from the fan delay times in the waiver requests, that were mostly greater than or equal to 30 seconds. It is possible, however, that as new material and technology evolve, an even lighter weight heat exchanger with better heat transfer performance will be developed. Such a heat exchanger could result in a faster furnace heat-up and allow a fan delay time of less than 20 seconds. The 20-second minimum fan delay time might become inappropriate for these better-designed furnaces of the future. Nevertheless, for furnaces lacking such designs, the Department believes that without the minimum fan delay requirement used during the test for furnaces with non-adjustable, unvarying fan delay control, a manufacturer could simply modify the furnace's electronic control without any resulting improvement in its heat transfer performance. Thus, the manufacturer would obtain a higher AFUE value. The Department assumes that consideration of consumer satisfaction in the long term will prevent that practice.

Based on the above reasons, the Department has decided to drop the proposed requirement of a 20-second minimum fan delay for furnaces designed with a non-adjustable, unvarying blower time delay during the heat-up test. Instead, DOE is adopting the procedure specified in section 9.6.1 of ANSI/ASHRAE Standard 103–1993 in today's final rule.

3. Air Circulation Blower Delay at Burner Shut-off

In the 1993 Proposed Rule, DOE proposed a modification to the ANSI/ASHRAE Standard 103–1988 version of the procedure now specified in section 9.5.1.2.2 of ANSI/ASHRAE Standard 103–1993. The modification requires that a furnace, if designed with an unvarying time delay that does not provide the same blower delay time that is specified for units with adjustable blower control, shall be tested with the blower control bypassed, and the blower manually controlled to give the delay time specified during the cool-down test. This delay time is three minutes for non-condensing, or 1.5 minutes for condensing furnaces, or 40°F temperature difference, whichever gives the longer time delay.

During the cool-down test, the extant test procedure allows a delay in blower shut-off of three minutes (1.5 minutes for condensing furnaces) or until the supply air temperature drops to a value of 40°F above the inlet air temperature, whichever gives the longer time delay. ANSI/ASHRAE Standard 103–1993 provided an additional exception (section 9.5.1.2.2) that for a furnace without adjustable fan control, the delay shall be as designed.

Both GAMA and Inter-City Products, as well as other commenters, expressed opposition to the specified maximum time delays for blowers with unvarying time delay in the proposed test procedure during the cool-down test. Inter-City Products stated that older or heavier mass heat exchangers may require more than three minutes of cool-down time. They gave the same reasons as given in Inter-City Products' comments against blower time delay at burner ignition in opposing the use of occupant comfort as the criterion in determining the maximum allowable time delay. (Inter-City, No. 7, at 2). GAMA gave similar reasons as Inter-City Products in opposing the requirement with respect to high mass heat exchangers. Further, they gave the same reasons as given in GAMA's comments against blower time delay at burner ignition in opposing the use of occupant comfort as a criterion in the test procedure. GAMA also pointed out the difficulty of adjusting an unvarying electronic time delay control in the field. (GAMA, No. 8, at 16). York International gave similar reasons as GAMA. (York International, No. 10, at 3). Carrier Corp. and Consolidated Industries both supported GAMA's statement. (Carrier, No. 12, at 1; and Consolidated, No. 21, at 1). The California Energy Commission (CEC) pointed out that the wording in section 8.4 of appendix N in the 1993 Proposed Rule is misleading. It stated that the time delay criterion of 40°F temperature difference between supply air and return air for units with adjustable fan control can be interpreted as not applying to condensing furnaces. Also, the time to reach the 40°F differential after burner shut-off may be shorter than three minutes, resulting in both a cold draft and a higher rating that fail to achieve a reasonable level of occupant comfort. (CEC, No. 25, at 1).

In the current test procedure for furnaces, the requirement for maximum fan delay time after burner shut-off was specified on the basis of obtaining an overall low cost of combined fossil fuel and auxiliary electrical energy consumption balanced with the historically accepted industry practice in furnace operation to provide occupant comfort. The after burner shut-off is defined as three minutes, or 1.5 minutes for condensing furnaces, after the burner shuts off, or until the supply air temperature drops to a value of 40°F above the inlet air temperature, whichever gives a longer fan-on time. The Department recognized the heat capacity of a heavier mass heat exchanger in retaining a greater amount of heat energy. This is evidenced by the specification in the existing test procedure of either three minutes (1.5 minutes for condensing furnaces) or 40°F differential in plenum to return air temperature, whichever gives a longer fan-on time. The removal of the maximum fan-on time requirement could encourage some manufacturers to lengthen the fan-on time after burner shut off without an accompanying improvement in furnace design. The manufacturers could do this by simply changing the electronics in the controller. Those furnaces would be able to obtain a slightly higher calculated AFUE by using a lower flue gas temperature measured at nine minutes after burner shut-off when the fan runs longer. Those furnaces however, would actually be consuming greater electrical energy than the savings in fossil fuel. This would be contrary to the intent of EPCA to reduce the nation's overall energy consumption.

Based on the reasons given above, and the fact that the proposed provision does not affect the rating of any existing furnaces, today's final rule prescribes the maximum blower delay time criterion specified in the 1993 Proposed Rule. This specification is for a furnace designed with an unvarying blower time delay during the cool-down test in today's final rule.

With respect to the comment by the CEC, the Department agrees that the wording in the 1993 Proposed Rule is misleading. In today's rule, therefore, the wording of ANSI/ASHRAE Standard 103–1993, section 9.5.1.2.1, which includes the 40°F temperature difference for condensing furnaces, is adopted instead. CEC also commented that for certain furnaces the 40°F temperature differential could be reached in less than three minutes and

on annual performance and cost of Operation of a furnace,'' February, 1978.

thus creating a possible cold draft. The blower time delay criterion is prescribed for blowers with adjustable time delay control in the current furnace test procedure. Changing the criterion would require the retesting of many existing furnaces. Also, the criterion was agreed to by consensus of the ASHRAE Standard Project Committee (SPC) 103 and specified in ANSI/ASHRAE Standard 103–1993. The Department sees no reason to change that criterion presently.

In the 1993 Proposed Rule, the Department also specified an exception to the delay time requirement for furnaces that employ a single motor to drive a power burner and the air circulation blower. In that case, the power burner and the blower would be stopped together. The current test procedure includes this exception of simultaneous start/stop operations during both the heat-up and the cool-down tests. ANSI/ASHRAE Standard 103–1993 specifically includes this exception in the heat-up test but it is not specified in the section for the cool-down test. The Department considered it to be only an inadvertent omission in ANSI/ASHRAE Standard 103–1993. There was no comment received on this issue, and the Department is specifying, in today's final rule, the modification to ANSI/ASHRAE Standard 103–1993. The Department specifies that if a single motor drives a power burner and the air circulating blower, the power burner and the blower shall be stopped together during the cool-down test.

4. Burner Box Inlet Damper and Flue Damper

Both GAMA and Inter-City Products supported the proposal to include a tracer gas test method for atmospheric furnaces with inlet or flue dampers. (GAMA, No. 8, at 2; and Inter-City, No. 7, at 4). There were no other comments on this issue. The Department has included this provision in today's final rule.

5. Jacket Loss Test for Downflow Furnaces

The proposal in the 1993 Proposed Rule to include a jacket loss test for downflow furnaces was supported by both GAMA and Inter-City Products. (GAMA, No. 8, at 2; and Inter-City, No. 7, at 4). These were the only comments on this issue. The Department is adopting the proposed jacket loss test procedure for downflow furnaces as specified in ANSI/ASHRAE Standard 103–1993 referenced in today's final rule.

6. Blower Compartment Heat Loss During Jacket Loss Test

Both GAMA and Inter-City Products supported the proposal in the 1993 Proposed Rule to exclude the surface area of the blower compartment in the jacket loss test. The CEC believed that the blower compartment should not be considered as part of the duct system and that the heat loss through the blower compartment should be measured in the jacket loss test. It stated that if the blower compartment is considered as the duct system, then the insulation requirement for duct systems in building codes will apply to the compartment. The CEC believed that this is not presently done to the furnace cabinet in the field and, in addition, manufacturers and others may recommend against the insulation of the cabinet. (CEC, No. 25, at 2).

The Department believes that for most furnaces, the blower compartment is in the return air side of the cabinet. The surface temperature of the blower compartment will be nearly the same as the air temperature around the compartment, and the heat loss from that surface to the test room air will be negligible. The added burden of instrumenting the blower compartment surface with thermocouples is not justified. The Department is therefore not adopting the CEC's suggestion of requiring some mechanism for measuring the heat loss from the blower compartment. The Department is adopting the provision of excluding the surface area of the blower compartment in the jacket loss test as specified in the ANSI/ASHRAE Standard 103–1993 referenced in today's final rule.

7. Revised Piping Arrangement for Hot Water Boilers

Both GAMA and Inter-City Products supported the proposal in the 1993 Proposed Rule for a revised piping arrangement for hot water boilers. (GAMA, No. 8, at 2; and Inter-City, No. 7, at 4). This was the only comment on this issue. The Department has adopted this provision as specified in ANSI/ASHRAE Standard 103–1993, which is referenced in today's final rule.

8. Maintaining of Draft During Off-Cycle

Both GAMA and Inter-City Products supported the proposal to maintain draft during off-cycle for only those oil-fueled or power gas burner furnaces that employ barometric dampers for draft control. (GAMA, No. 8, at 2; and Inter-City, No. 7, at 4). This was the only comment on this issue. The Department has adopted this provision as specified in ANSI/ASHRAE Standard 103–1993, which is referenced in today's final rule.

9. Tests Requirement for Modulating Units

In the 1993 Proposed Rule, DOE proposed to correct the following discrepancy between the current DOE test procedure and ANSI/ASHRAE Standard 103–1988, which DOE proposed to reference. The current DOE test procedure requires that for step modulating units, the steady-state efficiency test shall be conducted at both the maximum and the reduced input rates. The ANSI/ASHRAE Standard 103–1988 required the above tests at the reduced rate only. The 1993 Proposed Rule made clear that DOE would continue to require testing at both rates.

Both GAMA and Inter-City Products supported the proposal for testing modulating furnaces. GAMA put the proposed correction to ANSI/ASHRAE Standard 103–1988 for testing modulating boilers into the category of proposals on which it asked for delay in implementation until revised efficiency standards are adopted. (GAMA, No. 8, at 4; and Inter-City, No. 7, at 4). Carrier Corp. and Consolidated Industries both supported GAMA's position. (Carrier, No. 12, at 1; and Consolidated, No. 21, at 1). The Department does not agree with the comments that the correction is a revision to the existing DOE test procedure for modulating boilers. Such a test is already included. Specifically, the conditions (at rated input or reduced input) under which heat-up and cool-down tests are to be conducted are already specified in the current DOE test procedure. (See sections 3.1, 3.2, 3.4, and 4.5 of appendix N to subpart B of part 430.) The proposed clarification for the optional tracer gas test at rated input or at a reduced input rate is to make certain that the resulting measured draft factor D_P value(s) would be consistent with the other measured quantities when they are combined in the calculation procedure for the off-cycle losses. The Department believes that this clarification will have either no effect, or negligible effect on an insignificant number of units.

Such a requirement was not clearly stated in ANSI/ASHRAE Standard 103–1988, but in DOE's view it was implicit in that standard. The Department proposed this provision in the 1993 Proposed Rule only to clarify the language in the then-referenced ANSI/ASHRAE Standard 103-1988. The Department has therefore adopted this provision as specified in ANSI/ASHRAE Standard 103–1993, which is referenced in today's final rule.

10. On-Cycle Time Constant and Off-Cycle Time Constant

Both GAMA and Inter-City Products supported the proposal for the on-cycle time constant and off-cycle time constant. (GAMA, No. 8, at 2; and Inter-City, No. 7, at 4). The Department has adopted this provision as specified in ANSI/ASHRAE Standard 103–1993, which is referenced in today's final rule.

11. Multiplication Factor for Jacket Loss for Finned Tube Boilers for Isolated Combustion System (ICS)

In the 1993 Proposed Rule, DOE proposed to use the multiplication factor of Cj=0.50. Both GAMA and Inter-City Products supported the proposal for the value of the multiplication factor for jacket loss for finned tube boilers. (GAMA, No. 8, at 3; and Inter-City, No. 7, at 4). The Department has adopted this provision as specified in ANSI/ASHRAE Standard 103–1993, which is referenced in today's final rule.

12. Calculation Procedure for Electro-Mechanical Stack Dampers

GAMA commented that the proposed calculation procedure for evaluating the effectiveness of a stack damper would reduce the measured AFUE of both furnaces and boilers. (GAMA, No. 8, at 3). GAMA believes that the proposed changes would affect the efficiency rating of existing warm air furnaces.

In the case of warm air furnaces, the Department has considered the comment and disagrees with the statement that the proposed changes would affect the efficiency rating of existing warm air furnaces. Referring to Table 6, System Numbers, and sections 11.2.9.18, 11.2.10.3 and 11.2.10.4 of ANSI/ASHRAE 103–1993, a stack damper's operation has no effect on a warm air furnace installed as an Isolated Combustion System (ICS) No. 9 or 10. Because the existing non-weatherized warm air furnaces are rated as ICS systems, the problems cited by GAMA do not apply to existing furnaces. Also, because any direct vent system is defined as system No. 9 or 10, the problems likewise would not apply to direct vent systems such as those used for most mobile home furnaces.

In the case of boilers, which are installed indoors and rated as indoor systems, the effect of the revisions on the measured AFUE would be very small. For most existing boilers the stack damper closes within 30 seconds after the main burner is shut off, and the effect will be on the order of 0.1 percentage-point change in AFUE. The effect is therefore negligible for any stack damper that is completely closed within the 30-second interval. The effect, however, could be large if the damper closing time delay were to be extended for a long period. Such an extension would take advantage of the deficiency in the current procedure, where the damper is assumed to close instantaneously after the burner shut-off. The Department has therefore, adopted the revision as proposed in the 1993 Proposed Rule (and as included in ANSI/ASHRAE Standard 103–1993) in today's final rule.

13. Power Vented Systems Employing Post Purge After Burner Shut-Off

In the 1993 Proposed Rule, the maximum free post purge time was specified to be five seconds for both gas- and oil-fired furnaces and boilers. There were seven comments on this proposal. GAMA stated that the proposed maximum free post purge time would significantly reduce the measured AFUE of most existing models, and require DOE to amend the NAECA furnace and boiler efficiency standards for existing models that marginally meet the current minimum standard of 78 percent AFUE for furnaces and 80 percent for boilers. (GAMA, No. 8, at 4). Carrier Corp., Consolidated Industries, and Lennox Industries all supported GAMA's position. (Carrier, No. 12, at 1; Consolidated, No. 21, at 1; and Lennox, Transcript, at 77).

Inter-City Products requested that the implementation of this and other category 2 revisions be postponed to a future rulemaking, coordinated with implementation of amendments to furnace minimum efficiency standards. To support its request, Inter-City Products commented that DOE needs to lower the minimum standard on marginal units to correspond to changes in test procedure measurements, and address the problem associated with the utility rebate program. Inter-City Products further stated that for the manufacturers to modify these models, such that they attain the 80 percent AFUE value, the redesigned equipment may operate in the condensing region that can affect performance, reliability, and life of both the equipment and the associated vent system. (Inter-City, No. 7, at 3).

Energy Kinetics, Inc. commented that the proposed revision does not cover systems equipped with a power burner and a draft inducer. Energy Kinetics stated that the off-cycle flue gas flow rate with only the inducer on, but not the power burner, is significantly reduced from the on-cycle flow rate. According to Energy Kinetics, since the proposed revision in the 1993 Proposed Rule uses the on-cycle flue gas volume flow rate as a base to compute the flue loss during the post purge period, the loss will be higher than it should be. Energy Kinetics suggests that a tracer gas option be allowed for this type of system. (Energy Kinetics, No. 16, at 6).

The independent commenter, Mr. John Woodworth asserted that, based on research conducted at Brookhaven National Laboratory, the post-purge provisions are not accurate for oil-fired furnaces and boilers with relatively long post purge-periods. He reasons that, to reduce the test burden on manufacturers, the provisions assume a linearly decreasing flue gas temperature between the beginning and the end of the post purge period. Thus, measurements at only two points are required in the calculation. According to Mr. Woodworth, this assumption of a linearly varying temperature is valid only for a limited interval, since the temperature will eventually level off to nearly ambient conditions over a long purge period. Mr. Woodworth recommends that DOE adopt the provisions of ANSI/ASHRAE Standard 103–1993 which limit the post purge period during the test to 180 seconds. (Woodworth, No. 20, at 4).

The Department believes that the use of a post purge in power vented units during the off-cycle, when longer than necessary, is a waste of energy because a forced purge increases the loss of the residue heat in the furnace or boiler through the vent system. A forced purge is the forced combustion air flow through the heat exchanger. Given the deficiencies in the existing test procedure described in the 1993 Proposed Rule, DOE is aware that the current procedure could encourage a manufacturer to use a long post purge period to obtain a higher calculated AFUE rating while actually wasting more energy through the vent system. Tests conducted at NIST on a gas furnace with an induced draft combustion blower showed that increasing the post purge interval increased the flue loss, but the calculated AFUE based on current test procedure showed an increase in value. The discrepancy between the AFUE based on the current calculation procedure, and on the proposed calculation procedure, becomes progressively greater with an increasing post purge period. The difference was 0.9 percentage points with 30 seconds post purge and increased to 4.5 percentage points with 180 seconds post purge. Yet the calculated AFUE based on the current test procedure showed a gain (from the condition of no post purge) of about 0.2 percentage points at 30 seconds post purge to nearly 1.0

percentage point at 180 seconds post purge.

Data gathered indicated that the six major control manufacturers surveyed all have post purge timing of 30 seconds or less on their post purge control equipment. The data was gathered by the Lawrence Berkeley National Laboratory (LBNL) for DOE regarding the current practice of the furnace industry. The survey showed that if the free post purge time is extended from five seconds, as proposed in the 1993 Proposed Rule, to 30 seconds before the post purge calculation method is required, most of the existing furnace and boiler models that employ post purge will be treated as if there is no post purge. With post purge timing of 30 seconds, no retesting or re-rating will be required and no reduction in AFUE will result for those existing furnaces and boiler models.

Based on the above reasons, DOE is changing the maximum free post purge time of five seconds in the 1993 Proposed Rule to 30 seconds. That is, only units with post purge time longer than 30 seconds shall be tested by the prescribed post purge test procedure. Further, units with post purge periods of less than or equal to 30 seconds shall be tested without the post purge test procedure. The Department agrees with the commenters that if the maximum free post purge time is limited to the proposed five seconds, some existing furnace and boiler models that employ post purge time between five and thirty seconds would have to be retested. The Department acts today to limit the burden on the manufacturers of retesting those models and the possibility of lower AFUE ratings. The Department is prescribing, in today's final rule, the modified free post purge period of 30 seconds as the criterion for applying the revised test and calculation procedures for units that employ post purge after burner shut off.

DOE believes, however, that with this exception, where the maximum free post purge time is thirty seconds, additional energy is being lost through the venting system by the combustion blower. The Department will continue to examine this subject and may consider later implementation of the original five second criterion, which is based on the technical judgement of the ASHRAE Standard Project Committee (SPC) that developed ANSI/ASHRAE Standard 103–1993.

Secondly, on the issue of oil-fired furnaces and boilers that have purge periods greater than three minutes, the Department acts to limit the post purge time to 180 seconds during the rating test as suggested by commenter Mr. John Woodworth. If the designed post purge time is longer than 180 seconds, the blower control is to be bypassed and the blower manually turned off during the cool-down test. This provision is specified in ANSI/ASHRAE Standard 103–1993, which is referenced in today's final rule.

The comment by Energy Kinetics on the difference in the flue gas flow rate between the on-cycle (power burner and inducer on) and off-cycle (only inducer on during post purge) on oil-fired boilers, if the draft inducer is an integral part of the boiler supplied by the manufacturer, would require additional study. Therefore, this type of boiler is not covered by today's final rule. The Department will continue to solicit additional data on the on-cycle and off-cycle operations of this type of boilers, and will issue a revision to the test procedure at a future time.

14. Sealing of Ventilation Openings During Jacket Loss Test

The 1993 Proposed Rule would require conducting the jacket loss test with the ventilation openings sealed. There were six comments on this issue. GAMA provided data from tests recently conducted at the ETL Testing Laboratories of the Inchcape Testing Services (ETL). This data showed that for four furnace models tested for sealing the ventilation openings in jacket loss test, the percentage point reductions in AFUE were 1.0, 0.5, 0.7 and 0.1 for models currently rated at AFUE of 78.7 percent, 80.0 percent, 80.0 percent and 78.0 percent, respectively. Thus, two models would be below the 78 percent minimum and two models would be below the 80 percent rebate criteria if tested pursuant to the proposed revision. (GAMA, No. 8, at 4 and A–1). Carrier Corp., Consolidated Industries, and Lennox Industries all supported GAMA's position (Carrier, No. 12, at 1; Consolidated, No. 21, at 1; and Lennox, Transcript, at 77). Inter-City Products made several assertions on this issue. First, it stated that sealing ventilation openings could potentially reduce AFUE by 0.3–0.5 percent. Second, it stated that an attempt to determine which louver openings are for ventilation air egress and which are for intake cooling air would be a time-consuming and subjective test procedure. Third, the company claimed that a louver acting as ventilation air intake in one operating mode may be an exhaust louver in another. Fourth, it asserted that additional test time in development, agency certification, and independent efficiency audits (by ETL) would increase manufacturers' costs substantially. Finally, according to Inter-City, the revised procedure would lower the baseline efficiencies of equipment currently at 78 percent. (Inter-City, No.7, at 2). The CEC suggested that air leakage during the jacket loss test from any part of the furnace cabinet should represent the performance of the product as installed in the field. Any joints, holes, or other openings should remain as shipped by the manufacturer and should not be taped or sealed for the test. (CEC, No. 25, at 2).

Today's final rule does not include the sealing of furnace cabinet ventilation openings during the jacket loss test, and the sealing requirement specified in section 8.6.1.1 of the referenced ANSI/ASHRAE Standard 103–1993 has not been included in today's rule. Upon review, the Department considers that sealing of the ventilation openings will result in a more accurate measure of the combined effects of conduction and radiation heat loss. This is the heat loss from the cabinet surface to the test room surroundings and the convective cooling of the airflow into and out of the spaces adjacent to the inside surfaces of the jacket. The Department, however, has decided not to incorporate this provision into today's final rule. This is because the Department sees some merit in the objections offered by commenters with respect to test time, retesting and re-rating all the currently rated furnace units and the associated costs, reduction in currently marginal AFUE ratings, and the difficulty in objectively determining the most effective openings to seal. DOE will continue to examine this subject and may consider implementation of the provision at a later date.

15. Insulation Requirement for Units With Draft Diverter

The 1993 Proposed Rule would require insulation for units with a draft diverter, when testing furnaces with exposed diverters. There were three comments on this issue. GAMA objected to its immediate implementation. In addition, GAMA provided data from tests recently conducted at ETL. This data showed that, for two furnace models with integral draft diverters tested with insulation added to the draft diverter, the percentage point reductions in AFUE were 0.3 and 0.4 for the two models currently rated at AFUE of 78.0 percent. They would be below the 78 percent minimum standard if tested in accordance with the proposed revision. (GAMA, No. 8, at 4 and A–2). Carrier Corp. and Consolidated Industries both supported GAMA's position. (Carrier, No. 12, at 1; Consolidated, No. 21, at 1).

As described in the 1993 Proposed Rule on this issue, the ETL stated that it insulates the exposed diverters (in horizontal furnaces) when testing furnaces with exposed diverters. (April 30, 1991, letter from ETL to NIST). Therefore, the rated AFUE values for horizontal furnaces with exposed integral draft diverters in GAMA's Efficiency Certification Directory were tested with the proposed insulation in place. This means that the existing furnaces have already been tested according to the proposed provision and found to meet the minimum efficiency standard. Thus, no retesting or re-rating is required.

The Department therefore is not accepting GAMA's request that this provision be omitted from the final rule, and instead has adopted this provision as specified in ANSI/ASHRAE Standard 103–1993, which is referenced in today's final rule.

16. Insulation Requirement for Flue Collector Box

In the 1993 Proposed Rule, DOE called for the insulation of the flue collector box. Numerous comments were received on this issue. Specifically, Inter-City Products requested that the implementation of this provision be postponed to a later date. Inter-City Products cited the reduced AFUE of existing marginal units, that would require DOE to reduce the minimum standard, and the criterion of the 80 percent AFUE by the utility rebate program in support of the request. (Inter-City, No.7, at 1). Inter-City Products suggested that the flue collector box on equipment with draft inducers is significantly smaller in area than the sheet metal involved in an integral draft diverter, so losses are consequently less. Inter-City Products estimated that this provision would have an impact of lowering the efficiency by 0.3–0.4 percent in AFUE. Inter-City Products also believed that the requirement of insulating the collector box during the cool-down and heat-up tests, but not during the jacket loss test, constitutes ''double dipping.'' This is because any loss in heat from the collector box would be accounted for twice—first, as a reduced efficiency from a higher flue gas temperature during the cool-down and heat-up tests (cyclic test) due to the insulation requirement, and second, as a larger measured jacket loss because the insulation is not applied during the steady-state jacket loss test.

GAMA put this issue in its second category of proposed changes in the 1993 Proposed Rule and objected to its immediate implementation. In addition, GAMA provided data from tests recently conducted at ETL to show that for eleven furnace models tested for insulation of the exposed flue collector box, the percentage point reductions in AFUE ranged from 0.5 to 2.8 for models currently rated at AFUE of 78.0 percent to 80.2 percent. Seven models will be below the 78 percent minimum and five models will be below the 80 percent rebate criterion, if tested in accordance with the proposed revision. (GAMA, No. 8, at 4 and A–2). Carrier Corp., Consolidated Industries, and Lennox Industries all supported GAMA's position (Carrier, No. 12, at 1; Consolidated, No. 21, at 1; and Lennox, Transcript, at 77).

Energy Kinetics, Inc. commented that in addition to the cool-down and heat-up tests, the flue collector box should be insulated for the steady-state portion of the test also. It believed that without the insulation, the measured steady state efficiency is higher due to a lower measured flue gas temperature than that measured with the insulation. (Energy Kinetics, No. 16, at 6).

The commenters are not correct in classifying the proposed requirement of insulating the flue collector box on induced draft or forced draft units as a revision of the furnace test procedure. This requirement is already specified in the current test procedure, and has been in the DOE test procedure since 1980. Compliance with this requirement is demonstrated by a waiver request that was denied by DOE. This request was from the Carrier Corporation in 1980 for an exemption from the requirement of insulating the ''flue collector and inducer housing'' on its induced draft gas furnace. 76 FR 22799, April 21, 1981. The current test procedure cited at section 3.0—Test procedure, of appendix N to subpart B of part 430, 56 FR 12159, March 28, 1984 references section 9 of ANSI/ASHRAE Standard 103–1982 as the pertinent test procedure. In ANSI/ASHRAE Standard 103–1982, the requirement of section 9.1.1.6 specifies ''* * * cover the draft diverter and flue gas collector box (on a power vented unit) with insulation having an R value no less than 7. * * *'' Therefore, the provision is not a new requirement and should require no retesting or re-rating of any existing gas-fired, power vented units. The specification in the 1993 Proposed Rule was to: (1) Combine the requirement with the language in section 9.1.4 of ANSI/ASHRAE Standard 103–1988 that does not specifically include the language for a power vented unit in the insulation requirement, as was done in ANSI/ASHRAE Standard 103–1982, and (2) include any units that employ a power burner. The requirement is now specifically included in sections 7.2.2.2, 7.3.2.2, and 9.1.4, ANSI/ASHRAE Standard 103–1993.

DOE has reviewed the comments by Inter-City Products on ''double dipping,'' and by Energy Kinetics on the steady state efficiency being overstated due to an un-insulated flue gas collector box. The jacket loss and the steady state efficiency are measured without the insulation on the flue gas collector box because these conditions exist in practice. The reason for insulating the flue gas collector box during the transient cool-down and heat-up tests is to obtain a measured flue gas temperature as close as possible to its true value when the flue gas first exits from the heat exchanger. This allows a better calculation of the off-cycle flow through the heat exchanger. In the original development of the flue loss methodology, an assumption was made on the flue gas temperature variation during the transient condition of cool-down and heat-up. This assumption was based on the value of a flue gas temperature exiting the heat exchanger, not on a lowered value measured some distance away. This transient gas temperature variation has never been used in the calculation for jacket loss and steady state efficiency.

DOE has adopted this provision as specified in ANSI/ASHRAE Standard 103–1993, which is referenced in today's final rule. This action is taken for the reasons described above, and because this is not a new requirement for gas-fired units and no comments were received opposing the requirement for insulation of the flue gas collector box on oil-fired units.

17. Insulation Requirement for Downflow Furnaces

DOE proposed an insulation provision that specifies that during the cool-down and heat-up tests, the internal section of the vent pipe is to be insulated to an R value of not less than 7 ft^2–h–°F/Btu. GAMA and Inter-City Products both expressed their opposition to the insulation requirement. They claim that the insulation requirement will reduce the AFUE value of currently rated units, requiring the possible lowering of the minimum standard on marginal units and affecting the utility rebate program. GAMA provided data from tests recently conducted at ETL to show that for twelve furnace models tested with insulation of the internal vent pipe on downflow furnaces, the percentage point reductions in AFUE range from 0.2 to 1.1 for models currently rated at AFUE of from 78 percent to 80.2 percent. Eight of the models will be below the 78 percent minimum, and three will be below the 80 percent rebate criterion, if tested pursuant to the proposed revision. (GAMA, No. 8, at 2,4 and A–1; and Inter-City, No. 7, at 4). Carrier Corp., Consolidated Industries, and Lennox Industries all supported GAMA's position. (Carrier, No. 12, at 1; Consolidated, No. 21, at 1; and Lennox, Transcript, at 77).

The purpose of the proposal to require insulation of the flue pipe is to obtain as nearly as possible the true flue gas temperature required in the calculation of the flue loss. The assumption made in the calculation procedure is that the flue gas temperature is the temperature at the exit plane from the heat exchanger. Since this is sometimes impossible to measure in practice, provisions are made in the test procedure to measure the flue gas temperature in a more convenient and accessible location such as in the flue pipe or stack. Insulation of the sections of the flue gas passage between the heat exchanger exit plane and the flue gas temperature measuring plane in the stack is not for the purpose of reducing the heat loss through the jacket but to obtain a more accurate flue gas temperature.

Today's final rule does not include the insulation of the internal flue pipe during the cool-down and heat-up tests. Also, the insulation requirement specified in section 7.2.2.5 of the referenced ANSI/ASHRAE Standard 103–1993 has not been included in today's final rule. This action is justified by the fact that for the downflow furnace, there is no existing specification in the current DOE test procedure that covers the internal flue pipe. The Department considers the insulation of the internal flue pipe during the heat-up and cool-down tests as a desirable procedure in obtaining a more accurate measure of the flue gas temperatures. Commenters objected to immediate implementation, however, because of the test time, retesting and re-rating of all the currently rated downflow furnace units with the associated costs, and the reduction in AFUE. The Department decided that the objections offered by commenters warrant a delay in the implementation of this provision. DOE will continue to examine this subject and may consider the implementation of the insulation requirement at a later date.

18. Revised Minimum Value for the Draft Factor D_P and D_F

DOE proposed that a value of 0.05 for the draft factor D_P be assigned for any units whose D_P value, when measured by the optional tracer gas method, is less than 0.10. This action was based on the following circumstances. The current test procedure allows the minimum value for the draft factor D_P and D_F to equal 0.0 on units where absolutely no air flows through the combustion chamber and heat exchanger when the burner is off (section 9.4.4 of ANSI/ASHRAE Standard 103–1982 as referenced in section 3.0 of appendix N to subpart B of part 430, 56 FR 12159, March 28, 1984). However, it is very difficult to verify an ''absolutely no air-flow'' condition by current flow measurement technology.

Only two comments were received. GAMA objected to the immediate implementation of these changes. (GAMA, No. 8, at 4). Carrier Corp. and Consolidated Industries both supported GAMA's position. (Carrier, No. 12, at 1; and Consolidated, No. 21, at 1). Energy Kinetics, Inc. commented that the values are too small to have any significant effect. (Energy Kinetics, No. 16, at 6).

The Department does not agree with GAMA's position and has adopted this provision as specified in ANSI/ASHRAE Standard 103–1993, which is referenced in today's final rule. This action is founded upon the following observations. The measurement of very low flow rates of flue gas is very difficult, and replicating the measurement would be a problem at the low flow rate encountered. The Department considers the value of 0.05 to be reasonable. The Department believes that only pulse combustion furnaces meet the requirement of no air flow during the off-cycle. The effect of this change will be that more units can use a lower draft factor D_F (with a very slight increase in AFUE), but it will not result in a lower AFUE for the set of units that are minimally compliant with this provision, and will negate the necessity of repeatedly conducting the tracer gas test to confirm the accuracy of a measured value varying below the 0.1 range.

19. Water Pump Energy Consumption

DOE proposed the measurement of the electrical energy consumption of the water pump for hot water boilers in the 1993 Proposed Rule. GAMA put this requirement in its second category (GAMA, No. 8, at 4). Carrier Corp. and Consolidated both supported GAMA's position. (Carrier, No. 12, at 1; and Consolidated, No. 21, at 1). Hydronics Institute (HI) stated that not all boilers are supplied with pumps. Instead of measuring the pump power, HI suggested adopting the requirement in ANSI/ASHRAE Standard 103–1993. This requirement specifies the use of the nameplate wattage if the pump is supplied by the manufacturers and a default value of 0.13 kW if no pump is supplied. (HI, No. 15, at 3). Energy Kinetics stated that the value of 0.13 kW is too high and that the standard pumps shipped with residential systems today consume no more than 60 watts (W). (Energy Kinetics, No. 16, at 7). Mr. John Woodworth, independent commenter, stated that the requirement would create a hardship and the results would have an insignificant effect on the annual efficiency descriptor. He stated that boilers are seldom tested with the ''standard pump'' in the laboratory. Instead, test rigs in most laboratories include pumps and mixing valves to test all sizes of boilers. When sold, a model boiler may be equipped with as many as three different brands of pumps, or shipped without a pump. Mr. Woodworth recommended that DOE adopt the requirement of ANSI/ASHRAE Standard 103–1993 instead of the proposed measurement requirement. (J. Woodworth, No. 20, at 3).

The Department, in today's final rule, adopts the requirement of ANSI/ASHRAE Standard 103–1993 for pump power consumption. The requirement states that if a pump is supplied with the boiler (as cited by Energy Kinetics), then BE (electrical power to water pump) is the nameplate wattage rating, and if no pump is supplied, then the current default value of BE is 0.13 kW in calculation of annual electrical energy consumption. By referencing the revised ANSI/ASHRAE Standard 103–1993, this is included in today's final rule. The Department does not agree with GAMA's inclusion of this issue in its second category, since pump power consumption is not involved with the calculation of AFUE. DOE does agree that the 1993 Proposed Rule, by requiring an additional measurement of pump power consumption, would impose a burden that does not significantly improve the calculation of annual electrical energy consumption. Hence, DOE adopts instead the ANSI/ASHRAE provision.

20. Energy Factor and Annual Efficiency Descriptors

In the 1993 Proposed Rule, the Department proposed two energy descriptors, the energy factor and annual efficiency, for both fossil-fueled furnaces and boilers. The proposed energy factor includes the auxiliary electrical energy consumption of the appliance, and is identical to the energy factor term as defined in appendix B of ANSI/ASHRAE Standard 103–1993, except that DOE proposed a different ''F-factor.'' Appendix B defined ''energy factor'' as the ratio of the annual output of heat energy provided to the space to the total annual energy input required to operate the appliance. The annual output of heat energy includes the contribution from a portion of the auxiliary electrical energy that is recovered as useful heat. The total annual energy input required includes both the fossil fuel and the auxiliary electric energy. The F-factor, however, equal to 3.0 in ANSI/ASHRAE Standard 103–1993, was 3.37 in the DOE proposal. The modified F-factor then approximated the ratio of the energy required to generate and transmit the auxiliary electricity consumed by the appliance to the amount of such electrical energy. The F-factor was applied to the auxiliary electrical consumption to reflect the efficiency in the use of all energy used to run the appliance.

The purpose of the Department's proposal to establish the new efficiency descriptor and the energy factor was to account for the auxiliary electric energy in the operation of fossil-fueled furnaces and boilers. The proposed descriptors would combine the consumption of fossil fuel and auxiliary electricity into a single value that would reflect the overall energy cost of a fossil-fueled appliance. The current energy descriptor, AFUE, deals only with the primary type of energy consumed by an appliance. Therefore, it does not give the consumer a complete account of the overall energy and cost performance of the appliance. On the basis of AFUE alone, a consumer would not be able to compare the overall cost of operation of two or more different models of fossil-fueled furnaces or boilers of comparable output capacity with blowers of different motor efficiencies or on/off controller timings. The proposed energy descriptors were intended to give the consumer the necessary information for a more informed decision. Another purpose for the proposed energy descriptors was to provide an evaluation procedure for different design options for fossil-fueled furnaces and boilers that involves auxiliary electric energy consumption. This information would be considered in the determination of energy efficiency standard levels.

At the public hearing and during the public comment period following the publication of the 1993 Proposed Rule, twenty-one commenters offered views on this issue. The comments ranged from support for an energy descriptor that included both the fossil fuel and the auxiliary electric energy consumption, to complete disagreement with that concept. Nearly all commenters however, expressed reservations on the source-based multiplication factor (the F-factor to be applied to the auxiliary electrical energy consumption of fossil-fueled appliances). A summary of the commenters' reasons for objection include: (1) The use of source energy in determining the energy efficiency, through the proposed F-factor, is not permitted by EPCA and NAECA, which specify that efficiency must be determined by energy consumption at the point of use (site) of the covered products; (2) the application of the F-factor to the auxiliary electrical energy consumed by fossil-fueled appliances, but not to all-electric furnaces, is biased against fossil-fueled appliances; (3) a national average source to site energy ratio ignores the variation in the value of the F-factor due to different methods of power generation; (4) the value of the proposed energy descriptor would be lower than the AFUE, creating confusion for AFUE based rebate/incentive programs by utility companies; (5) combination furnace/air-conditioning systems with a single heating capacity may require different size blowers depending on cooling load requirements; and (6) fuel switching and marketplace distortion could result. A detailed summary of comments on the F-factor and the proposed energy descriptor is found in the **Federal Register** notice. 60 FR 4348 (January 20, 1995).

In 1995 the Department reopened the comment period on the 1993 Proposed Rule, solely to address this issue, and the Department proposed a revision of its 1993 proposal. In place of the 1993 Proposed Rule's definition of the F-factor as a source-to-site based energy ratio, the Department proposed a cost-based electricity-to-fossil fuel price ratio with a value of 3.36 at the point of use. The proposed revision was published in the **Federal Register** on January 20, 1995. 60 FR 4348.

Seventy comments were received concerning this proposed revision to the F-factor. Many comments were similar to those received in response to the original 1993 proposal, and disregarded the change to an F-factor based on cost of energy. Most commenters considered the proposal as violating the intent and language of EPCA and NAECA, asserting that these statutes define energy efficiency with reference to energy consumption at the point of use (site energy). Because comments were similar or identical to those submitted following the 1993 proposal, a commenter-by-commenter description of the comments is not presented here. Virtually all of the commenters urged DOE to either withdraw or modify the F-factor proposal.

One of the principal issues raised by the commenters is the authority of DOE to establish an energy efficiency standard for furnaces on the basis of either energy cost or source energy, as opposed to site energy consumption in units of energy. Upon further examination, it is the view of the Department of Energy that EPCA requires the energy efficiency of a furnace to be based on consumption of energy at the site of the furnace, and that the statute does not permit the promulgation of an energy efficiency standard that is expressed in terms of annual operating costs of the furnace.

EPCA defines the energy conservation standard of a covered appliance as ''a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use.'' EPCA section 321(6), 42 U.S.C. 6291(6). EPCA defines ''energy efficiency'' as the ratio of a product's useful output of services to its ''energy use.'' EPCA section 321(5), 42 U.S.C. 6291(5). Thus, ''energy use'' is a basis for any standard for furnaces and boilers. ''Energy use'' in turn is defined in section 321(4), 42 U.S.C. 6291(4), as ''the quantity of energy directly consumed by a consumer product at point of use.'' Therefore, furnace energy conservation standards must be based on consumption of energy at the site of the appliance. The Department believes that this conclusion is further supported by terminology used in section 325(f) of EPCA, 42 U.S.C. 6295(f), which concerns standards for furnaces. Section 325(f)(1)(B), for example, requires the promulgation of an ''energy conservation standard'' for small furnaces, and, as just discussed, such a standard must be based on energy consumption at the site of the application.

Based on the above analysis, the Department is withdrawing the proposed energy descriptor and energy factor in today's final rule. The current procedures of determining AFUE from the energy efficiency descriptor, and of calculating of the annual energy consumption of fossil fuel and electrical energy for furnaces/boilers, therefore will remain unchanged. In the meantime, the Department will continue to explore and to solicit input from interested parties on various options for the development of a descriptor that would take into account separately both a new energy factor for fossil fueled furnaces and the auxiliary electrical energy consumption of an appliance.

21. Measurement of Electric Energy Consumption for Interrupted Ignition Device

The 1993 Proposed Rule required measurement of the energy consumption by the interrupted ignition device. Both GAMA and Inter-City Products argued that the electrical energy consumption of the interrupted ignition device constitutes an extremely small amount of all electrical consumption of a furnace. To include the measurement of the energy consumption of the device is burdensome in time and effort. Carrier Corp. and Consolidated Industries both supported GAMA's position. (Inter-City, No. 7, at 3; GAMA, No. 8, at 18; Carrier, No. 12, at 1; and Consolidated, No. 21, at 1). HI and independent commenter Mr. John Woodworth both stated that the energy consumption of these ignition devices is small and will not affect the energy descriptors. Additionally, according to HI and Mr. Woodworth, a separate test would be required since the ignition devices are off during the steady state test, and they are difficult to measure because the time duration and power draw are not constant during ignition. Therefore, HI recommended the deletion of the device in the proposed measurement requirement and the calculation procedures. (HI, No. 15, at 3; and J. Woodworth, No. 20, at 4).

To assess the merits of these comments, and to determine the amount of energy consumption of an interrupted ignition device, NIST measured the power input, on-time duration and energy consumption of an electric hot surface ignition device on a 90,000 Btu/h input gas-fired furnace. It was found that the power input varied from 515 W to 470 W during the 40 seconds the device was on. Except for the first few seconds, the power draw was approximately 470 W. This translated into an energy consumption of approximately 18 Btu per burner on-cycle, or 63 Btu/h for the assumed average 3.5 burner on-cycles per hour (3.87 minutes on and 13.3 minutes off) for a single stage furnace. While this compares favorably with the average 400 Btu/h energy consumption of a pilot light, DOE does not agree that the energy consumption of the interrupted ignition device should be completely ignored. DOE agrees, however, that the energy consumption is small enough to justify the deletion of the measurement requirement in the proposed test procedure. Therefore, DOE is specifying in today's final rule that the on-time of an interrupted ignition device, as specified in a furnace's nameplate, should be used as the actual on-time. Further, the nameplate power input rating, or 0.4 kW if none is specified on the nameplate, should be used as the average power draw in the electrical energy calculation. The device on-time will be measured with a stop watch if not specified on the nameplate. The device on-time will be set to equal zero if the nameplate or measured value is less than or equal to five seconds.

22. Measurement of Energy Consumption of Combustion Blower During Post Purge

The test procedure of the proposed rule and ASHRAE 103–93 requires the measurement of the energy consumption of combustion blowers during a post purge. Commenters GAMA and Inter-City Products both argued that the electrical energy consumption of the combustion blower during post purge constitutes an extremely small amount of all electrical consumption of a furnace, and that to include the measurement of the energy consumption of the combustion blower is overly burdensome in time and effort. Carrier Corp. and Consolidated Industries both supported GAMA's position. (Inter-City, No. 7, at 3; GAMA, No. 8, at 18; Carrier, No. 12, at 1; and Consolidated, No. 21, at 1). Energy Kinetics, while not commenting on the power consumption of the draft inducer during post purge, pointed out that the power burner is off for some oil-fired units during post purge and thus, only the draft inducer is on. As a result, the auxiliary electrical energy consumption measured during steady state may not be equal to the electrical energy consumption during the post purge period. (Energy Kinetics, No. 16, at 6).

The 1989 ASHRAE Handbook of Fundamentals states that the power consumption of motors with rated horsepowers of $\frac{1}{20}$ hp and $\frac{1}{12}$ hp, which would be typical for combustion blowers, are approximately 360 Btu/h and 580 Btu/h, respectively. For a post purge period of 30 seconds, the energy consumptions would be 3–5 Btu per off-cycle for the two sizes of motors, and for a post purge period of 180 seconds, the motor energy consumptions would be 18–29 Btu per off-cycle. For an average 3.5 on-cycles per hour of furnace operation, the energy consumption would be 10 Btu/h to 17 Btu/h for the 30-second post purge and 60 Btu/h to 100 Btu/h for the 180-second post purge. For boilers with an average of 1.3 on-cycles per hour, the values would be approximately $\frac{1}{3}$ the above.

DOE does not agree that the energy consumption should be completely ignored. Therefore, DOE is specifying in today's final rule that the nameplate power rating of the combustion blower be used as the power consumption in the calculation for the electrical energy consumption. DOE agrees that the energy consumption is small enough to justify the deletion of the electric power measurement requirement for the combustion blower. But measurement of the full length of the post purge period, easily determined with a stop watch, is still required as set forth in the proposed rule.

23. ANSI/ASHRAE Standard 103–1993

The 1993 Proposed Rule referenced ANSI/ASHRAE Standard 103–1988 and added additional amendments to cover the changes, revisions and advances in technology between the years when the Standard was published (1988) and the Proposed Rule was published (1993). Those additional amendments included a revised calculation procedure for units with stack dampers; revised test procedures for atmospheric burner units with a burner inlet damper or flue damper; revised test procedures for power burner units employing post purge during the off-cycle; insulation requirements during heat-up and cool-down tests for downflow furnaces; a jacket loss test for units with ventilation openings on their cabinets; and other technical corrections.

Subsequent to the publication of the 1993 Proposed Rule, ASHRAE published in October 1993 ANSI/ASHRAE Standard 103–1993 which supersedes ANSI/ASHRAE Standard 103–1988. The revised ANSI/ASHRAE Standard 103–1993 incorporated most of the revisions and additions to ANSI/ASHRAE Standard 103–1988 that were included in the 1993 Proposed Rule, with the following exceptions: (1) The requirement of a minimum on-time delay for the blower at burner ignition and a maximum off-time delay after burner shut-off for units with an unvarying blower timing control; (2) the actual measurement of power input to hot water boiler pumps; (3) the measurement of ignition energy input to interrupted ignition devices; and (4) the measurement of combustion blower time delay during post purge after burner shut-off in power vented units. With the above exceptions, the revised ANSI/ASHRAE Standard 103–1993 and the 1993 Proposed Rule are nearly identical in content.

Commenters including GAMA stated that ANSI/ASHRAE Standard 103–1993 should be incorporated in the Department's test procedure rather than ANSI/ASHRAE 103–1988 as proposed in the 1993 Proposed Rule. (GAMA, Transcript, at 8). HI stated that since

ANSI/ASHRAE 103–1988 is no longer the current standard and will no longer be published by ASHRAE, it would be difficult for manufacturers to obtain additional copies for reference; therefore, the 1993 version should be referenced. (HI, Transcript, at 74). Mr. John Woodworth, who was Chairman of the SPC that developed ANSI/ASHRAE 103–1993, Secretary of the SPC for ANSI/ASHRAE 103–1988 and Vice-Chairman of the SPC for ANSI/ASHRAE 103–1982, suggested that DOE should reference the ANSI/ASHRAE 103–1993 rather than ANSI/ASHRAE 103–1988. He asserts that, with few exceptions, the requirements in ANSI/ASHRAE 103–1993 are the same as the requirements in the 1993 Proposed Rule. In addition, ANSI/ASHRAE 103-1988 will no longer be available from ASHRAE. (John Woodworth, No. 20, at 2). The CEC stated that it supports the use of ANSI/ASHRAE Standard 103–1993 with DOE-specified changes. (CEC, No. 25, at 3). It was suggested by Lennox (Lennox Transcript, at 78) that the test procedure be published in its entirety.

The Department agrees with the commenters on this issue and is referencing the ANSI/ASHRAE Standard 103–1993 instead of the 1988 version in today's final rule. DOE decided not to publish the above standard in its entirety, since it is the practice of the Department to incorporate by reference any industry consensus standards, and the test procedures adopted in today's final rule are nearly identical to ANSI/ASHRAE Standard 103–1993.

24. Other Minor Modifications to ANSI/ASHRAE Standards 103–1988 and 103–1993

In the 1993 Proposed Rule, DOE also proposed to adopt corrections and clarifications of several typographical errors and inconsistencies identified by ASHRAE SPC 103 following publication of ASHRAE Standard 103–1988.

No commenter expressed objection to those specific revisions with the exception of Mr. Woodworth on revision to section 9.7.3 of the Standard. Therein, Mr. Woodworth stated that, since $T_{F,OFF}$ is not needed in the calculation of off-period flue gas mass flow rate if the draft is maintained during cool-down, the $T_{F,OFF}$ reading is not necessary. The draft is maintained during cool-down for units with barometric draft regulators. Therefore, the phrase ''if draft is not maintained during cool-down'' should not be deleted. (J. Woodworth, No. 20, at 4). DOE agrees with Mr. Woodworth's comment, and the proposed revision is dropped from today's final rule.

DOE, by referencing ANSI/ASHRAE Standard 103–1993 today, has included all the other minor revisions and corrections to ANSI/ASHRAE Standard 103–1988 in today's final rule. With the exception of the item commented on by Mr. Woodworth above, the revised ANSI/ASHRAE Standard 103–1993 incorporated all the other minor revisions and corrections to ANSI/ASHRAE Standard 103–1988 described in the 1993 Proposed Rule.

After the publication of ANSI/ASHRAE Standard 103–1993, a few typographical errors were identified. On October 24, 1996, ASHRAE issued an Errata Sheet for ASHRAE Standard 103–1993, that listed the typographical errors to be corrected in ANSI/ASHRAE 103–1993. This ASHRAE Errata is incorporated by reference in today's final rule.

25. Other Issues

The following is a discussion of comments DOE received on issues not raised by the proposed test procedure for furnaces and boilers. As discussed below, however, in the 1993 Proposed Rule DOE had requested comments on certain of these issues.

(1) Distribution System Efficiency.—First, commenters including Dr. M. A. Habegger of Boulder, Colorado, remarked that in the field installation, the air flow rate through the distribution system has a large effect on the overall system efficiency. Further, the value of AFUE obtained through the current test procedure is usually much higher than the overall system efficiency. (M. A. Habegger, No. 22 at 1). The Department agrees that a reduced air flow rate will reduce the overall efficiency of the heating system due to a higher flue gas temperature and duct air leakage.

Dr. Habegger further comments that the circulation air flow rate is not considered in the current test procedure and that testing the efficiency of equipment without considering the overall installed system effect is meaningless. The Department disagrees. The rate of circulation air flow is addressed in the test procedure by the limits set on both the minimum external static pressure and the air temperature rise between the supply and return air. This assures that the circulation air blower will deliver the appropriate amount of air flow at the required design conditions.

As the Department specifically pointed out in the preamble to the 1984 Final Rule for furnaces, boilers, and vented and unvented home heaters, the test procedures cannot predict the energy performance of a furnace in every installation. 49 FR 12153 (March 28, 1984). Rather, their use is for comparison purposes and thus installation variables are only representatively accounted for. That preamble continues to state the Department's position on this issue.

(2) Input/Output Method.—Two commenters, Energy Kinetics and the CEC, responded to the Department's request to comment on the appropriateness of a test procedure for furnaces and boilers based on an input/output method. Both suggested the development or adoption of the input/output method as a more accurate method for rating furnaces and boilers in place of the present flue loss method. (Energy Kinetics, No. 16, at 7; and CEC, No. 25, at 3). GAMA, in response to questions during the public hearing, stated that ETL researchers working on an input/output method for GAMA experienced a great deal of difficulty in repeating the test results and in correlating the resulting efficiency rating with the current method. GAMA felt that more time is needed for work in the input/output method. (GAMA, Transcript, at 35).

An analysis by Dr. D. R. Tree of Purdue University with data supplied by NIST on the errors associated with the input/output method showed that for warm air furnaces, the uncertainties in duct air flow measurement and non-uniform temperature distribution in the duct, during steady state and cyclic conditions, would result in an error estimate of ±12 percent for the AFUE value. This made the input/output method unacceptable as a test procedure for warm air furnaces.[4] The problem of flow and temperature measurements for hot water boilers would not be as severe. A detailed method, however, on the transient performance of hot water boilers, both during the on-cycle (energy delivered) and the off-cycle (heat loss) needs to be developed and a consensus on the procedure agreed upon. The problems of testing according to two different test procedures, one for warm air furnaces and one for hydronic heating systems, also require further discussion. The Department is, therefore, reserving action on the possible adoption of an input/output method for hydronic heating systems to a future rulemaking.

(3) Test Procedure for Combined Space/Water Heating Appliances.—Only Energy Kinetics raised this issue, and questioned the appropriateness of the current ASHRAE Standard 124–

[4] David R. Tree, ''Error Analysis of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnace Boilers, Report Number 4, Executive Summary,'' Ray W. Herrick Laboratories, Purdue University.

1991 that covers the testing and rating of combination appliances. (Energy Kinetics, No. 16, at 8).

The Department is preparing to propose a test procedure for combined space/water heating appliances in the future. DOE welcomes any comments and input from industry and interested individuals and organizations.

(4) Off-Cycle Draft Setting.—Only Energy Kinetics commented that the operation and off-cycle draft conditions at the flue connection to a unit affect the ratings of the unit, and suggested that the draft value should not be left to be at the manufacturer's recommendation. Energy Kinetics suggested a standard draft level of 0.05″ water column to be maintained at both the on-cycle and off-cycle periods during the test. (Energy Kinetics, No. 16, at 5).

DOE believes that this specification is not necessary as the draft produced during the operation of the unit cannot be arbitrarily set by the manufacturer if proper operation, such as smoke number, CO_2 concentration, and flame stability, of the unit is to be maintained. DOE reasons that if the manufacturers do not require or recommend the maintenance of a specific draft level during the off-cycle for the normal operation of their unit, it should not be required during the off-period test.

(5) Supply and Return Water Temperature Settings for Hot Water Boilers.—Energy Kinetics stated that the hot water boiler temperature settings of 120°F return water temperature and 140°F supply water temperature during the tests, as prescribed in the current test procedure, are too low. They are not the normal temperatures of 160°F and 180°F encountered in a home installation. (Energy Kinetics, No. 16, at 4).

The Department prescribed the test conditions for hot water boilers (boiler return water of at least 120°F and a 20°F temperature rise) during the 1983 proposed rulemaking (48 FR 28014, June 17, 1983) before the publication of the final rule for the current furnace test procedure (49 FR 12148, March 24, 1984). In so doing, the Department stated its belief that all non-condensing hot water boilers, including finned tube boilers and low thermal mass boilers, generally operated at these conditions, and the specifications would eliminate the need for future test procedure waivers for specific types of hot water boilers from a uniform test condition. At that time the boiler industry had also indicated its desire to have these test conditions included. The Department sees no fundamental change in the application of hot water boilers to warrant revision to the current test procedure. In addition, changing the test conditions to those suggested by Energy Kinetics would result in a reduction of the AFUE for existing hot water boilers as the flue loss would be slightly higher due to a higher flue gas temperature. This would require the retesting and re-rating of most existing hot water boilers.

For the reasons discussed above, today's final rule does not include any changes to the test conditions with respect to the boiler water return temperature and temperature rise for hot water boilers as specified in the current test procedure.

(6) Energy Lost at Appliance Location (Boilers in Unheated Space).—Energy Kinetics disagreed with the requirement that boilers be tested as indoor installation. It claimed that most boilers are installed in un-conditioned space. (Energy Kinetics, No. 16, at 4).

Since the minimum standard for boilers is based on a statutory definition of AFUE which explicitly assumes that non-weatherized boilers are located indoors, DOE will not consider any change in the installation location for boilers at the present time.

(7) Setting Throughput Air Temperature Rise for Furnaces.—In the current DOE test procedure and ANSI/ASHRAE Standard 103–1988, the adjustment to the air throughput for warm air furnaces at steady state operation is specified under the following conditions: a temperature rise, across the heat exchanger, shall be the higher of (1) 15°F below the maximum temperature rise, or (2) 15°F above the minimum temperature rise, as specified by the manufacturer.

In the 1993 Proposed Rule and in the 1993 revision of ANSI/ASHRAE Standard 103 (as 103–1993), a provision was added to the test setting of the air temperature rise. The provision requires that, for furnaces whose design does not permit a temperature rise range of 30°F, the furnace shall be tested at the midpoint of the rise range specified by the manufacturer if the rise is less than 30°F. Commenters GAMA and Inter-City mentioned this provision for condensing furnaces whose temperature rise range may be less than 30°F, and listed this provision in GAMA's first category of revisions for immediate implementation. (GAMA, No. 8 at 3; Inter-City, No. 7 at 4).

DOE has adopted this provision as specified in ANSI/ASHRAE Standard 103–1993 referenced in today's final rule.

B. Vented Home Heating Equipment

The Department originally published the test procedure for vented home heating equipment on May 2, 1978. 43 FR 20182. The Department amended this test procedure on March 28, 1984, to include a simplified vented heater test procedure for heaters with modulating controls, manually controlled vented heaters, vented heaters equipped with thermal stack dampers, and floor furnaces. 49 FR 12169.

In the 1993 Proposed Rule, DOE proposed the following amendments to the vented home heating equipment test procedure: (1) To establish an annual efficiency descriptor to account for the auxiliary electrical energy consumed by the fan or blowers in addition to the fossil fuel consumed; (2) to revise the calculation procedure for AFUE for manually controlled heaters; and (3) to revise the calculation procedure for weighted average steady-state efficiency for manually controlled heaters with various input rates.

The following discussion addresses the comments received on the proposed rule.

1. Annual Efficiency Descriptor

The Department proposed in the 1993 Proposed Rule to adopt the energy factor as defined in appendix B of ANSI/ASHRAE Standard 103–1993 as the new energy descriptor for vented home heating equipment, and renamed it the annual efficiency descriptor.

The Department's current test procedure for vented home heating equipment prescribes the calculation of AFUE based on the energy consumption of fossil fuel only. Since auxiliary electrical energy can be consumed by these appliances such as for the operation of a blower, DOE considered that a more appropriate energy descriptor was needed to account for both fossil fuel and auxiliary electrical energy consumption of the appliances. This energy descriptor would also be used to address the electrical energy used by some of the design options considered for energy standard level evaluation.

Seventeen commenters, directly or in support of another commenter, have commented on this issue. The comments from each individual or organization were discussed in the **Federal Register** notice of January 20, 1995. 60 FR 4348. This was described previously in the section for the proposed energy factor and annual efficiency descriptors for central furnaces and boilers. (See II.A. 20 above, ''Annual Efficiency Descriptor and Energy Factor.'')

As concluded in the discussion above, DOE has decided to withdraw the proposed energy descriptor from today's final rule. Since the commenters combined their comments on this proposed energy descriptor with those for the central furnaces/boilers, readers are referred to that section for a discussion of this issue. Therefore, the current procedures of determining AFUE as the energy efficiency descriptor will remain unchanged. However, the proposed procedure for the calculation of the annual energy consumption of fossil fuel and electrical energy for the vented home heating equipment is included in today's final rule. This added procedure does not involve any additional testing beyond that required by the current test procedure. The added calculation procedure is intended to allow for the adequate and fair cost ranking of the different design options that may be considered in future evaluations of possible revisions of energy standard levels.

2. Pilot Light Energy Consumption for Manually Controlled Heaters

In the 1993 Proposed Rule, for manually controlled heaters, under certain conditions, the measurement of pilot light energy is not needed. Two comments on this issue were received. GAMA supported the provision of not requiring the measurement of the pilot energy consumption for manually controlled heaters equipped with a piezo igniter. (GAMA, No. 8, at 20). The CEC stated that the language in the provision should be more explicit in defining what is meant by the phrase ''when the heater is not in use and instruction to do so is given,'' in section 3.5.2 of appendix O to subpart B of part 430. The CEC further stated that the manufacturer should only be allowed to ignore the pilot energy use if the pilot extinguishes whenever the burner is off. (CEC, No. 25, at 3).

The Department agrees with the suggestion of the CEC to clarify when the proposed provision is applicable. This provision applies to a heater that provides manually controlled settings for the control knob in the operation of the appliance, and a clearly marked knob setting such as the ''OFF'' knob setting shuts off the appliance completely including the pilot light. DOE is today revising the section in question to read as follows:

''3.5.2 For manually controlled heaters where the pilot light is designed to be turned off by the user when the heater is not in use, that is, turning the control to the OFF position will shut off the gas supply to the burner(s) and to the pilot light, the measurement of Q_P is not needed. This provision applies only if an instruction to turn off the unit is provided on the heater near the gas control valve (e.g., by label) by the manufacturer.''

3. Weighted Average Steady-State Efficiency

In the 1993 Proposed Rule, DOE proposed that for manually controlled vented home heaters with multiple input rates whose design is such that the specified minimum firing rate cannot be set at 50±5 percent of the unit's maximum firing rate, the test will be conducted at the unit's minimum fuel input rate, provided that the minimum input shall be no higher than ⅔ of the maximum fuel input rate of the heater.

GAMA supported this provision. (GAMA, No. 8, at 20). DOE is adopting the provision in today's final rule.

C. Pool Heaters

The Department published the pool heater test procedure on February 7, 1989, referencing ANSI Standard Z21.56–1986 for gas-fired pool heaters. 54 FR 6076. In the 1993 Proposed Rule, DOE proposed to amend the pool heater test procedure, first, to include an annual efficiency descriptor that accounts for the fossil fuel and the auxiliary electrical energy consumed by any fan or pump and, second, to replace the reference to ANSI Standard Z21.56–1986 with references to the then updated version of ANSI Standard Z21.56.

Standard Z21.56 was updated again in 1994. But no substantive changes were made in the portions of that Standard which DOE had proposed, in the 1993 Proposed Rule, to incorporate into its pool heater test procedure. DOE is therefore referencing ANSI Standard Z21.56–1994 in the pool heater test procedure it adopts today.

All of the comments received on the proposed amendment to this test procedure concerned the proposed annual efficiency descriptor. The following discussion addresses those comments.

1. Annual Efficiency Descriptor

The Department proposed in the 1993 Proposed Rule a new energy descriptor, the Annual Efficiency (AE), for pool heaters. The proposed AE descriptor, was defined as the ratio of the annual output of energy delivered to the heated pool water by fossil fuel to the total annual energy input to the heater including auxiliary electrical energy. The latter term, auxiliary electrical energy, was multiplied by a factor F which represents the ratio of the heat energy required to generate and transmit the electricity to the electrical energy delivered at the pool heater. This was for the purpose of reflecting the efficiency of total energy used to run the appliance.

The Department's current test procedure for pool heaters prescribes the calculation of the thermal efficiency under steady state condition only. The thermal efficiency is defined as the ratio of the useful output of heated water to the sum of the input of fossil fuel energy and auxiliary electric energy during the steady state test period. DOE considered that a more appropriate energy descriptor was needed in order to account for the energy consumption during the burner-off periods of a pool heating season. DOE based this view on the fact that a significant quantity of energy can be consumed by a continuous pilot light and the auxiliary electrical energy consumption during the burner-off periods of the pool heating season. The proposed energy descriptor could also be used to address the energy savings by some of the design options that might be considered in future evaluation of possible revisions of energy standard levels. For example, to consider electronic ignition, the evaluation would have to account for the savings in gas consumption resulting from elimination of a continuous burning pilot.

Seventeen commenters, directly or in support of another commenter, have commented on this issue. The comments from each individual or organization concerning the proposed multiplication factor F applied to the auxiliary electric energy consumption are discussed in the **Federal Register** notice of January 20, 1995 (60 FR 4348). This was described previously in subsection 20 of section II.A of this notice, which discusses the proposed energy factor and annual efficiency descriptors for central furnaces and boilers. Readers are referred to that section for the discussion of the F-factor issue.

GAMA also commented on the proposed annual efficiency descriptor concerning pool heaters. GAMA stated that the use of a recirculating pump should be factored into the AE descriptor only if the pump is used during the thermal efficiency test under section 2.8.1 of ANSI Z21.56–1990 standard. Further, GAMA claims, the pump or the pump/filter system used in any given installation in the field that is not supplied by the manufacturer should not be considered as part of the heater's auxiliary components. GAMA commented that DOE should focus on addressing a pool heater's primary electrical energy consumption rather than auxiliary losses.

The Department believes that the above concerns expressed by GAMA are unfounded. As shown in section 4 of appendix P of the 1993 Proposed Rule, the determination of the auxiliary electrical energy consumption of the pool heater is as specified in ANSI Z21.56–1990 standard, and was not modified in the 1993 Proposed Rule. As proposed in section 4.4 of appendix P, the calculation of the annual auxiliary electrical energy consumption is based on heater on-time only.

GAMA first stated that, since DOE defined the average number of burner operating hours as 104 hours independent of pool and heater size, then ''100,000 Btu/hr and 400,000 Btu/hr pool heaters can have the same AE value, and would give the impression that a 400,000 Btu/hr pool heater is an effective choice for heating a 500 gallon hot tub.'' GAMA then stated that during pool ''off-season'' hours, the continuous pilot is usually shut off.

DOE disagrees with the first statement. If the output capacity of the pool heater is properly selected by the contractor or installer based on the size or load requirement of a particular pool, then the burner operating time would be neither excessively long nor unduly short. Moreover, although the selection of a particular pool heater among models of similar capacity for a specific pool size may be based on its energy efficiency, the selection of a correct capacity heater is based on the pool size or load requirement. As to GAMA's statement about the pilot light being off during the ''off season,'' the 1993 proposal already assumed that the continuous pilot light, if used, will be off during non-heating season hours. (See section 4.2 of appendix P to subpart B of part 430, on the definition of the average number of seasonal pool operating hours (POH).)

In its statement, GAMA also suggested that, instead of the AE descriptor, DOE should develop a methodology to calculate total annual energy consumption, based on thermal efficiency, electrical energy consumption, and continuous pilot light consumption. Thus, consumers could use this information to estimate annual energy consumption and operating costs for a specific pool size and season of operation.

DOE agrees with this suggestion. The calculation procedure in today's final rule includes the calculation of the average annual fossil fuel and auxiliary electric energy consumption.

The Department has decided to withdraw the proposed energy descriptor with the proposed F-factor multiplier from today's final rule, for the reasons discussed in subsection 20 of section II.A of this notice. The current procedure for determining the energy efficiency descriptor for pool heaters, the steady state thermal efficiency, shall remain unchanged. A procedure, however, for the calculation of the pool heater seasonal efficiency and the annual energy consumption of fossil fuel and auxiliary electricity for the pool heater is included in today's final rule. The pool heater seasonal efficiency is defined as the ratio (in percent) of the useful output of the heater in terms of heated pool water during the pool heating season to the sum of the total energy input when the burner is on and the energy consumption of the pilot light when the burner is off during the pool heating season. The total burner-on hours and the length of the pool heating season are assumed to be 104 hours and 4464 hours per year, respectively. The heater is assumed to be in steady state operation whenever the burner is on. The pilot light is assumed to be off during the non-heating season hours (4296 hours) and on during the pool heating season hours (4464 hours). The auxiliary electrical energy consumption is assumed to be negligible when the burner is off. For heaters which do not employ a continuous pilot light during the pool heating season, the seasonal efficiency will be the same as the steady state thermal efficiency. This procedure will account for the energy consumption of those pool heaters that employ a continuous pilot light during the pool heating season. As stated previously, the procedure also provides a calculation procedure for the average annual fossil fuel and auxiliary electric energy consumption. These calculations are simply arithmetic exercises with no additional testing required. Since these calculations could be used to address the energy savings by some design options that might be considered in future evaluations of energy standard levels, DOE believes it is justified to include these additional calculations.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

The Department has concluded that this final rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from the National Environmental Policy Act of 1969 (NEPA) review because they would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, appendix A to subpart D) implementing the NEPA (42 U.S.C. 4321, 4331–35, 4341–47). Therefore this final rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993. Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternate ways of reducing negative impacts.

The Department believes the final rule will not have a significant impact on either small or large manufacturers of furnaces and boilers, vented home heating equipment, and pool heaters under the provisions of the Regulatory Flexibility Act. The final rule amends DOE's test procedures, primarily to incorporate (1) test procedures already in use by manufacturers pursuant to waivers that DOE previously granted to those manufacturers, and (2) revisions to standard industry testing methods, contained in American Society of Heating, Air-Conditioning and Refrigerating Engineers (ASHRAE) Standard 103–1993, ''Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' and American National Standards Institute Standard Z21.56–1994, ''Gas-Fired Pool Heaters.'' Examples of amendments are:

- The 90-second delay from burner ignition to activation of the warm air circulation fan designed with an unvarying time delay in a central furnace has been shortened to accommodate current manufacturers designs.
- There is no requirement to calculate the energy consumption of a gas pilot light on manually controlled vented home heaters provided that there is instruction for the user to turn the pilot light off and restart it.

• The test procedure for modulated, vented home heating equipment allows testing at 100 percent and sixty six percent rated input power, instead of 100 percent and fifty percent power, to accommodate new designs.

Such requirements presented in the final rule incorporate improvements in the current testing technology for furnaces and boilers, vented home heating equipment, and pool heaters utilized by industry. But they would not have a significant economic impact, since they are methods already in use by manufacturers, and will not cause manufacturers to purchase equipment, consume testing time, nor employ technical staff beyond what is required by existing DOE test procedures.

In addition, in some respects the test procedures in the final rule are less burdensome than the current procedures. For example:

• The formula to calculate the time delay and energy loss of a stack damper traversing from fully open to fully closed has been adjusted for greater accuracy. The revised formula has been incorporated into the existing computer program for the calculation of the AFUE and will require no additional hand calculations.

Therefore, DOE certifies that the final rule, if promulgated, would not have a ''significant economic impact on a substantial number of small entities'' and that the preparation of a regulatory flexibility analysis is not warranted.

D. Review Under Executive Order 12612, ''Federalism'

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The final rule published today would not alter the distribution of authority and responsibility to regulate in this area. The final rule would only revise a currently applicable DOE test procedure to improve existing testing methods, and to add provisions that DOE might use in future standard setting. Accordingly, DOE has determined that preparation of a federation assessment is unnecessary.

E. Review Under Section 32 of the Federal Energy Administration Act of 1974

The test procedures in this final rule incorporate commercial standards to measure the efficiency and capacity of furnaces and/boilers, vented home heating equipment, and pool heaters. The commercial standards are ANSI/ASHRAE Standard 103–1993, ''Method of Testing for Annual Fuel utilization Efficiency of Residential Central Furnaces and Boilers,'' and ANSI Standard Z21.56–1994, ''Gas Fired Pool Heaters.''

Pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE is required to comply with section 32 of the Federal Energy Administration Act of 1974, as amended by section 9 of the Federal Energy Administration Authorization Act of 1977 (FEAA) Pub. L. 95–70, which imposes certain requirements where a proposed rule contains commercial standards or authorizes or requires the use of such standards. The findings required of DOE by section 32 serve to alert the public and DOE regarding the use and background of commercial standards in a proposal and through the rulemaking process. They allow interested persons to make known their views regarding the appropriateness of the use of any particular commercial standard in a proposed rulemaking.

The Department has evaluated ANSI/ASHRAE Standard 103–1993 and ANSI Standard Z21.56–1994 with regard to compliance with section 32(b) of the FEAA. The Department is unable to conclude whether these standards fully complied with the requirements of section 32(b), i.e., that they are developed in a manner which fully provided for public participation, comment, and review.

In addition, section 32(c) of the FEAA precludes the Department from incorporating any commercial standard into a rule unless it has consulted with the Attorney General and the Chairman of the Federal Trade Commission (FTC) as to the impact of such standard on competition, and neither individual recommends against its incorporation. Pursuant to section 32(c), the Department advised these individuals of its intention to incorporate Standards 103–1993 and Z21.56–1991 into its final test procedure rules for furnaces/boilers and pool heaters, respectively. Neither recommended against such incorporation.

The Department notes that it is incorporating into today's rule the method for testing pool heaters that is set forth in ANSI Standard Z21.56–1994. Standard Z21.56–1994 was not specifically identified in the aforementioned communications with the FTC and Department of Justice. It is, however, a revised and updated version of Standard Z21.56–1991, which was mentioned in those communications, and the provisions DOE is incorporating from Z21.56–1994 are identical in substance to the corresponding provisions in Z21.56–1991.[5]

F. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

It has been determined pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) that this final rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

The Department believes that test procedures implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts does not constitute a ''taking'' of private property. Thus, testing under the appliance standards program does not invoke the provisions of E.O. 12630.

G. Review Under the Paperwork Reduction Act of 1980

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

H. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly

[5] The Department has informally advised the Department of Justice and the Federal Trade Commission of its intention to incorporate the updated version of Standard Z21.56 into the final rule.

specifies the preemptive effect , if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

I. Review Under Unfunded Mandates Reform Act of 1995

If any proposed or final rule includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, requires an agency (prior to promulgation) to prepare a budgetary impact statement and select the least costly, most cost effective and least burdensome alternative that achieve the objectives of the rule and is consistent with statutory requirements.

DOE has determined that the action promulgated today does not include such a Federal mandate. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

J. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. 5 U.S.C. 801. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on February 28, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309

2. Section 430.2 is amended by adding a definition for the term ''Mobile home furnace'' in alphabetical order, to read as follows:

§ 430.2 Definitions.

* * * * *

Mobile home furnace means a direct vent furnace that is designed for use only in mobile homes.

* * * * *

3. Section 430.22 is amended by adding paragraph (a)(3)(iv) and adding item numbers 13 and 14 to paragraph (a)(4) to read as follows:

§ 430.22 Reference sources.

(a) * * *

(3) * * *

(iv) American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329, (1–800–5–ASHRAE).

(4) * * *

13. American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1993, ''Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' (with Errata of October 24, 1996) except for sections 3.0, 7.2.2.5, 8.6.1.1, 9.1.2.2, 9.5.1.1, 9.5.1.2.1, 9.5.1.2.2, 9.5.2.1, 9.7.1, 10.0, 11.2.12, 11.3.12, 11.4.12, 11.5.12 and appendices B and C.

14. American National Standards Institute Standard Z21.56–1994, ''Gas-Fired Pool Heaters,'' section 2.9.

* * * * *

4. Section 430.23 is amended as follows:

A. In paragraph (n)(1)(i), the words ''section 4.8 or 4.10'' are revised to read ''section 10.2.2 or 10.3'' and in paragraph (n)(1)(ii), the words ''section 4.9'' are revised to read ''section 10.2.3'' and, in the parenthetical phase, the words ''section 4'' are revised to read ''section 10.''

B. In paragraph (n)(2), the words ''section 4.6'' are revised to read ''section 10.1'' and the words ''section 4.1 of appendix N of this subpart'' are revised to read ''section 11.1 of American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 103–1993.''

C. In paragraph (n)(3)(i), the words ''section 4.11 or 4.13'' are revised to read ''section 10.5.1 or 10.5.3'' and in paragraph (n)(3)(ii), the words ''section 4.12'' are revised to read ''section 10.5.2.''

D. In paragraph (n)(4), the words ''section 4.14'' are revised to read ''section 10.4.''

E. Revise paragraphs (o)(2), and (p)(1) to read as follows:

§ 430.23 Test procedures for measures of energy consumption.

* * * * *

(o) *Vented home heating equipment.* * * *

(2) The estimated annual operating cost for vented home heating equipment is the sum of:

(i) The product of the average annual fuel energy consumption, in Btu's per year for natural gas, propane, or oil fueled vented home heating equipment, determined according to section 4.6.2 of appendix O of this subpart, and the representative average unit cost in dollars per Btu for natural gas, propane, or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The product of the average annual auxiliary electric energy consumption in kilowatt-hours per year determined according to section 4.6.3 of appendix O of this subpart, and the representative average unit cost in dollars per kilowatt-hours as provided pursuant to section 323(b)(2) of the Act, the resulting sum then being rounded off to the nearest dollar per year.

* * * * *

(p) *Pool heaters.* (1) The estimated annual operating cost for pool heaters is the sum of: (i) The product of the average annual fuel energy consumption, in Btu's per year, of natural gas or oil fueled pool heaters, determined according to section 4.2 of appendix P of this subpart, and the representative average unit cost in dollars per Btu for natural gas or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act; plus (ii) the product of the average annual auxiliary electric energy consumption in kilowatt-hours per year determined according to section 4.3 of appendix P of this subpart, and the representative average unit cost in dollars per kilowatt-hours as provided pursuant to section 323(b)(2) of the Act, the resulting sum then being rounded off to the nearest dollar per year.

* * * * *

5. Appendix N to subpart B of part 430 is revised to read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

1.0 *Scope.* The scope of this appendix is as specified in section 2.0 of ANSI/ASHRAE Standard 103–1993.

2.0 *Definitions.* Definitions include the definitions specified in section 3 of ANSI/ASHRAE Standard 103–1993 and the following additional and modified definitions:

2.1 *ANSI/ASHRAE Standard 103–1993* means the test standard published in 1993 by ASHRAE, approved by the American National Standards Institute (ANSI) on October 4, 1993, and entitled ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers'' (with errata of October 24, 1996).

2.2 *ASHRAE* means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

2.3 *Thermal stack damper* means a type of stack damper which is dependent for operation exclusively upon the direct conversion of thermal energy of the stack gases to open the damper.

2.4 *Isolated combustion system.* The definition of isolation combustion system in section 3 of ANSI/ASHRAE Standard 103–1993 is incorporated with the addition of the following: ''The unit is installed in an un-conditioned indoor space isolated from the heated space.''

3.0 *Classifications.* Classifications are as specified in section 4 of ANSI/ASHRAE Standard 103–1993.

4.0 *Requirements.* Requirements are as specified in section 5 of ANSI/ASHRAE Standard 103–1993.

5.0 *Instruments.* Instruments must be as specified in section 6 of ANSI/ASHRAE Standard 103–1993.

6.0 *Apparatus.* The apparatus used in conjunction with the furnace or boiler during the testing must be as specified in section 7 of ANSI/ASHRAE Standard 103–1993 except for section 7.2.2.5; and as specified in section 6.1 of this appendix:

6.1 *Downflow furnaces.* Install the internal section of vent pipe the same size as the flue collar for connecting the flue collar to the top of the unit, if not supplied by the manufacturer. Do not insulate the internal vent pipe during the jacket loss test (if conducted) described in section 8.6 of ANSI/ASHRAE Standard 103–1993 or the steady-state test described in section 9.1 of ANSI/ASHRAE Standard 103–1993. Do not insulate the internal vent pipe before the cool-down and heat-up tests described in sections 9.5 and 9.6, respectively, of ANSI/ASHRAE Standard 103–1993. If the vent pipe is surrounded by a metal jacket, do not insulate the metal jacket. Install a 5-ft test stack of the same cross sectional area or perimeter as the vent pipe above the top of the furnace. Tape or seal around the junction connecting the vent pipe and the 5-ft test stack. Insulate the 5-ft test stack with insulation having an R-value not less than 7 and an outer layer of aluminum foil. (See Figure 3–E of ANSI/ASHRAE Standard 103–1993.)

7.0 *Testing conditions.* The testing conditions shall be as specified in section 8 of ANSI/ASHRAE Standard 103–1993 with errata of October 24, 1996, except for section 8.6.1.1; and as specified in section 7.1 of this appendix.

7.1 *Measurement of jacket surface temperature.* The jacket of the furnace or boiler shall be subdivided into 6-inch squares when practical, and otherwise into 36-square-inch regions comprising 4 in. x 9 in. or 3 in. x 12 in. sections, and the surface temperature at the center of each square or section shall be determined with a surface thermocouple. The 36-square-inch areas shall be recorded in groups where the temperature differential of the 36-square-inch area is less than 10°F for temperature up to 100°F above room temperature and less than 20°F for temperature more than 100°F above room temperature. For forced air central furnaces, the circulating air blower compartment is considered as part of the duct system and no surface temperature measurement of the blower compartment needs to be recorded for the purpose of this test. For downflow furnaces, measure all cabinet surface temperatures of the heat exchanger and combustion section, including the bottom around the outlet duct, and the burner door, using the 36 square-inch thermocouple grid. The cabinet surface temperatures around the blower section do not need to be measured (See figure 3–E of ANSI/ASHRAE Standard 103–1993.)

8.0 *Test procedure.* Testing and measurements shall be as specified in section 9 of ANSI/ASHRAE Standard 103–1993 except for sections 9.5.1.1, 9.5.1.2.1, 9.5.1.2.2, 9.5.2.1, and section 9.7.1. ; and as specified in sections 8.1, 8.2, 8.3, 8.4, and 8.5, of this appendix.

8.1 *Input to interrupted ignition device.* For burners equipped with an interrupted ignition device, record the nameplate electric power used by the ignition device, PE_{IG}, or use PE_{IG}=0.4 kW if no nameplate power input is provided. Record the nameplate ignition device on-time interval, t_{IG}, or measure the on-time period at the beginning of the test at the time the burner is turned on with a stop watch, if no nameplate value is given. Set t_{IG}=0 and PE_{IG}=0 if the device on-time is less than or equal to 5 seconds after the burner is on.

8.2 *Gas- and oil-fueled gravity and forced air central furnaces without stack dampers cool-down test.* Turn off the main burner after steady-state testing is completed, and measure the flue gas temperature by means of the thermocouple grid described in section 7.6 of ANSI/ASHRAE 103–1993 at 1.5 minutes ($T_{F,OFF}(t_3)$) and 9 minutes ($T_{F,OFF}(t_4)$) after the burner shuts off. An integral draft diverter shall remain blocked and insulated, and the stack restriction shall remain in place. On atmospheric systems with an integral draft diverter or draft hood, equipped with either an electromechanical inlet damper or an electro-mechanical flue damper that closes within 10 seconds after the burner shuts off to restrict the flow through the heat exchanger in the off-cycle, bypass or adjust the control for the electromechanical damper so that the damper remains open during the cool-down test. For furnaces that employ post purge, measure the length of the post-purge period with a stopwatch. The time from burner OFF to combustion blower OFF (electrically de-energized) shall be recorded as t_p. For the case where t_p is intended to be greater than 180 seconds, stop the combustion blower at 180 seconds and use that value for t_p. Measure the flue gas temperature by means of the thermocouple grid described in section 7.6 of ANSI/ASHRAE 103–1993 at the end of post-purge period, t_p ($T_{F,OFF}(t_p)$), and at the time (1.5 + t_p) minutes ($T_{F,OFF}(t_3)$) and (9.0 + t_p) minutes ($T_{F,OFF}(t_4)$) after the main burner shuts off. For the case where the measured tp is less than or equal to 30 seconds, it shall be tested as if there is no post purge and t_p shall be set equal to 0.

8.3 *Gas- and oil-fueled gravity and forced air central furnaces without stack dampers with adjustable fan control—cool-down test.* For a furnace with adjustable fan control, this time delay will be 3.0 minutes for non-condensing furnaces or 1.5 minutes for condensing furnaces or until the supply air temperature drops to a value of 40°F above the inlet air temperature, whichever results in the longest fan on-time. For a furnace without adjustable fan control or with the type of adjustable fan control whose range of adjustment does not allow for the delay time specified above, the control shall be bypassed and the fan manually controlled to give the delay times specified above. For a furnace which employs a single motor to drive the power burner and the indoor air circulating blower, the power burner and indoor air circulating blower shall be stopped together.

8.4 *Gas-and oil-fueled boilers without stack dampers cool-down test.* After steady-state testing has been completed, turn the main burner(s) OFF and measure the flue gas temperature at 3.75 ($T_{F,OFF}(t_3)$) and 22.5 ($T_{F,OFF}(t_4)$) minutes after the burner shut off, using the thermocouple grid described in section 7.6 of ANSI/ASHRAE 103–1993. During this off-period, for units that do not have pump delay after shutoff, no water shall be allowed to circulate through the hot water boilers. For units that have pump delay on shutoff, except those having pump controls sensing water temperature, the pump shall be stopped by the unit control and the time t^+, between burner shutoff and pump shutoff shall be measured within one-second accuracy. For units having pump delay controls that sense water temperature, the pump shall be operated for 15 minutes and t^+ shall be 15 minutes. While the pump is operating, the inlet water temperature and flow rate shall be maintained at the same values as used during the steady-state test as specified in sections 9.1 and 8.4.2.3 of ANSI/ASHRAE 103–1993.

For boilers that employ post purge, measure the length of the post-purge period with a stopwatch. The time from burner OFF to combustion blower OFF (electrically de-energized) shall be recorded as t_P. For the case where t_P is intended to be greater than

180 seconds, stop the combustion blower at 180 seconds and use that value for t_P. Measure the flue gas temperature by means of the thermocouple grid described in section 7.6 of ANSI/ASHRAE 103–1993 at the end of the post purge period $t_P(T_{F,OFF}(t_P))$ and at the time $(3.75 + t_P)$ minutes $(T_{F,OFF}(t_3))$ and $(22.5 + t_P)$ minutes $(T_{F,OFF}(t_4))$ after the main burner shuts off. For the case where the measured t_P is less or equal to 30 seconds, it shall be tested as if there is no post purge and t_P shall be set to equal 0.

8.5 *Direct measurement of off-cycle losses testing method.* [Reserved.]

9.0 *Nomenclature.* Nomenclature shall include the nomenclature specified in section 10 of ANSI/ASHRAE Standard 103–1993 and the following additional variables:

Eff_{motor}=Efficiency of power burner motor
PE_{IG}=Electrical power to the interrupted ignition device, kW
$R_{T,a}=R_{T,F}$ if flue gas is measured
$=R_{T,S}$ if stack gas is measured
$R_{T,F}$=Ratio of combustion air mass flow rate to stoichiometric air mass flow rate
$R_{T,S}$=Ratio of the sum of combustion air and relief air mass flow rate to stoichiometric air mass flow rate
t_{IG}=Electrical interrupted ignition device on-time, min.
$T_{a,SS,X}=T_{F,SS,X}$ if flue gas temperature is measured, °F
$=T_{S,SS,X}$ if stack gas temperature is measured, °F
y_{IG}=ratio of electrical interrupted ignition device on-time to average burner on-time
y_P=ratio of power burner combustion blower on-time to average burner on-time

10.0 *Calculation of derived results from test measurements.* Calculations shall be as specified in section 11 of ANSI/ASHRAE Standard 103–1993 and the October 24, 1996, Errata Sheet for ASHRAE Standard 103–1993, except for appendices B and C; and as specified in sections 10.1 through 10.8 and Figure 1 of this appendix.

10.1 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) is as defined in sections 11.2.12 (non-condensing systems), 11.3.12 (condensing systems), 11.4.12 (non-condensing modulating systems) and 11.5.12 (condensing modulating systems) of ANSI/ASHRAE Standard 103–1993, except for the definition for the term $Effy_{HS}$ in the defining equation for AFUE. $Effy_{HS}$ is defined as:

$Effy_{HS}$=heating seasonal efficiency as defined in sections 11.2.11 (non-condensing systems), 11.3.11 (condensing systems), 11.4.11 (non-condensing modulating systems) and 11.5.11 (condensing modulating systems) of ANSI/ASHRAE Standard 103–1993 and is based on the assumptions that all weatherized warm air furnaces or boilers are located out-of-doors, that warm air furnaces which are not weatherized are installed as isolated combustion systems, and that boilers which are not weatherized are installed indoors.

10.2 *National average burner operating hours, average annual fuel energy consumption and average annual auxiliary electrical energy consumption for gas or oil furnaces and boilers.*

10.2.1 *National average number of burner operating hours.* For furnaces and boilers equipped with single stage controls, the national average number of burner operating hours is defined as:

BOH_{SS}=2,080 (0.77) A DHR−2,080 B

where:

2,080=national average heating load hours
0.77=adjustment factor to adjust the calculated design heating requirement and heating load hours to the actual heating load experienced by the heating system
DHR=typical design heating requirements as listed in Table 8 (in unit of kBtu/h) of ANSI/ASHRAE Standard 103–1993, using the proper value of Q_{OUT} defined in 11.2.8.1 of ANSI/ASHRAE Standard 103–1993
A=100,000 / [341,300(y_PPE+$y_{IG}PE_{IG}$+yBE)+(Q_{IN}−Q_P)$Effy_{HS}$], for forced draft unit, indoors
=100,000 / [341,300(y_PPE Eff_{motor}+$y_{IG}PE_{IG}$+y BE)+(Q_{IN}−Q_P)$Effy_{HS}$], for forced draft unit, ICS,
=100,000 / [341,300(y_PPE(1−Eff_{motor})+$y_{IG}PE_{IG}$+y BE)+(Q_{IN}−Q_P)$Effy_{HS}$], for induced draft unit, indoors, and
=100,000 / [341,300($y_{IG}PE_{IG}$+yBE)+(Q_{IN}−Q_P)$Effy_{HS}$], for induced draft unit, ICS
B=2 Q_P($Effy_{HS}$)(A) / 100,000

where:

Eff_{motor}=Power burner motor efficiency provided by manufacturer,
=0.50, an assumed default power burner efficiency if not provided by manufacturer.
100,000=factor that accounts for percent and kBtu
PE=burner electrical power input at full-load steady-state operation, including electrical ignition device if energized, as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993
y_P=ratio of induced or forced draft blower on-time to average burner on-time, as follows:
1 for units without post purge;
1+(t_P/3.87) for single stage furnaces with post purge;
1+(t_P/10) for two-stage and step modulating furnaces with post purge;
1+(t_P/9.68) for single stage boilers with post purge; or
1+(t_P/15) for two stage and step modulating boilers with post purge.
PE_{IG}=electrical input rate to the interrupted ignition device on burner (if employed), as defined in 8.1 of this appendix
y_{IG}=ratio of burner interrupted ignition device on-time to average burner on-time, as follows:
0 for burners not equipped with interrupted ignition device;
(t_{IG}/3.87) for single stage furnaces;
(t_{IG}/10) for two-stage and step modulating furnaces;
(t_{IG}/9.68) for single stage boilers; or
(t_{IG}/15) for two stage and step modulating boilers.
t_{IG}=on-time of the burner interrupted ignition device, as defined in 8.1 of this appendix
t_P=post purge time as defined in 8.2 (furnace) or 8.4 (boiler) of this appendix
=0 if t_P is equal to or less than 30 second.
y=ratio of blower or pump on-time to average burner on-time, as follows:
1 for furnaces without fan delay;
1 for boilers without a pump delay;
1+(t^+—t^-)/3.87 for single stage furnaces with fan delay;
1+(t^+—t^-)/10 for two-stage and step modulating furnaces with fan delay;
1+(t^+/9.68) for single stage boilers with pump delay; or
1+(t^+/15) for two stage and step modulating boilers with pump delay.
BE=circulating air fan or water pump electrical energy input rate at full load steady-state operation, as defined in ANSI/ASHRAE Standard 103–1993
Q_{IN}=as defined in 11.2.8.1 of ANSI/ASHRAE Standard 103–1993
Q_P=as defined in 11.2.11 of ANSI/ASHRAE Standard 103–1993
$Effy_{HS}$=as defined in 11.2.11 (non-condensing systems) or 11.3.11.3 (condensing systems) of ANSI/ASHRAE Standard 103–1993, percent, and calculated on the basis of:
ICS installation, for non-weatherized warm air furnaces;
indoor installation, for non-weatherized boilers; or
outdoor installation, for furnaces and boilers that are weatherized.
2=ratio of the average length of the heating season in hours to the average heating load hours
t^+=as defined in 9.5.1.2 of ANSI/ASHRAE Standard 103–1993 or 8.4 of this appendix
t^-=as defined in 9.6.1 of ANSI/ASHRAE Standard 103–1993

10.2.1.1 For furnaces and boilers equipped with two stage or step modulating controls the average annual energy used during the heating season, E_M, is defined as:

E_M=(Q_{IN} − Q_P) BOH_{SS}+(8,760 − 4,600)Q_P

where:

Q_{IN}=as defined in 11.4.8.1.1 of ANSI/ASHRAE Standard 103–1993
Q_P=as defined in 11.4.12 of ANSI/ASHRAE Standard 103–1993
BOH_{SS}=as defined in section 10.2.1 of this appendix, in which the weighted $Effy_{HS}$ as defined in 11.4.11.3 or 11.5.11.3 of ANSI/ASHRAE Standard 103–1993 is used for calculating the values of A and B, the term DHR is based on the value of Q_{OUT} defined in 11.4.8.1.1 or 11.5.8.1.1 of ANSI/ASHRAE Standard 103–1993, and the term (y_PPE+$y_{IG}PE_{IG}$+yBE) in the factor A is increased by the factor R, which is defined as:
R=2.3 for two stage controls
=2.3 for step modulating controls when the ratio of minimum-to-maximum output is greater than or equal to 0.5
=3.0 for step modulating controls when the ratio of minimum-to-maximum output is less than 0.5
A=100,000/[341,300(y_PPE+$y_{IG}PE_{IG}$+y BE) R+(Q_{IN} − Q_P) $Effy_{HS}$], for forced draft unit, indoors
=100,000/[341,300(y_PPE Eff_{motor}+$y_{IG}PE_{IG}$+y BE) R+(Q_{IN} − Q_P)$Effy_{HS}$], for forced draft unit, ICS,

$=100{,}000/[341{,}300(y_P PE(1-Eff_{motor})+y_{IG}PE_{IG}+y\ BE)\ R+(Q_{IN}-Q_P)\ Effy_{HS}]$, for induced draft unit, indoors, and

$=100{,}000/[341{,}300(y_{IG}PE_{IG}+y\ BE)\ R+(Q_{IN}-Q_P)\ Effy_{HS}]$, for induced draft unit, ICS

where:

Eff_{motor}=Power burner motor efficiency provided by manufacturer,

=0.50, an assumed default power burner efficiency if none provided by manufacturer.

$Effy_{HS}$=as defined in 11.4.11.3 or 11.5.11.3 of ANSI/ASHRAE Standard 103–1993, and calculated on the basis of:

—ICS installation, for non-weatherized warm air furnaces

—indoor installation, for non-weatherized boilers

—outdoor installation, for furnaces and boilers that are weatherized

8,760=total number of hours per year

4,600=as specified in 11.4.12 of ANSI/ASHRAE Standard 103–1993

10.2.1.2 For furnaces and boilers equipped with two stage or step modulating controls the national average number of burner operating hours at the reduced operating mode is defined as:

$BOH_R=X_RE_M/Q_{IN,R}$

where:

X_R=as defined in 11.4.8.7 of ANSI/ASHRAE Standard 103–1993

E_M=as defined in section 10.2.1.1 of this appendix

$Q_{IN,R}$=as defined in 11.4.8.1.2 of ANSI/ASHRAE Standard 103–1993

10.2.1.3 For furnaces and boilers equipped with two stage controls the national average number of burner operating hours at the maximum operating mode (BOH_H) is defined as:

$BOH_H=X_HE_M/Q_{IN}$

where:

X_H=as defined in 11.4.8.6 of ANSI/ASHRAE Standard 103–1993

E_M=as defined in section 10.2.1.1 of this appendix

Q_{IN}=as defined in 11.4.8.1.1 of ANSI/ASHRAE Standard 103–1993

10.2.1.4 For furnaces and boilers equipped with step modulating controls the national average number of burner operating hours at the modulating operating mode (BOH_M) is defined as:

$BOH_M=X_HE_M/Q_{IN,M}$

where:

X_H=as defined in 11.4.8.6 of ANSI/ASHRAE Standard 103–1993

E_M=as defined in section 10.2.1.1 of this appendix

$Q_{IN,M}=Q_{OUT,M}/(Effy_{SS,M}/100)$

$Q_{OUT,M}$=as defined in 11.4.8.10 or 11.5.8.10 of ANSI/ASHRAE Standard 103–1993, as appropriate

$Effy_{SS,M}$=as defined in 11.4.8.8 or 11.5.8.8 of ANSI/ASHRAE Standard 103–1993, as appropriate, in percent

100=factor that accounts for percent

10.2.2 *Average annual fuel energy consumption for gas or oil fueled furnaces or boilers.* For furnaces or boilers equipped with single stage controls the average annual fuel energy consumption (E_F) is expressed in Btu per year and defined as:

$E_F=BOH_{SS}(Q_{IN}-Q_P)+8{,}760\ Q_P$

where:

BOH_{SS}=as defined in 10.2.1 of this appendix

Q_{IN}=as defined in 11.2.8.1 of ANSI/ASHRAE Standard 103–1993

Q_P=as defined in 11.2.11 of ANSI/ASHRAE Standard 103–1993

8,760=as specified in 10.2.1 of this appendix

10.2.2.1 For furnaces or boilers equipped with either two stage or step modulating controls E_F is defined as:

$E_F=E_M + 4{,}600Q_P$

where:

E_M=as defined in 10.2.1.1 of this appendix

4,600=as specified in 11.4.12 of ANSI/ASHRAE Standard 103–1993

Q_P=as defined in 11.2.11 of ANSI/ASHRAE Standard 103–1993

10.2.3 *Average annual auxiliary electrical energy consumption for gas or oil fueled furnaces or boilers.* For furnaces or boilers equipped with single stage controls the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$E_{AE}=BOH_{SS}(y_PPE +y_{IG}PE_{IG}+yBE)$

where:

BOH_{SS}=as defined in 10.2.1 of this appendix

PE=as defined in 10.2.1 of this appendix

y_P=as defined in 10.2.1 of this appendix

y_{IG}=as defined in 10.2.1 of this appendix

PE_{IG}=as defined in 10.2.1 of this appendix

y=as defined in 10.2.1 of this appendix

BE=as defined in 10.2.1 of this appendix

10.2.3.1 For furnaces or boilers equipped with two stage controls E_{AE} is defined as:

$E_{AE}=BOH_R(y_PPE_R+y_{IG}PE_{IG}+yBE_R) + BOH_H(y_PPE_H+y_{IG}PE_{IG}+y\ BE_H)$

where:

BOH_R=as defined in 10.2.1.2 of this appendix

y_P=as defined in 10.2.1 of this appendix

PE_R=as defined in 9.1.2.2 and measured at the reduced fuel input rate, of ANSI/ASHRAE Standard 103–1993

y_{IG}=as defined in 10.2.1 of this appendix

PE_{IG}=as defined in 10.2.1 of this appendix

y=as defined in 10.2.1 of this appendix

BE_R=as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the reduced fuel input rate

BOH_H=as defined in 10.2.1.3 of this appendix

PE_H=as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the maximum fuel input rate

BE_H=as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the maximum fuel input rate

10.2.3.2 For furnaces or boilers equipped with step modulating controls E_{AE} is defined as:

$E_{AE}=BOH_R(y_P\ PE_R+y_{IG}PE_{IG}+y\ BE_R)+BOH_M(y_PPE_H+y_{IG}PE_{IG}+y\ BE_H)$

where:

BOH_R=as defined in 10.2.1.2 of this appendix

y_P=as defined in 10.2.1 of this appendix

PE_R=as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the reduced fuel input rate

y_{IG}=as defined in 10.2.1 of this appendix

PE_{IG}=as defined in 10.2.1 of this appendix

y=as defined in 10.2.1. of this appendix

BE_R=as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the reduced fuel input rate

BOH_M=as defined in 10.2.1.4 of this appendix

PE_H=as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the maximum fuel input rate

BE_H=as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the maximum fuel inputs rate

10.3 *Average annual electric energy consumption for electric furnaces or boilers.* For electric furnaces and boilers the average annual energy consumption (E_E) is expressed in kilowatt-hours and defined as:

$E_E=100(2{,}080)(0.77)DHR/(3.412\ AFUE)$

where:

100=to express a percent as a decimal

2,080=as specified in 10.2.1 of this appendix

0.77=as specified in 10.2.1 of this appendix

DHR=as defined in 10.2.1 of this appendix

3.412=conversion to express energy in terms of watt-hours instead of Btu

AFUE=as defined in 11.1 of ANSI/ASHRAE Standard 103–1993, in percent, and calculated on the basis of:

ICS installation, for non-weatherized warm air furnaces;

indoor installation, for non-weatherized boilers; or

outdoor installation, for furnaces and boilers that are weatherized.

10.4 *Energy factor.*

10.4.1 *Energy factor for gas or oil furnaces and boilers.* Calculate the energy factor, EF, for gas or oil furnaces and boilers defined as, in percent:

$$EF=\frac{\left(E_F-4{,}600\ Q_P\right)Effy_{HS}}{E_F+3{,}412\ E_{AE}}$$

where:

E_F=average annual fuel consumption as defined in 10.2.2 of this appendix.

E_{AE}=as defined in 10.2.3 of this appendix.

$Effy_{HS}$=Annual Fuel Utilization Efficiency as defined in 11.2.11, 11.3.11, 11.4.11 or 11.5.11 of ANSI/ASHRAE Standard 103–1993, in percent, and calculated on the basis of:

ICS installation, for non-weatherized warm air furnaces;

indoor installation, for non-weatherized boilers; or

outdoor installation, for furnaces and boilers that are weatherized.

3,412=conversion factor from kilowatt to Btu/h

10.4.2 *Energy factor for electric furnaces and boilers.* The energy factor, EF, for electric furnaces and boilers is defined as:

EF=AFUE

where:

AFUE=Annual Fuel Utilization Efficiency as defined in section 10.3 of this appendix, in percent

10.5 *Average annual energy consumption for furnaces and boilers located in a different geographic region of the United States and in* *buildings with different design heating requirements.*

10.5.1 *Average annual fuel energy consumption for gas or oil-fueled furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled furnaces and boilers the average annual fuel energy consumption for a specific geographic region and a specific typical design heating requirement (E_{FR}) is expressed in Btu per year and defined as:

$$E_{FR}=(E_F-8{,}760\ Q_P)(HLH/2{,}080)+8{,}760\ Q_P$$

where:

E_F=as defined in 10.2.2 of this appendix
8,760=as specified in 10.2.1 of this appendix
Q_P=as defined in 11.2.11 of ANSI/ASHRAE Standard 103–1993
HLH=heating load hours for a specific geographic region determined from the heating load hour map in Figure 1 of this appendix
2,080=as defined in 10.2.1 of this appendix

10.5.2 *Average annual auxiliary electrical energy consumption for gas or oil-fueled furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil-fueled furnaces and boilers the average annual auxiliary electrical energy consumption for a specific geographic region and a specific typical design heating requirement (E_{AER}) is expressed in kilowatt-hours and defined as:

$$E_{AER}=E_{AE}\ (HLH/2{,}080)$$

where:

E_{AE}=as defined in 10.2.3 of this appendix
HLH=as defined in 10.5.1 of this appendix
2,080=as specified in 10.2.1 of this appendix

10.5.3 *Average annual electric energy consumption for electric furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* For electric furnaces and boilers the average annual electric energy consumption for a specific geographic region and a specific typical design heating requirement (E_{ER}) is expressed in kilowatt-hours and defined as:

$$E_{ER}=100\ (0.77)\ DHR\ HLH/(3.412\ AFUE)$$

where:

100=as specified in 10.3 of this appendix
0.77=as specified in 10.2.1 of this appendix
DHR=as defined in 10.2.1 of this appendix
HLH=as defined in 10.5.1 of this appendix
3.412=as specified in 10.3 of this appendix
AFUE=as defined in 10.3 of this appendix, in percent

10.6 *Annual energy consumption for mobile home furnaces*

10.6.1 *National average number of burner operating hours for mobile home furnaces (BOH_{SS}).* BOH_{SS} is the same as in 10.2.1 of this appendix, except that the value of $Effy_{HS}$ in the calculation of the burner operating hours, BOH_{SS}, is calculated on the basis of a direct vent unit with system number 9 or 10.

10.6.2 *Average annual fuel energy for mobile home furnaces (E_F).* E_F is same as in 10.2.2 of this appendix except that the burner operating hours, BOH_{SS}, is calculated as specified in 10.6.1 of this appendix.

10.6.3 *Average annual auxiliary electrical energy consumption for mobile home furnaces (E_{AE}).* E_{AE} is the same as in 10.2.3 of this appendix, except that the burner operating hours, BOH_{SS}, is calculated as specified in 10.6.1 of this appendix.

10.7 *Calculation of sales weighted average annual energy consumption for mobile home furnaces.* In order to reflect the distribution of mobile homes to geographical regions with average HLH_{MHF} value different from 2,080, adjust the annual fossil fuel and auxiliary electrical energy consumption values for mobile home furnaces using the following adjustment calculations.

10.7.1 For mobile home furnaces the sales weighted average annual fossil fuel energy consumption is expressed in Btu per year and defined as:

$$E_{F,MHF}=(E_F-8{,}760\ Q_P)HLH_{MHF}/2{,}080+8{,}760\ Q_P$$

where:

E_F=as defined in 10.6.2 of this appendix
8,760=as specified in 10.2.1 of this appendix
Q_P=as defined in 11.2.11 of ANSI/ASHRAE Standard 103–1993
HLH_{MHF}=1880, sales weighted average heating load hours for mobile home furnaces
2,080=as specified in 10.2.1 of this appendix

10.7.2 For mobile home furnaces the sales weighted average annual auxiliary electrical energy consumption is expressed in kilowatt-hours and defined as:

$$E_{AE,MHF}=E_{AE}HLH_{MHF}/2{,}080$$

where:

E_{AE}=as defined in 10.6.3 of this appendix
HLH_{MHF}=as defined in 10.7.1 of this appendix
2,080=as specified in 10.2.1 of this appendix

10.8 *Direct determination of off-cycle losses for furnaces and boilers equipped with thermal stack dampers.* [Reserved.]

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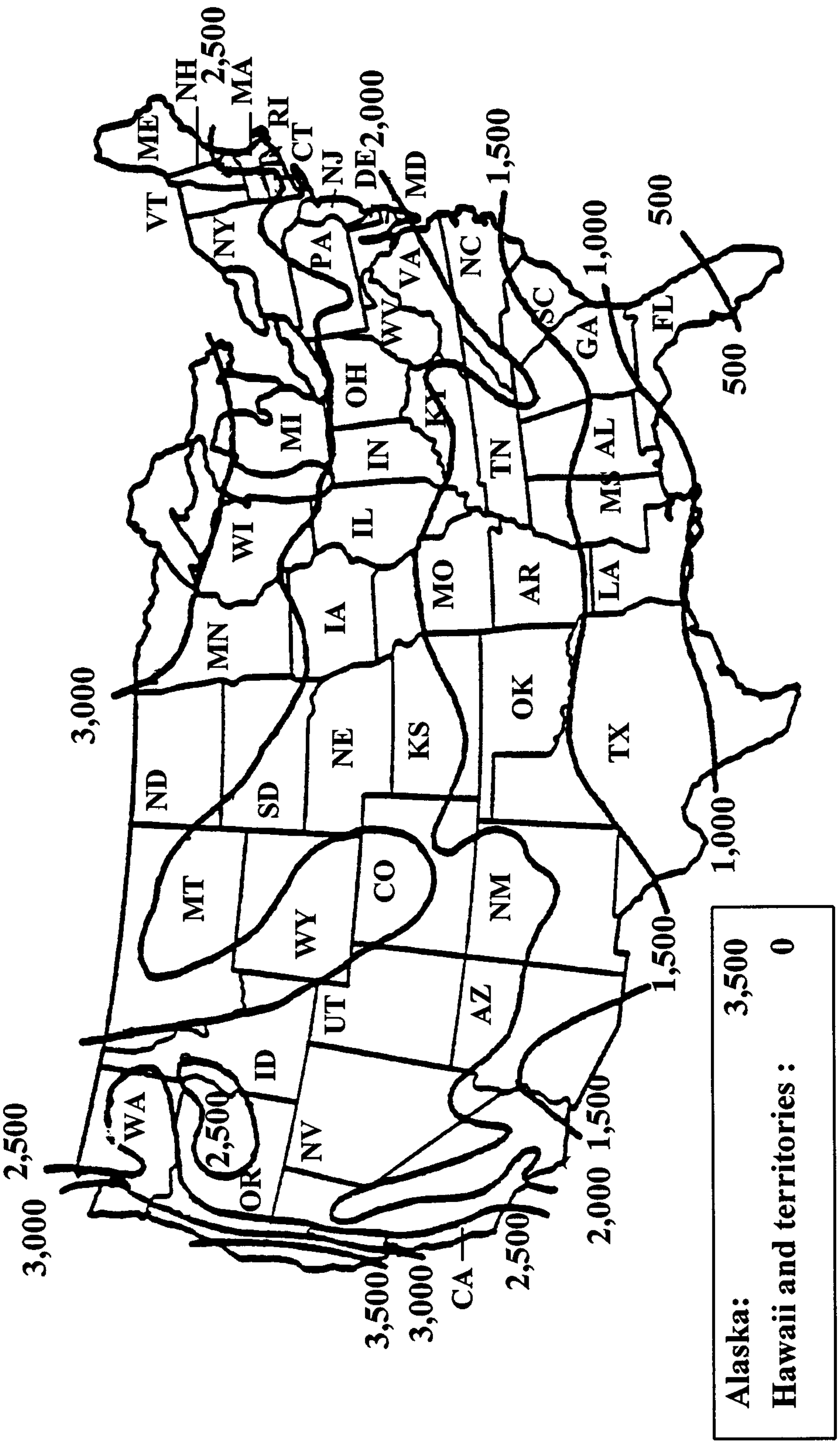

This map is reasonably accurate for most parts of the United States but is necessarily generalized, and consequently not too accurate in mountainous regions, particularly in the rockies.

FIGURE 1 - HEATING LOAD HOURS (HLH) FOR THE UNITED STATES

BILLING CODE 6450–01–C

6. Appendix O to subpart B of part 430 is amended as follows:

Appendix O to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment

a. Section 3.5 is revised to read as follows:

3.5 *Pilot light measurement.*

3.5.1 Measure the energy input rate to the pilot light (Q_P) with an error no greater than 3 percent for vented heaters so equipped.

3.5.2 For manually controlled heaters where the pilot light is designed to be turned off by the user when the heater is not in use, that is, turning the control to the OFF position will shut off the gas supply to the burner(s) and to the pilot light, the measurement of Q_P is not needed. This provision applies only if an instruction to turn off the unit is provided on the heater near the gas control valve (e.g. by label) by the manufacturer.

b. Section 4.2.4 is revised to read as follows:

4.2.4 *Weighted-average steady-state efficiency.*

4.2.4.1 For manually controlled heaters with various input rates the weighted average steady-state efficiency (η_{SS-WT}), is determined as follows:

(1) at 50 percent of the maximum fuel input rate as measured in either section 3.1.1 of this appendix for manually controlled gas vented heaters or section 3.1.2 of this appendix for manually controlled oil vented heaters, or

(2) at the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters if the design of the heater is such that the ± 5 percent of 50 percent of the maximum fuel input rate cannot be set, provided this minimum rate is no greater than ⅔ of maximum input rate of the heater.

4.2.4.2 For manually controlled heater with one single firing rate the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

c. Section 4.2.6 is revised to read as follows:

4.2.6 *Annual Fuel Utilization Efficiency.*

4.2.6.1 For manually controlled vented heaters, calculate the AFUE expressed as a percent and defined as:

$$\mathrm{AFUE} = \frac{2{,}950\ \eta_{SS}\ \eta_u\ Q_{in-max}}{2{,}950\ \eta_{SS}\ Q_{in-max} + 2.083(4{,}600)\ \eta_u\ Q_P}$$

where:

2,950=average number of heating degree days
η_{SS}=as defined as η_{SS-WT} in 4.2.4 of this appendix
η_u=as defined in 4.2.5 of this appendix
Q_{in-max}=as defined as Q_{in} at the maximum fuel input rate, as defined in 3.1 of this appendix
4,600=average number of non-heating season hours per year
Q_P=as defined in 3.5 of this appendix
2.083=(65–15)/24=50/24
65=degree day base temperature, °F
15=national average outdoor design temperature for vented heaters as defined in section 4.1.10 of this appendix
24=number of hours in a day

4.2.6.2 For manually controlled vented heaters where the pilot light can be turned off by the user when the heater is not in use as described in section 3.5.2, calculate the AFUE expressed as a percent and defined as:

$\mathrm{AFUE}=\eta_u$

where:

η_u=as defined in section 4.2.5 of this appendix

d. Section 4.3.7 is revised to read as follows:

4.3.7 Annual Fuel Utilization Efficiency.

Calculate the AFUE expressed as a percent and defined as:

$$\mathrm{AFUE} = \frac{2{,}950\ \eta_{SS-WT}\ \eta_u\ Q_{in-max}}{2{,}950\ \eta_{SS-WT}\ Q_{in-max} + 2.083(4{,}600)\ \eta_u\ Q_P}$$

where:

2,950=average number of heating degree days
$\eta_{SS\text{-}WT}$=as defined in 4.1.16 of this appendix
η_u=as defined in 4.3.6 of this appendix
Q_{in-max}=as defined in 4.2.6 of this appendix
4,600=as specified in 4.2.6 of this appendix
Q_P=as defined in 3.5 of this appendix
2.083=as specified in 4.2.6 of this appendix

e. Add section 4.6 after section 4.5.3 and before the table 1 to read as follows:

4.6 *Annual energy consumption.*

4.6.1 *National average number of burner operating hours.* For vented heaters equipped with single stage controls or manual controls, the national average number of burner operating hours (BOH) is defined as:

$BOH_{SS}=1{,}416 A_F A\ DHR - 1{,}416\ B$

where:

1,416=national average heating load hours for vented heaters based on 2,950 degree days and 15°F outdoor design temperature
A_F=0.7067, adjustment factor to adjust the calculated design heating requirement and heating load hours to the actual heating load experienced by the heating system
DHR=typical design heating requirements based on Q_{OUT}, from Table 4 of this appendix.
$Q_{OUT}=[(\eta_{SS}/100) - C_j\ (L_j/100)]\ Q_{in}$
L_j=jacket loss as defined in 4.1.5 of this appendix
C_j=2.8, adjustment factor as defined in 4.3.6 of this appendix
η_{SS}=steady-state efficiency as defined in 4.1.10 of this appendix, percent
Q_{in}=as defined in 3.1 of this appendix at the maximum fuel input rate
$A=100{,}000/[341{,}300 P_E+(Q_{in} - Q_P)\eta_u]$
$B=2.938(Q_P)\ \eta_u\ A/100{,}000$
100,000=factor that accounts for percent and kBtu
P_E=as defined in 3.1.3 of this appendix
Q_P=as defined in 3.5 of this appendix
η_u=as defined in 4.3.6 of this appendix for vented heaters using the tracer gas method, percent
=as defined in 4.2.5 of this appendix for manually controlled vented heaters, percent
$=2{,}950\ \mathrm{AFUE}\eta_{SS}\ Q_{in}/[2{,}950\ \eta_{SS}\ Q_{in} - \mathrm{AFUE}(2.083)(4{,}600)Q_P]$, for vented heaters equipped without manual controls and without thermal stack dampers and not using the optional tracer gas method, where:
AFUE=as defined in 4.1.17 of this appendix, percent
2,950=average number of heating degree days as defined in 4.2.6 of this appendix
4,600=average number of non-heating season hours per year as defined in 4.2.6 of this appendix

2.938=(4,160/1,416)=ratio of the average length of the heating season in hours to the average heating load hours
2.083=as specified in 4.2.6 of this appendix

4.6.1.1 For vented heaters equipped with two stage or step modulating controls the national average number of burner operating hours at the reduced operating mode is defined as:

$BOH_R=X_1E_M/Q_{red-in}$

where:

X_1=as defined in 4.1.14 of this appendix
Q_{red-in}=as defined in 4.1.11 of this appendix
E_M=average annual energy used during the heating season
=$(Q_{in}-Q_P)BOH_{SS}+(8,760-4,600)Q_P$
Q_{in}=as defined in 3.1 of this appendix at the maximum fuel input rate
Q_P=as defined in 3.5 of this appendix
BOH_{SS}=as defined in 4.6.1 of this appendix, in which the term P_E in the factor A is increased by the factor R, which is defined in 3.1.3 of this appendix as:
R=1.3 for two stage controls
=1.4 for step modulating controls when the ratio of minimum-to-maximum fuel input is greater than or equal to 0.7
=1.7 for step modulating controls when the ratio of minimum-to-maximum fuel input is less than 0.7 and greater than or equal to 0.5
=2.2 for step modulating controls when the ratio of minimum-to-maximum fuel input is less than 0.5
$A=100,000/[341,300\ PE\ R+(Q_{in}-Q_P)\eta_u]$
8,760=total number of hours per year
4,600=as specified in 4.2.6 of this appendix

4.6.1.2 For vented heaters equipped with two stage or step modulating controls the national average number of burner operating hours at the maximum operating mode (BOH_H) is defined as:

$BOH_H=X_2E_M/Q_{in}$

where:

X_2=as defined in 4.1.15 of this appendix
E_M=average annual energy used during the heating season
=$(Q_{in}-Q_P)BOH_{SS}+(8,760-4,600)Q_P$
Q_{in}=as defined in 3.1 of this appendix at the maximum fuel input rate

4.6.2 *Average annual fuel energy for gas or oil fueled vented heaters.* For vented heaters equipped with single stage controls or manual controls, the average annual fuel energy consumption (E_F) is expressed in Btu per year and defined as:

$E_F=BOH_{SS}\ (Q_{in}-Q_P)+8,760\ Q_P$

where:

BOH_{SS}=as defined in 4.6.1 of this appendix
Q_{in}=as defined in 3.1 of this appendix
Q_P=as defined in 3.5 of this appendix
8,760=as specified in 4.6.1 of this appendix

4.6.2.1 For vented heaters equipped with either two stage or step modulating controls E_F is defined as:

$E_F=E_M+4,600Q_P$

where:

E_M=as defined in 4.6.1.2 of this appendix
4,600=as specified 4.2.6 of this appendix
Q_P=as defined in 3.5 of this appendix

4.6.3 *Average annual auxiliary electrical energy consumption for vented heaters.* For vented heaters with single stage controls or manual controls the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$E_{AE}=BOH_{SS}P_E$

where:

BOH_{SS}=as defined in 4.6.1 of this appendix
P_E=as defined in 3.1.3 of this appendix

4.6.3.1 For vented heaters equipped with two stage or modulating controls E_{AE} is defined as:

$E_{AE}=(BOH_R+BOH_H)P_E$

where:

BOH_R=as defined in 4.6.1 of this appendix
BOH_H=as defined in 4.6.1 of this appendix
P_E=as defined in 3.1.3 of this appendix

4.6.4 *Average annual energy consumption for vented heaters located in a different geographic region of the United States and in buildings with different design heating requirements.*

4.6.4.1 *Average annual fuel energy consumption for gas or oil fueled vented home heaters located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil fueled vented heaters the average annual fuel energy consumption for a specific geographic region and a specific typical design heating requirement (E_{FR}) is expressed in Btu per year and defined as:

$E_{FR}=(E_F-8,760\ Q_P)(HLH/1,416)+8,760Q_P$

where:

E_F=as defined in 4.6.2 of this appendix
8,760=as specified in 4.6.1 of this appendix
Q_P=as defined in 3.5 of this appendix
HLH=heating load hours for a specific geographic region determined from the heating load hour map in Figure 3 of this appendix
1,416=as specified in 4.6.1 of this appendix

4.6.4.2 *Average annual auxiliary electrical energy consumption for gas or oil fueled vented home heaters located in a different geographic region of the United States and in buildings with different design heating requirements.* For gas or oil fueled vented home heaters the average annual auxiliary electrical energy consumption for a specific geographic region and a specific typical design heating requirement (E_{AER}) is expressed in kilowatt-hours and defined as:

$E_{AER}=E_{AE}\ HLH/1,416$

where:

E_{AE}=as defined in 4.6.3 of this appendix
HLH=as defined in 4.6.4.1 of this appendix
1,416=as specified in 4.6.1 of this appendix

f. Table 4 and Figure 3 are added to the end of appendix O to subpart B of 10 CFR part 430 to read as follows:

TABLE 4.—AVERAGE DESIGN HEATING REQUIREMENTS FOR VENTED HEATERS WITH DIFFERENT OUTPUT CAPACITIES

Vented heaters output capacity Q_{out}—(Btu/hr)	Average design heating requirements (kBtu/hr)
5,000–7,499	5.0
7,500–10,499	7.5
10,500–13,499	10.0
13,500–16,499	12.5
16,500–19,499	15.0
19,500–22,499	17.5
22,500–26,499	20.5
26,500–30,499	23.5
30,500–34,499	26.5
34,500–38,499	30.0
38,500–42,499	33.5
42,500–46,499	36.5
46,500–51,499	40.0
51,500–56,499	44.0
56,500–61,499	48.0
61,500–66,499	52.0
66,500–71,499	56.0
71,500–76,500	60.0

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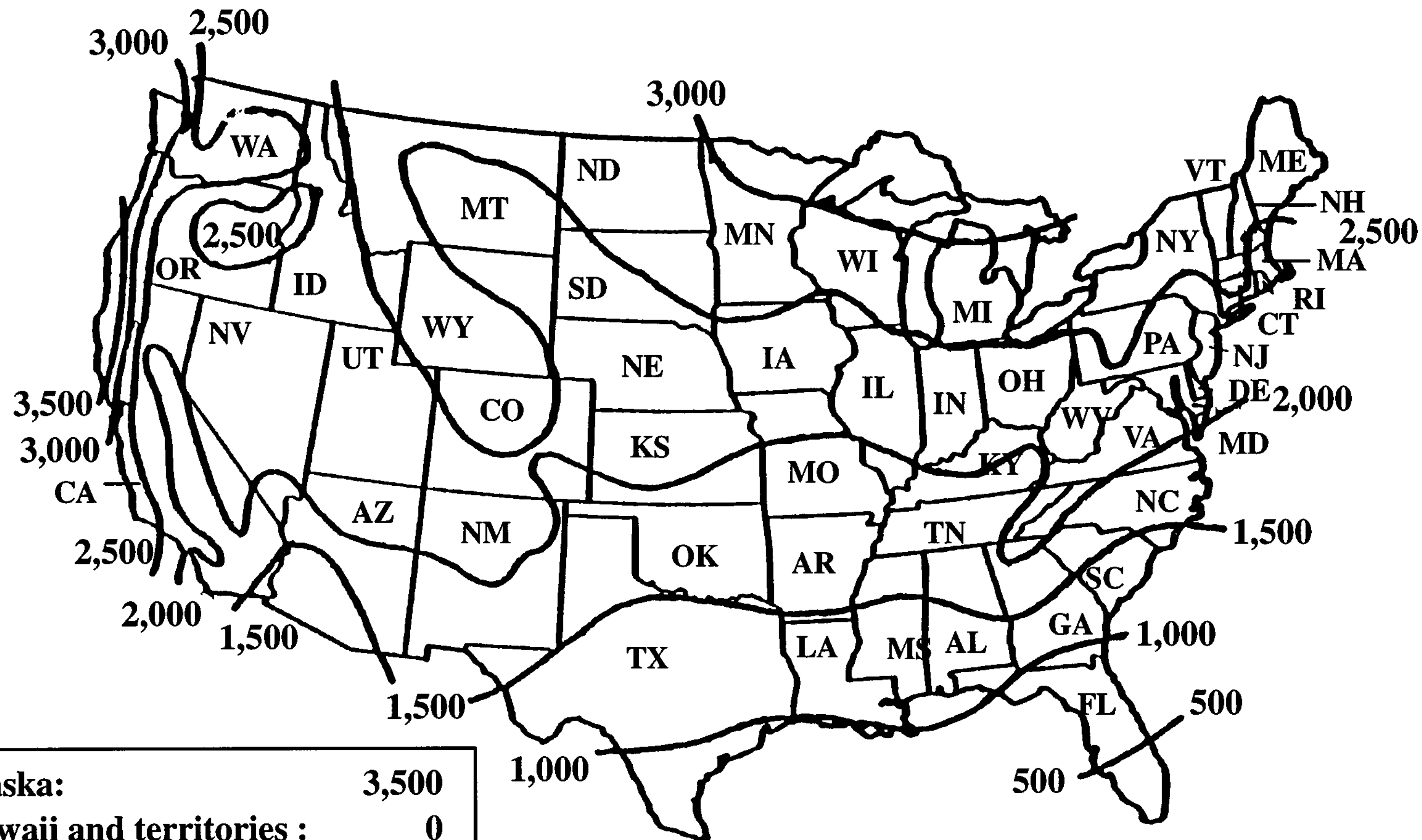

Alaska:	3,500
Hawaii and territories :	0

This map is reasonably accurate for most parts of the United States but is necessarily generalized, and consequently not too accurate in mountainous regions, particularly in the rockies.

FIGURE 3- HEATING LOAD HOURS (HLH) FOR THE UNITED STATES

BILLING CODE 6450–01–C

7. Appendix P to Subpart B of Part 430 is revised to read as follows:

Appendix P to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Pool Heaters

1. Test method. The test method for testing pool heaters is as specified in American National Standards Institute Standard for Gas-Fired Pool Heaters, Z21.56–1994.

2. Test conditions. Establish the test conditions specified in section 2.9 of ANSI Z21.56–1994.

3. Measurements. Measure the quantities delineated in section 2.9 of ANSI Z21.56–1994. The measurement of energy consumption for oil-fired pool heaters in Btu is to be carried out in appropriate units, e.g., gallons.

4. Calculations.

4.1 *Thermal efficiency.* Calculate the thermal efficiency, E_t (expressed as a percent), as specified in section 2.9 of ANSI Z21.56–1994. The expression of fuel consumption for oil-fired pool heaters shall be in Btu.

4.2 *Average annual fossil fuel energy for pool heaters.* The average annual fuel energy for pool heater, E_F, is defined as:

E_F=BOH Q_{IN}+(POH − BOH)Q_P

where:

BOH=average number of burner operating hours=104 h

POH=average number of pool operating hours=4464 h

Q_{IN}=rated fuel energy input as defined according to 2.9.1 or 2.9.2 of ANSI Z21.56–1994, as appropriate

Q_P=energy consumption of continuously operating pilot light if employed, in Btu/h.

4.3 *Average annual auxiliary electrical energy consumption for pool heaters.* The average annual auxiliary electrical energy consumption for pool heaters, E_{AE}, is expressed in Btu and defined as:

E_{AE}=BOH PE

where:

PE=2E_c if heater tested according to 2.9.1 of ANSI Z21.56–1994

=3.412 PE_{rated} if heater tested according to 2.9.2 of ANSI Z21.56–1994, in Btu/h

E_c=Electrical consumption of the heater (converted to equivalent unit of Btu), including the electrical energy to the recirculating pump if used, during the 30-minute thermal efficiency test, as defined in 2.9.1 of ANSI Z21.56–1994, in Btu per 30 min.

2=Conversion factor to convert unit from per 30 min. to per h.

PE_{rated}=nameplate rating of auxiliary electrical equipment of heater, in Watts

BOH=as defined in 4.2 of this appendix

4.4 *Heating seasonal efficiency.*

4.4.1 Calculate the seasonal useful output of the pool heater as:

E_{OUT}=BOH [(E_t/100)(Q_{IN}+PE)]

where:

BOH=as defined in 4.2 of this appendix

E_t=thermal efficiency as defined in 4.1 of this appendix

Q_{IN}=as defined in 4.2 of this appendix

PE=as defined in 4.3 of this appendix

100=conversion factor, from percent to fraction

4.4.2 Calculate the seasonal input to the pool heater as:

E_{IN}=BOH (Q_{IN}+PE)+(POH − BOH) Q_P

where:

BOH=as defined in 4.2 of this appendix

Q_{IN}=as defined in 4.2 of this appendix

PE=as defined in 4.3 of this appendix

POH=as defined in 4.2 of this appendix

Q_P=as defined in 4.2 of this appendix

4.4.3 *Calculate the pool heater heating seasonal efficiency (in percent).*

4.4.3.1 For pool heaters employing a continuous pilot light:

$EFFY_{HS}$=100(E_{OUT}/E_{IN})

where:

E_{OUT}=as defined in 4.4.1 of this appendix

E_{IN}=as defined in 4.4.2 of this appendix

100=to convert a fraction to percent

4.4.3.2 For pool heaters without a continuous pilot light:

$EFFY_{HS}$=E_t

where:

E_t=as defined in 4.1 of this appendix.

[FR Doc. 97–10608 Filed 5–9–97; 8:45 am]

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Monday
May 12, 1997

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3403

Small Business Innovation Research Grants Program; Administrative Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3403

RIN 0524–AA08

Small Business Innovation Research Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is amending its regulations relating to the administration of the Small Business Innovation Research (SBIR) Grants Program, which prescribe the procedures to be followed annually in the solicitation of research grant proposals, the evaluation of such proposals, and the award of competitive research grants under this program. This rule amends those regulations by identifying information that will be specified in the annual solicitation as opposed to this rule. CSREES is republishing these regulations in their entirety with the proposed amendments in order to enhance their use by the public and to ensure expeditious submission and processing of grant proposals.

DATES: Effective May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Ebaugh; Director; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Washington, DC 20250. Telephone: (202) 720-9181.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements contained in this rule have been approved under the Office of Management and Budget (OMB) Document Nos. 0524–0022, 0524–0025, and 0524–0026.

Classification

This rule has been reviewed under Executive Order 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866. In addition, the Department certifies that the rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*).

Regulatory Analysis

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.212, Small Business Innovation Research (SBIR Program). For the reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, and pursuant to the Notice found at 52 FR 22831, June 16, 1987, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

On June 10, 1988, the Department published a Final Rule in the **Federal Register** (53 FR 21966–21972), which established Part 3403 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the U.S. Department of Agriculture's Small Business Innovation Research (SBIR) Grants Program conducted under the authority of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law 99–591, 100 Stat. 3341. This rule established and codified the procedures to be followed in the solicitation of competitive small business innovation research proposals, the evaluation of such proposals, and the award of grants under this program. On September 20, 1991, the Department published a Final Rule in the **Federal Register** (56 FR 47882–47889), which amended the Cooperative State Research Service (CSRS) regulations relating to the Small Business Innovation Research Grants Program. On December 30, 1994, the Department published a Final Rule in the **Federal Register** (59 FR 68072) which amended 7 CFR Chapter XXXIV to reflect the abolishment of CSRS and the establishment of CSREES. On May 15, 1996, the Department published a Final Rule in the **Federal Register** (61 FR 25366) amending 7 CFR Chapter XXXIV by encouraging individuals who are principally responsible for the scientific or technical direction of the proposed work to be designated as the principal investigator, making it a condition that Federal funds remain for an extension of a Phase I grant and that an extension will not normally exceed 12 months, requiring that when purchasing equipment or products with agreement funds that only American-made items are purchased to the extent possible, and making a few additional changes. On March 11, 1997, the Department published a Notice in the **Federal Register** (62 FR 11256–11263) proposing the amendment of this rule and inviting comments from interested individuals and organizations. Written comments were requested by April 10, 1997. No comments were received.

List of Subjects in 7 CFR Part 3403

Grant programs—Agriculture, Grant administration.

For the reasons set out in the preamble, Title 7, Subtitle B, Chapter XXXIV, Part 3403 of the Code of Federal Regulations is revised to read as follows:

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

Subpart A—General Information

Subpart B—Program Description

Authority: 15 U.S.C. 638.

Subpart A—General Information

§ 3403.1 Applicability of regulations.

(a) The regulations of this part apply to small business innovation research grants awarded under the general authority of section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law 99–591, 100 Stat. 3341, and the provisions of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638). The Small Business Innovation Development Act of 1982, as amended, mandates that each Federal agency with an annual extramural budget for research or research and development in excess of $100 million participate in a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of its annual extramural budget for award to small business concerns for research or research and development in order to stimulate technological innovation, use small business to meet Federal research and development needs, increase private sector commercialization of innovations derived from Federal research and development, and foster and encourage the participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in technological innovation. The U.S. Department of Agriculture (USDA) will participate in this program through the issuance of competitive research grants which will be administered by the Office of Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service (CSREES).

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3403.2 Definitions.

As used in this part:

Ad hoc reviewers means experts or consultants, qualified by training and experience in particular scientific or technical fields to render expert advice on the scientific or technical merit of grant applications in those fields, who review on an individual basis one or several of the eligible proposals submitted to this program in their area of expertise and who submit to the Department written evaluations of such proposals.

Awarding official means any officer or employee of the Department who has the authority to issue or modify research project grant instruments on behalf of the Department.

Budget period means the interval of time into which the project period is divided for budgetary and reporting purposes.

Commercialization means the process of developing markets and producing and delivering products or services for sale (whether by the originating party or by others); as used here, commercialization includes both government and commercial markets.

Department means the Department of Agriculture.

Funding agreement is any contract, grant, or cooperative agreement entered into between any Federal agency and any small business concern for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

Grantee means the small business concern designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

Peer review group means experts or consultants, qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications in those fields, who assemble as a group to discuss and evaluate all of the eligible proposals submitted to this program in their area of expertise.

Principal investigator means a single individual designated by the grantee in the grant application and approved by the Department who is responsible for the scientific or technical direction of the project. Therefore, the individual should have a scientific and technical background.

Program solicitation is a formal request for proposals whereby an agency notifies the small business community of its research or research and development needs and interests in selected areas and invites proposals from small business concerns in response to those needs.

Project means the particular activity within the scope of one of the research topic areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

Project period means the total length of time that is approved by the Department for conducting the research project as outlined in an approved grant application.

Research or research and development (R&D) means any activity which is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

Research project grant means the award by the Department of funds to a grantee to assist in meeting the costs of conducting for the benefit of the public an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research topic area identified in the annual solicitation of applications.

Small business concern means a concern which at the time of award of phase I and phase II funding agreements meets the following criteria:

(1) Is organized for profit, independently owned or operated, is not dominant in the field in which it is proposing, has its principal place of business located in the United States, has a number of employees not exceeding 500 (full-time, part-time, temporary, or other) in all affiliated concerns owned or controlled by a single parent concern, and meets the other regulatory requirements outlined in 13 CFR Part 121. Business concerns, other than licensed investment companies, or State development companies qualifying under the Small Business Investment Act of 1958, 15 U.S.C. 661, *et seq.*, are affiliates of one

another when directly or indirectly one concern controls or has the power to control the other or third parties (or party) control or have the power to control both. Control can be exercised through common ownership, common management, and contractual relationships. The term ''affiliates'' is defined in greater detail in 13 CFR 121.401(a) through (m). The term ''number of employees'' is defined in 13 CFR 121.407. Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association, or cooperative.

(2) Is at least 51 percent owned, or in the case of a publicly owned business at least 51 percent of its voting stock is owned, by United States citizens or lawfully admitted permanent resident aliens.

Socially and economically disadvantaged individual is a member of any of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, other groups designated from time to time by the Small Business Administration (SBA) to be socially disadvantaged, or any other individual found to be socially and economically disadvantaged by the SBA pursuant to section 8(a) of the Small Business Act, 15 U.S.C. 637(a).

Socially and economically disadvantaged small business concern is one that is:

(1) At least 51 percent owned by

(i) An Indian tribe or a native Hawaiian organization, or

(ii) One or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals.

Subcontract is any agreement, other than one involving an employer-employee relationship, entered into by a Federal Government funding agreement awardee requesting supplies or services required solely for the performance of the funding agreement.

United States means the fifty States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

Women-owned small business concern means a small business concern that is at least 51 percent owned by a woman or women who also control and operate it. ''Control'' as used in this context means exercising the power to make policy decisions. ''Operate'' as used in this context means being actively involved in the day-to-day management of the concern.

§ 3403.3 Eligibility requirements.

(a) *Eligibility of organization.* (1) Each organization submitting a proposal must qualify as a small business concern for research purposes, as defined in § 3403.2. Joint ventures and limited partnerships are eligible to apply for and to receive research grants under this program, provided that the entity created qualifies as a small business concern in accordance with section 2(3) of the Small Business Act (15 U.S.C. 632) and as defined in § 3403.2. For both phase I and phase II the research must be performed in the United States.

(2) A minimum of two-thirds of the research or analytical work, as determined by budget expenditures, must be performed by the proposing organization under phase I grants. For phase II awards, a minimum of one-half of the research or analytical effort must be conducted by the proposing organization. The space used by the SBIR awardee to conduct the research must be space over which it has exclusive control for the period of the grant.

(b) *Eligibility of principal investigator.* (1) It is strongly suggested that the individual responsible for the scientific or technical direction of the project be designated as the principal investigator. In addition, the primary employment of the principal investigator must be with the proposing small business concern at the time of award and during the conduct of the proposed research. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the small business concern. Primary employment with the small business applicant precludes full-time employment with another organization.

(2) If the proposed principal investigator is employed by another organization (e.g., university or another company) at the time of submission of the application, documentation must be submitted with the proposal from the principal investigator's current employer verifying that, in the event of an SBIR award, he/she will become a less-than half-time employee of such organization and will remain so for the duration of the SBIR project.

Subpart B—Program Description

§ 3403.4 Three-phase program.

The Small Business Innovation Research Grants Program will be carried out in three separate phases described in this section. The first two phases are designed to assist USDA in meeting its research and development objectives and will be supported with SBIR funds. The purpose of the third phase is to pursue the commercial applications or objectives of the research carried out in phases I and II through the use of private or Federal non-SBIR funds.

(a) Phase I is the initial stage in which the scientific and technical merit and feasibility of an idea related to one of the research areas described in the program solicitation is evaluated, normally for a period not to exceed 6 months. In special cases, however, where a proposed research project requires more than 6 months to complete, a longer grant period may be considered. A proposer of a phase I project with an anticipated duration beyond 6 months should specify the length and duration in the proposal at the time of its submission to USDA in order for it to be considered at the time of award. (See § 3403.14(c) for changes in project period subsequent to award).

(b) Phase II is the principal research or research and development effort in which the results from Phase I are expanded upon and further pursued, normally for a period not to exceed 24 months. Only those small businesses previously receiving phase I awards are eligible to submit phase II proposals. For each phase I project funded the awardee may apply for a phase II award only once. Phase I awardees who for valid reasons cannot apply for phase II support in the next fiscal year funding cycle may apply for support not later than the second fiscal year funding cycle.

(c) Phase III is to stimulate technological innovation and the national return on investment from research through the pursuit of commercial objectives resulting from the work supported by SBIR funding carried out in phases I and II. This portion of the project is performed by the small business concern and privately funded or Federally funded by a non-SBIR source through the use of a follow-on funding commitment. A follow-on funding commitment is an agreement between the small business concern and a provider of follow-on capital for a specified amount of funds to be made available to the small business concern for further development of their effort upon achieving certain mutually agreed upon technical objectives during phase II.

Subpart C—Preparation and Submission of Proposals

§ 3403.5 Requests for proposals.

(a) *Phase I.* A program solicitation requesting phase I proposals will be prepared each fiscal year in which funds are made available for this purpose. The solicitation will contain information sufficient to enable eligible applicants to prepare grant proposals and will include descriptions of specific research topic areas which the Department will support during the fiscal year involved, forms to be completed and submitted with proposals, and special requirements. A notice will be published in the **Federal Register** informing the public of the availability of the program solicitation.

(b) *Phase II.* For each fiscal year in which funds are made available for this purpose, the Department will send a letter requesting phase II proposals from the phase I grantees eligible to apply for phase II funding in that fiscal year. The letter will be accompanied by the solicitation which contains information sufficient to enable eligible applicants to prepare grant proposals and includes forms to be submitted with proposals as well as special requirements.

§ 3403.6 General content of proposals.

(a) The proposed research must be responsive to one of the USDA program interests stated in the research topic descriptions of the program solicitation.

(b) Proposals must cover only scientific/technological research activities. A small business concern must not propose product development, technical assistance, demonstration projects, classified research, or patent applications. Many of the research projects supported by the SBIR program lead to the development of new products based upon the research results obtained during the project. However, projects that seek funding solely for product development where no research is involved, i.e. the funds are needed to permit the development of a project based on previously completed research, will not be accepted. Literature surveys should be conducted prior to preparing proposals for submission and must not be proposed as a part of the SBIR phase I or phase II effort. Proposals principally for the development of proven concepts toward commercialization or for market research should not be submitted since such efforts are considered the responsibility of the private sector and therefore are not supported by USDA.

(c) A proposal must be limited to only one topic. The same proposal may not be submitted under more than one topic. However, an organization may submit separate proposals on the same topic. Where similar research is discussed under more than one topic, the proposer should choose that topic whose description appears most relevant to the proposer's research concept. Duplicate proposals will be returned to the applicant without review.

(d) The limitation on the length of phase I and phase II proposals, text instructions, and the formatting instructions will be identified in the annual solicitation.

§ 3403.7 Proposal format for phase I applications.

(a) The following items relate to phase I applications. Further instructions or descriptions for these items as well as any additional items to be included will be provided in the annual solicitation, as necessary.

(1) *Proposal cover sheet.* Photocopy and complete Form CSREES–667 in the program solicitation. The original of the proposal cover sheet must at a minimum contain the pen-and-ink signatures of the proposed principal investigator(s) and the authorized organizational official.

(2) *Project summary.* Photocopy and complete Form CSREES–668 in the program solicitation. The technical abstract should include a brief description of the problem or opportunity, project objectives, and a description of the effort. Anticipated results and potential commercial applications of the proposed research also should be summarized in the space provided. Keywords, to be provided in the last block on the page, should characterize the most important aspects of the project. The project summary of successful proposals may be published by USDA and, therefore, should not contain proprietary information.

(3) *Technical content.* The main body of the proposal should include:

(i) Identification and significance of the problem or opportunity.

(ii) Background and rationale.

(iii) Relationship with future research or research and development.

(iv) Phase I technical objectives.

(v) Phase I work plan.

(vi) Related research or research and development.

(4) *Key personnel and bibliography.* Identify key personnel involved in the effort, including information on their directly related education and experience.

(5) *Facilities and equipment.* Describe the types, location, and availability of instrumentation and physical facilities necessary to carry out the work proposed. Items of equipment to be purchased must be fully justified under this section.

(6) *Consultants.* Involvement of university or other consultants in the planning and research stages of the project is permitted and may be particularly helpful to small firms which have not previously received Federal research awards. If such involvement is intended, it should be described in detail.

(7) *Potential post application.* Briefly describe:

(i) Whether and by what means the proposed research appears to have potential commercial application;

(ii) Whether and by what means the proposed research appears to have potential use by the Federal Government; and

(iii) Whether and by what means the proposed research will satisfy the public interest.

(8) *Current and pending support.* If a proposal, substantially the same as the one being submitted, has been previously funded or is currently funded, pending, or about to be submitted to another Federal agency or to USDA in a separate action, the proposer must provide the following information:

(i) Name and address of the agency(s) to which a proposal was submitted, or will be submitted, or from which an award is expected or has been received.

(ii) Date of actual or anticipated proposal submission or date of award, as appropriate.

(iii) Title of proposal or award, identifying number assigned by the agency involved, and the date of program solicitation under which the proposal was submitted or the award was received.

(iv) Applicable research topic area for each proposal submitted or award received.

(v) Title of research project.

(vi) Name and title of principal investigator for each proposal submitted or award received. USDA will not make awards that duplicate research funded (or to be funded) by other Federal agencies.

(9) *Cost breakdown on proposal budget.* Photocopy and complete the budget form in the program solicitation only for the phase under which you are currently applying. (An applicant for phase I funding should not submit both phase I and II budgets.)

(10) *Research involving special considerations.* If the proposed research will involve recombinant DNA molecules, human subjects at risk, or laboratory animal care, the proposal must so indicate and include an

assurance statement (Form CSREES–662) as the last page of the proposal. The original of the assurance statement must at a minimum contain the pen-and-ink signature of the authorized organizational official. In order to complete the assurance statement, the proposer may be required to have the research plan reviewed and approved by an appropriate ''Institutional Review Board'' (IRB) prior to commencing actual substantive work. If an IRB review is required, USDA will not release funds for an award until proper documentation of the IRB approval is submitted to and accepted by USDA. It is suggested that proposers contact local universities, colleges, or nonprofit research organizations which have established such reviewing mechanisms to have this service performed.

(11) *Proprietary information.* (i) If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided the information is clearly marked by the proposer with the term ''confidential proprietary information'' and provided the following legend appears in the designated area at the bottom of the proposal cover sheet (Form CSREES–667):

The following pages (specify) contain proprietary information which (name of proposing organization) requests not be released to persons outside the Government, except for purposes of evaluation.

(ii) USDA by law is required to make the final decision as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the proposer. However, USDA will retain for one year one file copy of all proposals received; extra copies will be destroyed. Public release of information for any proposal submitted will be subject to existing statutory and regulatory requirements. Any proposal which is funded will be considered an integral part of the award and normally will be made available to the public upon request except for designated proprietary information that is determined by USDA to be proprietary information.

(iii) The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items which, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information which could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports which attempt to restrict dissemination of large amounts of information may be found unacceptable by USDA. Any other legend than that listed in paragraph (a)(11)(i) of this section may be unacceptable to USDA and may constitute grounds for return of the proposal without further consideration. Without assuming any liability for inadvertent disclosure, USDA will limit dissemination of such information to its employees and, where necessary for the evaluation of the proposal, to outside reviewers on a confidential basis.

(12) *Rights in data developed under SBIR funding agreement.* The SBIR legislation provides for ''retention of rights in data generated in the performance of the contract by the small business concern.''

(i) The legislative history clarifies that the intent of the statute is to provide authority for the participating agency to protect technical data generated under the funding agreement, and to refrain from disclosing such data to competitors of the small business concern or from using the information to produce future technical procurement specifications that could harm the small business concern that discovered and developed the innovation until the small business concern has a reasonable chance to seek patent protection, if appropriate.

(ii) Therefore, except for program evaluation, participating agencies shall protect such technical data for a period of not less than *4 years* from the completion of the project from which the data were generated unless the agencies obtain permission to disclose such data from the contractor or grantee. The government shall retain a royalty-free license for government use of any technical data delivered under an SBIR funding agreement whether patented or not.

(13) *Organizational management information.* Before the award of an SBIR funding agreement, USDA requires the submission of certain organizational management, personnel and financial information to assure the responsibility of the proposer. This information is not required unless a project is recommended for funding, and then it is submitted on a one-time basis only. However, new information should be submitted if a small business concern has undergone significant changes in organization, personnel, finance, or policies including those relating to civil rights.

(b) *Reserved.*

§ 3403.8(b) Reserved Proposal format for phase II applications.

(a) The following items relate to phase II applications. Further instructions or descriptions for these items as well as any additional items to be included will be identified in the annual solicitation, as necessary.

(1) *Proposal cover sheet.* Follow instructions found in § 3403.7(a)(1).

(2) *Project summary.* Follow instructions found in § 3403.7(a)(2).

(3) *Phase I results.* The proposal should contain an extensive section that lists the phase I objectives and makes detailed presentation of the phase I results. This section should establish the degree to which phase I objectives were met and feasibility of the proposed research project was established.

(4) *Proposal.* Since phase II is the principal research and development effort, proposals should be more comprehensive than those submitted under phase I. However, the outline contained in § 3403.7(a)(3) should be followed, tailoring the information requested to the phase II project.

(5) *Cost breakdown on proposal budget.* For phase II, a detailed budget is required for each year of requested support. In addition, a summary budget is required detailing the requested support for the overall project period.

(6) *Organizational management information.* Each phase II awardee will be asked to submit an updated statement of financial condition (such as the latest audit report, financial statements or balance sheet).

(7) *Follow-on funding commitment.* If the proposer has obtained a contingent commitment for phase III follow-on funding, it should be forwarded with the phase II application.

(8) *Documentation of multiple phase II awards.* (i) An applicant that submits a proposal for a funding agreement for phase I and has received more than 15 phase II awards during the preceding 5 fiscal years, must document the extent to which it was able to secure phase III funding to develop concepts resulting from previous phase II awards. This documentation should include the name of the awarding agency, date of award, funding agreement number, topic or subtopic title, amount and date of phase II funding and commercialization status for each phase II award.

(ii) USDA shall collect and retain the information submitted under paragraph (a)(8)(i) of this section at least until the General Accounting Office submits the report required under section 106 of the

Small Business Research and Development Enhancement Act of 1992.

(b) *Reserved.*

§ 3403.9(b) Submission of proposals.

The program solicitation for phase I proposals and the letter requesting phase II proposals will provide the deadline date for submitting proposals, the number of copies to be submitted, and the address where proposals should be mailed or delivered.

Subpart D—Proposal Review and Evaluation

§ 3403.10 Proposal review.

(a) All research grant applications will be acknowledged.

(b) Phase I and phase II proposals will be judged competitively in a two-stage process, based primarily upon scientific or technical merit. First, each proposal will be screened by USDA scientists to ensure that it is responsive to stated requirements contained in the program solicitation. Proposals found to be responsive will be technically evaluated by peer scientists knowledgeable in the appropriate scientific field using the criteria identified in the annual solicitation, as appropriate. Proposals found to be nonresponsive will be returned to the proposing firm without review.

(c) Both internal and external peer reviewers may be used during the technical evaluation stage of this process. Selections will be made from among recognized specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals received. It is anticipated that such experts will include those located in universities, Government, and non-profit research organizations. If possible, USDA intends that peer review groups shall be balanced with minority and female representation and with an equitable age distribution.

(d) Technical reviewers will base their conclusions and recommendations on information contained in the phase I or phase II proposal. It cannot be assumed that reviewers are acquainted with any experiments referred to within a proposal, with key individuals, or with the firm itself. Therefore, the proposal should be self-contained and written with the care and thoroughness accorded papers for publication.

(e) Final decisions will be made by USDA based upon the ratings assigned by reviewers and consideration of other factors, including the potential commercial application, possible duplication of other research, any critical USDA requirements, and budget limitation. In addition, the follow-on funding commitment will be a consideration for phase II proposals. In the event that two or more phase II proposals are of approximately equal technical merit, the follow-on funding commitment for continued development in phase III will be an important consideration. The value of the commitment will depend upon the degree of commitment made by non-Federal investors, with the maximum value resulting from a signed agreement with reasonable terms for an amount at least equal to the funding requested from USDA in phase II.

§ 3403.11 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), the SBIR Policy Directive, and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR part 1.

Subpart E—Supplementary Information

§ 3403.12 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in the annual solicitation. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the Federal Acquisition Regulation (48 CFR part 31), and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

§ 3403.13 Notice of grant awards.

(a) The grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of the Principal Investigator(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort.

(6) Total amount of Federal financial assistance approved for the project period.

(7) Legal authorities under which the grant is awarded.

(8) Approved budget plan for categorizing project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described in paragraph (a) of this section.

§ 3403.14 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this paragraph, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the ADO to complete or fulfill the purposes of an approved project provided Federal funds remain. The extension shall be conditioned upon a prior request by the grantee and approval in writing by the

ADO. In such cases the extension will not normally exceed 12 months, the phase I award will still be limited to the approved award amount, and the submission of a Phase II proposal will be delayed by one year. The extension allows the grantee to continue expending the remaining Federal funds for the intended purpose over the extension period. In instances where no Federal funds remain, it is unnecessary to approve an extension since the purpose of the extension is to continue using Federal funds. The grantee may opt to continue the Phase I project after the grant's termination and closeout, however, the grantee would have to do so without additional Federal funds. In the latter case, no communication with USDA is necessary. However, the maximum delay for submission of a Phase II proposal remains as specified in § 3403.4(b).

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded;

(3) Result in a need or claim for the award of additional funds; or

(4) Involve transfers or expenditures of amounts requiring prior approval as set forth in the Departmental regulations or in the grant award.

§ 3403.15 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR Part 1—USDA implementation of Freedom of Information Act.

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A–129, Managing Federal Credit Programs.

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives where applicable (i.e., Circular Nos. A–102, A–110, A–87, A–21, and A–122) and incorporating the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-free Workplace (Grants), as amended.

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act;

9 CFR Parts 1, 2, 3, and 4—USDA implementation of the Act of August 24, 1966, Public Law 89–544, as amended (commonly known as the Laboratory Animal Welfare Act).

48 CFR Part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation.

29 U.S.C. 794, section 504—Rehabiliation Act of 1973, and 7 CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

§ 3403.16 Other conditions.

The Department may, with respect to any research project grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Done at Washington, D.C., this 5th day of May 1997.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service

[FR Doc. 97–12153 Filed 5–9–97; 8:45 am]

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Monday
May 12, 1997

Part VI

Department of Education

Technology Innovation Challenge Grants; Notice

DEPARTMENT OF EDUCATION

Technology Innovation Challenge Grants

AGENCY: Department of Education.

ACTION: Notice of final selection criteria, selection procedures, and application procedures.

SUMMARY: The Secretary establishes final selection criteria, procedures for evaluating and selecting applications, and procedures for submission of applications under the Technology Innovation Challenge Grant Program. The Secretary will use these selection criteria, selection procedures and application procedures in fiscal year 1997 (FY 1997) and in subsequent years. The Secretary takes this action to make informed funding decisions on applications for technology projects having great promise for improving elementary and secondary education.

EFFECTIVE DATE: These selection criteria, selection procedures, and application procedures take effect on June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Technology Innovation Challenge Grant Program, Office of Educational Research and Improvement, U.S. Department of Education, Room 606D, 555 New Jersey Avenue, NW, Washington, DC 20208–5544. Telephone: (202) 208–3882. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Technology Innovation Challenge Grant Program is authorized in Title III, section 3136, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6846).

Under this program the Secretary makes grants to consortia. Each consortium must include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line and may include other LEAs, private schools, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, or other appropriate entities. The Technology Innovation Challenge Grant Program provides support to consortia that are developing, adapting, or expanding existing and new applications of technology to improve schools through activities that include continuous professional development for teachers and the development of high quality academic content that helps all children learn to challenging standards.

The Secretary published a notice of proposed selection criteria, selection procedures, and application procedures for the Technology Innovation Challenge Grant Program in the **Federal Register** on February 26, 1997 (62 FR 8687). Written public comments were due to the Secretary by March 28, 1997. Written comments were received from four parties. The Secretary has reviewed these comments and has determined that no modifications in the proposed selection criteria, selection procedures, and application procedures are warranted, except for editorial and technical revisions. An analysis of the comments and the Secretary's responses are contained in the Appendix to this notice.

Selection Criteria

The Secretary establishes selection criteria, selection procedures, and application procedures for the FY 1997 competition and subsequent competitions. The program statute (20 U.S.C. 6846(c)) requires the Secretary to give priority in awarding grants to consortia that demonstrate certain factors in their applications. The Secretary has addressed this mandate by incorporating these priority factors into the selection criteria.

The Secretary establishes the following unweighted selection criteria to evaluate applications:

(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 consortium 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.

Evalation and Selection of Applications

Evaluation

The Secretary evaluates applications using unweighted selection criteria. The Secretary believes that the use of unweighted criteria is most appropriate because they will allow the reviewers maximum flexibility to apply their professional judgments in identifying the particular strengths and weaknesses in individual applications.

The Secretary also believes that due to the highly technical nature of the applications, it will be necessary to obtain clarification and additional information from applicants during the selection process. For the purposes of the Technology Innovation Challenge Grant Program, the Secretary may request highly rated applicants to submit additional information in response to specific questions raised during the application selection process for the FY 1997 competition and subsequent competitions. In accordance with 34 CFR 75.231, the Secretary also may request an applicant to submit additional information after the application has been selected for funding.

Selection Procedures

In applying the selection criteria, the Secretary will use a three-tier peer review process for the FY 1997 competition and subsequent competitions.

At each tier of the review process, panels of experts will read the applications under consideration to determine which applications are most deserving of further consideration in light of the selection criteria. The Department will, to the extent feasible, use reviewers that represent three areas of expertise: (1) K–12 school-based educators who use new technologies for classroom instruction or curriculum development; (2) K–12 school-based administrators who have management responsibility for school-wide, system-wide, or state-wide technology applications; and (3) educational technology experts drawn from higher education, consulting firms, or technology-related firms.

At each tier of the review process, each reviewer assigns a qualitative rating for Significance and a qualitative rating for Feasibility to each application he or she reviews. The qualitative ratings used by individual reviewers are as follows: ''A'' for high quality; ''B'' for satisfactory quality; and ''C'' for unsatisfactory quality. The reviewers also assign an overall rating of ''A'', ''B'', or ''C'' for each application they review.

In Tier I of the review process, reviewers are recruited to serve on panels that meet in several regional sites around the country. Tier I of the review process has two stages. In Stage 1 of Tier I, the applications received by the published application deadline are assigned to teams of readers at the regional sites. The applications are read and rated by all of the individual readers on the team, who then meet to compare their individual ratings of each application they have read. Through this process, the reviewers identify applications that have been unanimously awarded high ratings. At the end of Stage 1 of Tier I, each team at a review site forwards its most highly rated applications for further consideration. In Stage 2 of Tier I, the applications forwarded for further consideration at that site are then read and individually rated by reviewers who served as team leaders in Stage 1 of Tier I. These team leaders use the same qualitative ratings of ''A'', ''B'', and ''C'' for Significance, Feasibility and the overall rating for each forwarded application they read. At the end of Stage 2 of Tier I, the team leaders meet to compare the ratings of all the applications they have read or considered at both stages of Tier I, taking into account all of the readings and ratings of all of the reviewers for each application at that site. Those applications that have been unanimously awarded high ratings by the team leaders at the end of Stage 2 of Tier I are forwarded for further consideration at Tier II of the review process.

In Tier II of the review process, team leaders from all of the regional sites are brought together to serve as reviewers at a single site. These reviewers read the applications forwarded for further consideration from Tier I. Taking into account the quality of all of the applications they have read, the reviewers assign a qualitative rating for Significance, a qualitative rating for Feasibility, and an overall rating of ''A'', ''B'', or ''C'' for each application they review.

Tier II of the review process has two stages. In Stage 1 of Tier II, the reviewers meet in teams to compare their individual ratings of each application they have read. Through this process the reviewers identify applications that have been unanimously awarded high ratings. At the end of Stage 1 of Tier II, each team forwards its most highly rated applications for further consideration. The applications forwarded for further consideration are then read and individually rated ''A'', ''B'', or ''C'' by the persons who served as team leaders in Stage 1 of Tier II. At the end of Stage 2 of Tier II, the team leaders meet to compare the ratings of all the applications they have read or considered at both stages of Tier II, taking into account all of the readings and ratings of all of the reviewers for each application. Those applications that have been unanimously awarded high ratings at the end of Stage 2 of Tier II are then forwarded for further consideration at Tier III of the review process. At the end of Tier II, the reviewers will also identify inconsistencies, points in need of clarification, and other concerns, if any, pertaining to each application being forwarded. Each applicant whose application is forwarded for further consideration at the end of Tier II will have an opportunity to respond in writing to these clarification questions and concerns.

At Tier III, readers are assembled to serve as reviewers at a single site. These reviewers have served as team leaders during both of the previous tiers of the review, and each of the original Tier I review sites is represented by one team leader at Tier III. There is only one stage of review at Tier III. The reviewers read the applications that are still under consideration and, after reading the responses to the clarification questions, they assign ratings for Significance and Feasibility, and an overall rating of ''A'', ''B'', or ''C'' for each application, taking into account the quality of all of the applications they have read. The reviewers compare their individual ratings of each application they have read, and through this process the reviewers identify applications that have been unanimously awarded high ratings. Those applications that have unanimously high ratings are recommended for funding. The reviewers also provide individual recommendations on an appropriate budget level for each application recommended for funding. The Secretary awards grants only to those applications the reviewers have recommended for funding at the end of Tier III. No other applications are considered for funding. In the final selection of applications for funding, the Secretary may also 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. In preparation for a grant award, the Secretary also may request an applicant to submit additional information after the application has been selected for funding.

Application Deadline

The Secretary, in order to ensure timely receipt and processing of applications, establishes the following application deadline for the FY 1997 competition and subsequent competitions.

Procedures for Submission of Applications

Applications, in order to be considered for funding under this program, must be received on or before the deadline date announced in the application notice published in the **Federal Register**. (For the FY 1997 competition, applications must be received on or before May 30, 1997, as announced in the **Federal Register** on March 28, 1997 (62 FR 15052)). The Secretary does not consider an application for funding if it is not received by the deadline date unless the applicant can show, in accordance with 34 CFR 75.102 (d) and (e), 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. (Washington, D.C. time) on the deadline date. For the purposes of this competition the Secretary will not apply 34 CFR 75.102(b), which requires an application to be mailed, rather than received, by the deadline date.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in this notice of selection criteria, selection procedures, and application procedures is 1810–0569.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Note: This notice does *not* solicit applications. A notice inviting applications under this competition was published in the **Federal Register** on March 28, 1997 (62 FR 15052).

(Catalog of Federal Domestic Assistance Number 84.303A, Technology Innovation Challenge Grants)

Program Authority: 20 U.S.C. 6846.

Dated: May 6, 1997.

Ramon C. Cortines,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix

Analysis of Comments and Changes

Summarized below are comments that referred to the proposed selection criteria, selection procedures, and application procedures.

Geographic Equity

Comments: Two commenters noted that over the last two years, the distribution of awards under the Technology Innovation Challenge Grant Program appeared to have been skewed in favor of a few geographic regions of the United States. The two commenters advocated that provisions ensuring some measure of equitable geographic distribution of awards be added to the selection criteria.

Discussion: The statute authorizing the Technology Innovation Challenge Grant Program does not address the issue of geographic distribution of awards. The Secretary understands the importance of participation by all areas of the country in this program and is engaged in intensive dissemination activities to heighten public awareness about the funding that is available. However, the Secretary believes that the three-tier review process that will be used to make selection decisions based on the priority factors outlined in the statute will result in the highest quality awards and that these awards must be based on ''merit,'' irrespective of geographic considerations.

Changes: None.

Serving Disadvantaged Students

Comment: One commenter suggested that the Secretary consider stronger, quantitative measures to ensure that the legislative intent of serving disadvantaged students with the greatest need for educational technology be fulfilled. The commenter suggested that additional points be added to applications emanating from LEAs serving primarily disadvantaged populations and that a sliding scale of extra points be put in place to strengthen the applications coming from jurisdictions with high percentages of disadvantaged students.

Discussion: The statute authorizing the Technology Innovation Challenge Grant Program specifies that a consortia, in order to be eligible for support under this program, must include at least one local educational agency with a high percentage or number of children living below the poverty line. Further, the selection criteria for this program incorporate the statutory priority by specifying that each proposed project be reviewed for its significance by determining the extent to which the project ''is designed to serve areas with a high number or percentage of disadvantaged students or other areas with the greatest need for educational technology * * *.'' Applicants will have to address this selection criterion by demonstrating that the projects they propose will in fact serve areas with a high number or percentage of disadvantaged students or other areas with the greatest need. The Secretary does not believe that further elaboration of the selection criteria, by adding a sliding scale of extra points, is needed to ensure that the needs of disadvantaged students will be addressed.

Changes: None.

Funding New Applicants

Comment: One commenter advocated that those institutions that have not applied under past competitions or been successful in these competitions, be given the same opportunity to receive grants as those who have been successful in previous competitions. The commenter was concerned that funding appears to go to institutions that have been previously funded and that seldom are there successful new applicants.

Discussion: The Secretary agrees that the widest possible pool of applicants must be able to compete for support under the Technology Innovation Challenge Grant Program. Therefore, the program encourages applications from all eligible sources and engages in an intensive dissemination program to ensure broad participation. To date the program has supported two competitions, one in fiscal year 1995 and one in fiscal year 1996, that have resulted in 43 grants. None of these current grantees holds more than one award under this program. There are some grantees that are also members of consortia in partnership with other grantees, but there are no current grantees that have won grants in both competitions that have been held to date.

Changes: None.

Allowing a State Educational Agency to Assist Consortia

Comment: One commenter suggested that for the next Technology Innovation Challenge Grant Program competition State educational agencies be allowed to assist consortia in putting together meaningful grant applications to support improving elementary and secondary education.

Discussion: The statute authorizing the Technology Innovation Challenge Grant Program currently does allow State educational agencies to participate in consortia seeking funding under the program. The statute is clear that the application for funding must be submitted by a local educational agency, but a single local educational agency is not eligible to apply unless it is part of a consortium that may include other local educational agencies, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries or other appropriate organizations. The Secretary agrees that State educational agencies can be important members of these consortia, can fulfill a critical role in assisting the consortia to develop a meaningful grant application, can provide leadership to bring together appropriate partners to build the consortia, and should use every opportunity to do so.

Changes: None.

[FR Doc. 97–12354 Filed 5–9–97; 8:45 am]

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Part VII

Department of Housing and Urban Development

Funding Availability for FY 1997 Historically Black Colleges and Universities Program; Expanding HUD Partnerships for Neighborhood and Community Revitalization; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4213–N–01]

Funding Availability for FY 1997 Historically Black Colleges and Universities Program; Expanding HUD Partnerships for Neighborhood and Community Revitalization

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

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1997.

SUMMARY: This NOFA announces the availability of $6.5 million in FY 1997 funding for the Historically Black Colleges and Universities (HBCU) Program, as provided by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204; approved September 26, 1996; 110 Stat. 2874) (the 1997 Appropriations Act), plus any recaptured funds from prior appropriations. (The use of recaptured funds is subject to reprogramming procedures as required by section 218 of the 1997 Appropriations Act (110 Stat. 2905)). In order to ensure that some previously unfunded HBCUs will receive awards in this competition, one-half of the available funds will be awarded to applicants that have not previously been funded under the HUD HBCU program. Thus, of the $6.5 million in FY 1997 funds made available under this NOFA, $3.25 million will be awarded to HBCUs that have not received funding in past HUD HBCU competitions under section 107(b)(3) of the Housing and Community Development Act of 1974, as amended, which includes competitions for Fiscal Years 1991 through 1996 [1] (''Previously-unfunded HBCUs''). The remaining $3.25 million of FY 1997 funds will be awarded to HBCUs that have received funding under such competitions (''Previously-funded HBCUs''). (Similarly, if recaptured funds are made available, those funds will also be divided evenly between the two types of applicant).

The maximum amount awarded to any applicant will be $400,000. The maximum period for performance of a proposed program under this NOFA is 24 months. The performance period will commence on the effective date of the grant agreement. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in a particular application. The awards will be made in the form of grants.

This document contains the following information:

a. The purpose of the NOFA;
b. Information regarding available amounts, objectives, eligibility, and selection criteria; and
c. Application processing guidance, including how, where, and when to apply and how selections will be made.

DATES: Application kits may be requested immediately. HUD will distribute application kits as soon as they become available.

DEADLINE DATE:

Applications Delivered. Completed applications are due before 5 p.m. eastern standard time on July 28, 1997. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

Applications Mailed. Applications will be considered timely filed if postmarked before midnight on July 28, 1997, and received by HUD Headquarters within ten (10) days after that date.

Applications Sent by Overnight Delivery. Overnight delivery items will be considered timely filed if received before or on July 28, 1997, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service no later than July 28, 1997.

No facsimile (FAX). Applications may not be submitted by (FAX).

ADDRESSES: For a copy of the application package and supplemental information, including an instructional video, please call Community Connections at 1–800–998–9999. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (The numbers are both toll-free.) These materials, except the video, are also available on the Internet at gopher://amcom.aspensys.com:75/11/funding. When requesting an application kit, please refer to document FR–4213, and provide your name, address (including zip code), and telephone number (including area code). Requests for HBCU application packages should be made immediately to insure sufficient time for application preparation. HUD will distribute application packages as soon as they become available.

Application Submission. An originally signed application and two copies shall be submitted to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7251, Washington, D.C., 20410–3500; ATTN: HBCU Program. In addition, one copy of the application must also be sent to the Community Planning and Development (CPD) Director in the HUD field office serving the State in which the applicant is located. The application sent to the field office must be received by the application deadline as well, but determination that an application was received on time will be made solely on receipt of the application at HUD Headquarters in Washington. The original and all three copies may be used in reviewing the application. A listing of HUD field offices with HBCUs located in their jurisdiction appears as Appendix A to this Notice of Funding Availability.

HUD will accept only *one* application per HBCU. If more than one application is received from a single HBCU, the application from that HBCU that was received earliest will be considered for funding, and the application(s) submitted later will be ineligible. If more than one application is received simultaneously from an HBCU then all such applications will be considered ineligible for funding. Applicants should take these policies into account and take steps to ensure that multiple applications are not submitted.

FOR FURTHER INFORMATION CONTACT: Ms. Delores Pruden or Mr. John Simmons, Historically Black Colleges and Universities Program, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th St., S.W., Washington, DC 20410; telephone (202) 708–1590 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. Information may also be obtained from the HUD field office located in the applicant's geographic area, see Appendix A to this NOFA for names, addresses and telephone numbers, or for general information, applicants can call Community Connections at 1–800–998–9999.

[1] The FY 1991 competition was the first funded under the current HBCU Program authorization, section 107(b)(3) of the 1974 Act.

SUPPLEMENTARY INFORMATION:

I. Purpose, Objectives, and Substantive Description

Purpose. The Historically Black Colleges and Universities (HBCU) Program is designed to assist HBCUs to expand their role and effectiveness in addressing community development needs in their localities. For the purposes of this program, the term ''locality'' includes any city, county, town, township, parish, village, or other general political subdivision of a State or the U.S. Virgin Islands within which an HBCU is located. An HBCU located in a metropolitan statistical area (MSA), as established by the Office of Management and Budget, may consider its locality to be one or more of these entities within the entire MSA. The nature of the locality for each HBCU may, therefore, differ depending on its location.

Program Objective. The objective of this program is to assist HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, consistent with the purposes of Title I of the Housing and Community Development Act of 1974, as amended.

Promoting Comprehensive Approaches to Housing and Community Development. HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, HUD in recent years has developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan.

On December 3, 1996 (61 FR 64196), HUD published in the **Federal Register** the NOFA for the HUD-Administered Small Cities Community Development Block Grant Program—Development Grants for Fiscal Year 1997 and the Section 108 Loan Guarantee Program for Small Communities in New York State. On March 20, 1997 (62 FR 13506), HUD published the NOFA for Community Outreach Partnership Centers (COPC). On April 23, 1997 (62 FR 19860), HUD published the Youthbuild NOFA. Other related NOFAs that HUD expects to publish in the **Federal Register** within the next few weeks include the Joint Community Partners NOFA and the TOP/Economic Development NOFA.

To foster comprehensive, coordinated approaches by communities, HUD intends for the remainder of FY 1997 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html. Additional steps on NOFA coordination may be considered for FY 1998.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

A. Authority

This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act) (42 U.S.C. 5307(b)(3)), which was added by section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235). The program is governed by regulations contained in 24 CFR 570.400 and 570.404, and in 24 CFR part 570, subparts A, C, J, K, and O.

B. Eligibility

1. *Eligible Applicants.* Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12677, dated April 28, 1989, are eligible for funding under the HBCU Program. As indicated above, funds available under this NOFA will be split between two classes of HBCU applicant. One category, Previously-funded HBCUs, includes HBCUs that have received funding in past HUD HBCU competitions under section 107(b)(3) of the Housing and Community Development Act of 1974, which includes competitions for Fiscal Years 1991 through 1996. The other category of eligible applicant, Previously-unfunded HBCUs, includes HBCUs that *have not* received funding under such competitions. Lists of Previously-funded HBCUs and Previously-unfunded HBCUs appear as Appendices B and C to this Notice of Funding Availability. HUD will use these lists to determine in which category the application should be considered.

2. *Eligible Activities.* Each activity proposed for funding must meet both a Community Development Block Grant (CDBG) program national objective AND the CDBG eligibility requirements, which are described below. In addition, the application must contain a letter from the Chief Executive Officer of the unit of general local government in which the proposed activities are to be carried out, certifying that the activities are consistent with the Consolidated Plan or other officially approved Comprehensive Plan of the jurisdiction to be served.

a. National Objectives. Each activity that may be funded under this NOFA must meet one of the three national objectives of the Community Development Block Grant program: (1) Benefit to low- or moderate-income persons; (2) aid in the prevention or elimination of slums or blight; or (3) meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community, and other financial resources are not available to meet such needs. Criteria for determining whether an activity addresses one or more of these objectives are provided at 24 CFR 570.208. (It is not necessary for applicants to comply with the primary objective requirement of 24 CFR 570.200 (a)(3), which requires recipients to ensure that not less than 70 percent of the grant expenditures be for activities benefiting low and moderate income persons.).

b. Eligible Activities that may be funded under this NOFA are those activities eligible for CDBG funding. They are listed in 24 CFR part 570, subpart C, particularly §§ 570.201 through 570.206. Ineligible activities are listed at § 570.207. Additionally, an activity which otherwise is eligible under §§ 570.201 through 570.206 may not be funded if State or local law requires that it be carried out by a governmental entity. Examples of activities that generally can be carried out with these funds include, but are not limited to:

(1) Acquisition of real property;

(2) Clearance and demolition;

(3) Rehabilitation of residential structures to increase housing opportunities for low- and moderate-income persons and rehabilitation of commercial or industrial buildings to

correct code violations or for certain other purposes;

(4) Direct homeownership assistance to low- and moderate-income persons, as provided in section 105(a)(25) of the Housing and Community Development Act of 1974;

(5) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, such as water and sewer facilities and streets;

(6) Special economic development activities described at 24 CFR 570.203;

(7) Eligible public service activities, including activities that provide a continuum of care for the homeless; adult basic education classes; GED preparation and testing; job and career counseling and assessment; citizen participation academies, and public access telecommunications centers including ''Campus of Learners'' (COL) and ''Neighborhood Networks'' (NN); social and medical services; other support activities for youth, senior citizens, and other low- and moderate-income residents; and/or fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex, national origin, family status and/or disability aware of the range of housing opportunities available to them;

(8) Assistance to facilitate economic development by providing technical or financial assistance for the establishment, stabilization, and expansion of microenterprises, including minority enterprises;

(9) Establishment of a Community Development Corporation (CDC) to undertake eligible activities;

(10) Assistance to a community based development organizations (CBDO) to carry out a CDBG neighborhood revitalization, community economic development, or energy conservation project, in accordance with 24 CFR 570.204. This could include activities in support of a HUD approved local CDBG Neighborhood Revitalization Strategy (NRS) or HUD approved State CDBG Community Revitalization Strategy (CRS). HBCUs proposing a Community Development Corporation (CDC) component may qualify for CBDO activities; and

(11) Program administration costs related to the planning and execution of community development activities assisted in whole or in part with grant funds. In order to expand the capacity of HBCUs eligible under this NOFA, applicants may propose to use up to 10 percent of the award funds to acquire technical assistance (TA) from a qualified TA provider to assist in implementing the proposed activities. While applicants are responsible for ensuring that potential TA providers are qualified, HUD would expect that the most qualified providers would be entities/organizations that have demonstrated the expertise and capacity to successfully conceptualize, develop and implement community and economic development projects and initiatives similar to those proposed by the applicant. Although pre-award technical assistance costs may not be paid out of grant funds (not including matching funds, if any), applicants expecting to need technical assistance are encouraged, nonetheless, to choose a TA provider as early as possible, to ensure that the TA provider is involved in the early stages of proposal development. Previously unfunded HBCUs are particularly encouraged to consider acquiring technical assistance from a qualified HBCU TA provider, as described in paragraph I.B.3 of this section (entitled ''Partnering with a qualified HBCU technical assistance (TA) provider'').

In selecting proposed eligible activities, applicants are urged to propose undertaking activities designed to promote opportunities for training and employment of low-income residents in connection with HUD initiatives such as ''Campus of Learners'' (COL) in public housing and ''Neighborhood Networks'' (NN) in other Federally-assisted or insured housing. Applicants are also encouraged, whenever feasible, to propose implementing activities in a Federally-designated Urban or Rural (HUD or Department of Agriculture) Empowerment Zone, Urban Supplemental Empowerment Zone, Urban or Rural Enterprise Community (EZ or EC), or a HUD-approved local CDBG Neighborhood Revitalization Strategy Area or HUD-approved State CDBG Community Revitalization Strategy Area. As indicated in the Selection Criteria of this NOFA, qualified applicants may be awarded bonus points for projects meeting these criteria.

Although acquisition of equipment is not generally an eligible activity (subject to the exceptions provided in 24 CFR 570.207(b)(1)), applicants are encouraged to propose the use of grant funds, at reasonable levels, for the acquisition of computer hardware and software compatible with Internet access and HUD's Community Planning Software Plus (CPS+), if they do not currently have such capability. More information on CPS+ can be obtained from the local HUD Community Planning and Development Office.

Those applicants planning to use grant funds for the provision of public services are bound by the statutory requirement that not more than 15 percent of the total grant amount be used for public service activities. Therefore, at least 85 percent of the grant amount must be proposed to be used for activities qualifying under an eligibility category other than public services (as described at 24 CFR 570.201(e)).

3. *Partnering With a Qualified HBCU Technical Assistance (TA) Provider.* In order to expand the capacity of HBCUs eligible under this NOFA and to foster further partnerships among HBCUs, applicants are encouraged to propose using a portion of the award funds to acquire technical assistance from a qualified HBCU to assist them in developing and implementing the proposed activities. The cost for the technical assistance must be for post-award assistance and must be necessary and reasonable for the purposes of the grant. Under no circumstances may an applicant use more than 10 percent of the total HUD grant (not including matching funds, if any) to purchase technical assistance. As indicated above, although pre-award technical assistance costs may not be paid out of grant funds (not including matching funds, if any), applicants expecting to need technical assistance are encouraged, nonetheless, to choose a TA provider as early as possible, to ensure that the TA provider is involved in the early stages of proposal development. While applicants are responsible for ensuring that potential TA providers are qualified, HUD would expect that the most qualified HBCU TA providers would be Previously-funded HBCUs that have demonstrated the expertise and capacity to successfully conceptualize, develop, and implement community and economic development projects and initiatives, particularly by successfully carrying out activities funded under the HUD HBCU Program.

4. *Environmental Review.* If the applicant proposes activities (such as physical development activities) that are not excluded from environmental review under 24 CFR 50.19(b), an environmental review by HUD is required in accordance with 24 CFR part 50, as indicated by 24 CFR 570.404(i), before HUD approves the proposal (i.e., releases CDBG funds). Before *any* grant funds are released, environmental approval must be secured. If the requirements of part 50 are not met, HUD reserves the right to terminate all or portions of the award. The grantee is

not authorized to proceed with any activity requiring such approval until written approval is received from the appropriate HUD field Environmental Clearance Officer in its area certifying that the project has been approved and released from all environmental conditions.

C. Selection Process, Optional Match and Selection Criteria

Selection Process

HUD will evaluate applications for funding under this NOFA competitively and will award points based on responses to the Selection Criteria identified below. Applications must be complete and consistent with this NOFA, the application kit, and the HBCU program regulations (24 CFR 570.404) in order for the application to be eligible to compete in this competition. To be considered for funding, applicants must receive a minimum score of 70 out of the total of 100 points possible for Criteria I through IV. HUD will not fund specific proposed activities that do not meet eligibility requirements (see, particularly, 24 CFR part 570, subpart C), or that do not meet a national objective in accordance with 24 CFR 570.208. The CDBG Publication entitled ''Everything You Wanted to Know About CDBG'' discusses the regulations, and a copy can be ordered from HUD's Community Connection at 1–800–998–9999.

HUD will rate complete applications that are consistent with all requirements of this NOFA, the application kit, and the HBCU and CDBG Program regulations using the selection criteria provided below. To review and rate applications, HUD may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies.

After rating the responses to the Selection Criteria, HUD will separate the applications by category of applicant (Previously-funded HBCUs or Previously-unfunded HBCUs). Within each category, HUD will fund applications in rank order, until it has awarded all available funds for that category of applicant, or until there are no fundable applications remaining in that category. If there is a tie in the point scores of two applications, the rank order will be determined by the applicant's scores on Selection Criterion I. HUD will give the higher rank to the application with the most points on Selection Criterion I. If there is still a tie, the rank order will be determined by the applicant's scores on Selection Criterion II. HUD will give the higher rank to the application with the most points for Selection Criterion II. If funds remain after approving all fundable applications within a category of applicants, HUD may choose to add those funds to the funds available for the other category of applicants.

After HUD has rated and ranked all applications and has made a determination of successful applicants, HUD will require all successful applicants to participate in negotiations to determine the specific terms of the Statement of Work and grant budget. In cases in which HUD cannot successfully conclude negotiations, it will not make awards. In such instances, HUD may elect to offer an award (in an amount not to exceed the amount of funds available for the competition that remain unawarded) to the next highest ranking applicant of the same category (either Previously-funded HBCU or Previously-unfunded HBCU) and proceed with negotiations as described above. If no fundable applications remain in that applicant category, HUD may offer the award to the next highest ranking applicant in the other applicant category.

Optional Match

Although a match is not required to qualify for funding, HUD encourages HBCUs to participate in public/private partnerships, i.e., with local or national nonprofit organizations, the local banking and real estate community, local builders/developers, faith communities, etc., to secure matches of cash and/or in-kind goods or services. The maximum number of rating points an applicant can receive for a match is 10 points of the 20 points possible for Criterion IV, below. Applicants having a cash match will receive a higher number of points than those providing in-kind goods or services of the same value. To be recognized as a match, contributions must be made available for the duration of the grant period, regardless of the form of investment provided to the project. Applicants *without* evidence of a match will receive *zero (0) points* out of the possible 10 points available for match.

Selection Criteria

HUD will use the criteria set forth below to evaluate applications. Each application must contain sufficient information to be reviewed for its merits. The score for each criterion will be based on the qualitative and quantitative aspects of the applicant's response to that criterion. Applicants should adhere to the page limits for responses as indicated. The criteria and the maximum number of points available for each criterion (out of a total of 100 points), are as follows:

Criterion I—Addressing the Program Objective (Maximum Points: 25)

Response *Must* Be Limited To No More Than Four (4) Pages.

A Minimum of 15 Points Must Be Received for Criterion I in Order To Be Eligible for Funding Consideration.

HUD will evaluate this criterion on the extent to which the applicant demonstrates how its proposal addresses the program objective described below.

- To assist HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, consistent with the purposes of Title I of the Housing and Community Development Act of 1974.

Criterion II—Distress, Need(s) and Impact (Maximum Points: 35)

This criterion addresses the special needs of the applicant or locality to be met in carrying out the proposed activities, particularly with respect to benefiting low-and moderate-income persons. This criterion will be evaluated on: (a) The documentation of the level(s) of distress in the target area(s) to be served versus the level(s) of distress for the locality or State; (b) the identification of need(s) of the target area(s); (c) how the identified needs will be alleviated and/or fulfilled, and what projected impact the proposed activities will have on the documented distress levels of the target area(s).

a. Distress (Maximum Points: 5)

Response *Must* Be Limited To No More Than Two (2) Pages. Limitation does not apply to maps or tables.

Applicant's documentation of the level of distress in the target area(s) to be served versus the level of distress for the locality or State. While the poverty rate is a strong indicator of distress levels, the applicant may demonstrate the level of distress with other factors indicative of distress such as income, unemployment, drug use, homelessness, including the local veterans population, and other generally accepted indicators of socio-economic distress and/or disinvestment. Use of the locality's or State's Consolidated Plan data and maps is strongly encouraged.

b. Need(s) (Maximum Points: 5)

Response *Must* Be Limited To No More Than Three (3) Pages.

The applicant should identify the need(s) of the target area(s) and state what priority each locality's or State's Consolidated Plan (CP) has placed on addressing the need(s). Applicants which identify needs that are consistent with those in the CP will receive more points. The applicant should document the need(s) that are identified by referencing and/or providing, as appropriate, the relevant section(s) of the CP or testimonies from organizations other than the applicant (i.e., concerned local officials, the news media, local veterans service organizations, citizens organizations, etc.), or other evidence that this is a high priority need. Any relevant data based on testimonies, planning or social science studies, or media reports should be included or footnoted.

c. Impact and Addressing Need(s) (Maximum Points: 25)

Response *Must* Be Limited To No More Than Ten (10) Pages.

To the maximum extent feasible, applicants should provide HUD with measurable results to be achieved with the requested funds, i.e., the number of persons to be trained, number of persons to be employed, number of houses to be built or rehabilitated, number of minority owned businesses to be started, etc., in the target area(s) as a result of the implementation of the proposed activities. Based on the data supplied above in the responses to a. Distress and b. Need(s), the applicant should fully describe:

(1) The proposed activities to be implemented and how these activities will alleviate and/or fulfill the Need(s) identified in paragraph (b) of this criterion, above, and particularly how the activities will benefit low-income and elderly residents, welfare recipients, and the working poor in the target area(s) to be served. Remember each activity proposed for funding must meet both a CDBG program national objective AND the CDBG eligibility requirements described above under B. Eligibility; and

(2) The projected Impact the proposed activities will have on the Distress levels documented under paragraph a. of this criterion, above.

Criterion III—Capability (Maximum Points: 20)

This criterion addresses the capability of the applicant to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any previous HUD-assisted projects or activities. If the applicant proposes to use a technical assistance provider, then the applicant's responses to a. and b. below may include information about the TA provider as well as the applicant. In assessing responses to a. and b. of this criterion, reviewers will consider, with regard to the Program Manager and Staff, the kind of recent work experience they possess, the number of years they have been involved with similar projects, and the number of projects they have successfully completed.

a. Staff Capacity (Maximum Points: 10)

Do *NOT* Send Resumes. Limit Response To One (1) Page For The Program Manager And One-Half (1/2) Page Apiece For Other Staff Members.

The extent to which the applicant demonstrates that the proposed Staff and Program Manager possess the background, experience and capacity to conduct the proposed project, as evidenced by recent work experience in managing projects of the same or similar size, dollar amount, and types of activities as those proposed in the application.

b. Past Performance (Maximum Points: 5)

Response *Must* Be Limited To No More Than Two (2) Pages.

The extent to which the applicant can demonstrate that its past and current projects funded by HUD and/or other Federal or private sector sources are being or have been completed on schedule and have met or are meeting goals established.

c. Products Deliverable Schedule (Maximum Points: 5)

Response *Must* Be Limited To No More Than Two (2) Pages.

As a result of the implementation of the proposed activities, describe products to be delivered in 6 month intervals, up to 24 months. Indicate which of the staff described under Staff Capacity will be responsible and accountable for deliverables. This criterion will be evaluated on the extent to which the schedule represents an efficient and feasible plan for implementation of the proposed activities.

Responses to Criterion III, Above, Will Be Rated by the HUD Secretary's Representative Whose Jurisdiction Includes the Applicant's Geographic Area.

Criterion IV—Feasibility (Maximum Points: 20)

This criterion addresses the feasibility of the proposed activities for achieving the stated objectives, including local support for activities proposed to be carried out in the locality and any matching funds proposed to be provided from other sources.

a. Match (Maximum Points: 10)

Response *Must* Be Limited To No More Than One (1) Page. Limitation applies to the applicant's narrative response and *NOT* to the evidence, i.e. firm commitment letters and/or other documentation.

Applicants must provide letters or other documentation evidencing the extent and firmness of commitments of a match from other Federal (e.g., Americorps Programs), State, local, and/or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published NOFA. An Applicant which has evidence in support of its proposed match commitment is eligible for more rating points than those applicants not having a firm commitment for a match.

The maximum number of rating points an applicant can receive for a match is 10 points of the 20 points possible for this Criterion. Applicants having a cash match will receive a higher number of points than applicants receiving in-kind goods or services of the same value. To be recognized as a match, contributions must be made available for the duration of the grant period, regardless of the form of investment provided to the project. Applicants without evidence of a match will receive zero (0) points out of the possible 10 points available for match.

b. Budget (Maximum Points: 10)

The budget should include: (1) A budget summary covering the Federal and non-Federal share of costs proposed, by cost category, and a budget justification which includes assumptions used to determine the costs of budget items in each category; and (2) a budget-by-task, which will include a listing of tasks with activities for each task necessary to be performed to implement the program, the overall costs for each task, and the cost for each funding source. The budget-by-task should clearly indicate the HUD grant amount and identify the source and dollar amount of the matching funds, if any. HUD will award points on the extent to which the budget documents clearly demonstrate a cost-effective use of resources based on reasonable assumptions. A format for the budget summary and the budget-by-task will be included in the application kit.

Bonus Points (Maximum Points: 25)

In addition to points awarded under the above criteria, Bonus Points may be awarded to applicants that receive at least a minimum score of 70 out of the total 100 points available under Criteria I through IV above.

Bonus Points may be awarded as follows:

a. Location of Implementation of Proposed Activities, 5 points.

Response *Must* Be Limited To No More Than One (1) Page.

Five bonus points will be awarded to applicants that propose to implement activities in a Federally-designated Urban or Rural (HUD or Department of Agriculture) Empowerment Zone, Urban Supplemental Empowerment Zone, Urban or Rural Enterprise Community (EZ or EC), a HUD approved local CDBG Neighborhood Revitalization Strategy (NRS) Area, or HUD approved CDBG State Community Revitalization Strategy (CRS) Area. To receive these points, applicants must submit with the application package a certification from the authorized representative of the unit of State or local government that proposed activities are to be carried out within the EZ, EC, or Strategy Areas, NRS or CRS.

b. HUD Initiatives, 5 points.

Response *Must* Be Limited To No More Than Three (3) Pages.

Five points will be awarded to applicants that propose activities which directly include one or more HUD existing, approved, or planned:

(1) Neighborhood Networks (NN). The mission of NN is to enhance the self-sufficiency, employability, and economic self-reliance of low-income families and the elderly living in HUD-insured and HUD-assisted properties by providing such residents with on-site access to computer and training resources;

(2) Campus of Learners (COL) designated sites and/or sites that have significant activities like the COL Program. The COL initiative is designed to transform public housing into safe and livable communities where families undertake training in new telecommunications and computer technology and partake in educational opportunities and job training initiatives; and/or

(3) Local Homeownership Partnerships (LPs) recognized by the National Partners in Homeownership. Local Homeownership Partnerships are local manifestations of the National Homeownership Strategy and are designed to increase homeownership opportunity through public-private collaboration. More detailed information on COL, NN, and LP will be provided in the application kit that accompanies this NOFA. To receive these bonus points, the applicant must thoroughly describe how these activities have been or will be implemented.

c. Partnering With A Qualified HBCU Technical Assistance (TA) Provider, 5 points.

Response *Must* Be Limited To No More Than One (1) Page.

Five points will be awarded to applicants that partner with other HBCUs for technical assistance as described in Section I.B.3 of this NOFA. Applicants must name the HBCU TA Provider and describe the technical assistance to be provided, the cost of the technical assistance, and the duration of the technical assistance.

d. Affirmatively Furthering Fair Housing, 10 points.

Response *Must* Be No More Than Four (4) Pages.

Five bonus points will be awarded to applicants who work with their jurisdictions to affirmatively further fair housing. Pursuant to HUD regulations at 24 CFR 91.225 (a)(1) and 91.325(a)(1), HUD entitlement grantees submitting Consolidated Plans are required to affirmatively further fair housing by conducting an Analysis of Impediments (AI) to Fair Housing Choice within their jurisdiction, by taking appropriate actions to overcome the effects of any impediments identified through the AI, and by maintaining records reflecting the AI and actions taken to overcome the effects of identified impediments. HUD interprets these broad objectives to mean taking the following actions toward the goal of expanding mobility and widening people's freedom to choose where they will live:

- Analyzing and eliminating housing discrimination in the locality;
- Promoting fair housing choice for all persons;
- Providing opportunities for racially and ethnically inclusive patterns of housing occupancy;
- Promoting housing that is physically accessible to, and usable by, all persons, particularly persons with disabilities; and
- Fostering compliance with the nondiscrimination provisions of the Fair Housing Act.

Applicants under this NOFA can show a commitment to affirmatively further fair housing by describing how activities proposed for funding under this NOFA will assist their jurisdictions to overcome impediments to fair housing choice within their localities, identified in the jurisdiction's AI. Actions which can be implemented to overcome any impediments found in the applicant's locality may include, but are not limited to: Applicable neighborhood revitalization efforts, which could include narrowing or eliminating gaps in amenities, transportation, and security; mobility counseling programs and clearinghouses which offer housing opportunities both within and outside of high-poverty areas; making available to disabled persons a full range of supportive services, including housing units which are both accessible and visitable (i.e., making housing accessible to visitors with disabilities); working with local lenders to develop alternative lending criteria; job and career counseling and assessment; and social and medical services and support activities for youth, senior citizens, and low- and moderate-income residents, regardless of race, color, religion, sex, national origin, family status or disability.

Affirmatively furthering fair housing can also be accomplished by the applicant working with its jurisdiction in carrying out Fair Housing Planning requirements under the Consolidated Plan, by assisting to identify any impediments to fair housing choice within their locality.

Examples of areas which should be reviewed to assist jurisdictions in meeting affirmatively furthering fair housing responsibilities may include, but are not limited to: Zoning and site selection; Fair Housing Enforcement; Employment-Housing-Transportation linkage; Lending Policies and Practices; and PHA and Other Assisted/Insured Housing Provider Tenant Selection. Applicants seeking additional examples and more information about Fair Housing Planning, particularly those applicants seeking to assist their locality in carrying out Fair Housing Planning requirements under the Consolidated Plan, should refer to HUD's ''Fair Housing Planning Guide,'' which may be ordered from HUD's Fair Housing Clearinghouse by calling 1–800–343–3442. Applicants whose localities are not subject to Consolidated Plan requirements may respond by demonstrating how the activities proposed for funding under this NOFA will otherwise assist their locality in affirmatively furthering fair housing.

To receive these bonus points, an applicant must clearly demonstrate that the activities proposed for funding under this NOFA will affirmatively further fair housing in its jurisdiction.

Bonus points responses for a., b., and c. will be rated by the HUD Secretary's representative whose jurisdiction includes the applicant's geographic area. The bonus points responses for d. will be rated by the appropriate HUD Office of Fair Housing and Equal Opportunity within the applicant's geographic area.

II. Application Submission Requirements

Applicants must complete and submit applications for HBCU grants in accordance with instructions contained in the FY 1997 Historically Black Colleges and Universities Program

Application Kit. The application kit will request information in sufficient detail for HUD to determine whether the proposed activities are feasible and meet all the requirements of applicable statutes, regulations, and this NOFA. The application kit requires the following items:

1. *Transmittal Letter.* A transmittal letter shall accompany the application. This cover letter shall be signed by the *Chief Executive Officer* (usually the President or Provost) of the applicant institution. If the Chief Executive Officer has delegated this responsibility to another official, that person may sign, but a copy of the delegation must also be included.
2. *Table of Contents.*
3. *Application Checklist.*
4. *Standard Form 424, Application for Federal Assistance.* Signed by the Chief Executive Officer.
5. *Abstract.*
6. *Selection Criteria Responses.*
7. *Certifications.* Certification forms signed by the Chief Executive Officer of the applicant institution.
8. *Appendices.* None permitted. General support letters and resumes shall not be submitted. Letters of commitment and other documentation shall be included with responses to the appropriate Selection Criteria.

Applicants should refer to the HBCU application kit for further instructions.

III. Corrections to Deficient Applications

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

IV. Other Matters

(a) *Paperwork Reduction Act Statement.*

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned control number 2506–0122. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(b) *Environmental Impact.*

This NOFA provides funding under, and does not alter environmental requirements of, 24 CFR part 570, a regulation that was previously published in the **Federal Register**, and this NOFA specifically refers to the environmental review provisions of § 570.404(i). Therefore, in accordance with 24 CFR 50.19(c)(5), the issuance of this NOFA is categorically excluded from preparation of a Finding of No Significant Impact under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(c) *Federalism, Executive Order 12612.*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits HBCU applicants to expand their role in addressing community development needs in their localities, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the NOFA is not subject to review under the Order.

(d) *Catalog of Federal Domestic Assistance.*

The CFDA number for the Historically Black Colleges and Universities Program is 14.237.

(e) *Fair Housing and Equal Opportunity.*

Applications must contain a certification that the applicant will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing.

(f) *Prohibition Against Lobbying Activities.*

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

(g) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements.*

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(h) *Section 103 HUD Reform Act.*

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR 570.404.

Dated: May 7, 1997.

Jacquie Lawing,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A—Community Planning and Development (CPD) Directors With Historically Black Colleges and Universities Located Within Their Jurisdiction

William H. Dirl, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7630

Bill Parsley,TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–6375

John Perry, Richard B. Russell Federal Building, 75 Spring Street S.W., Atlanta, GA 30303–3388, 404–331–5139

Ben Cook, 601 West Broadway, PO Box 1044, Louisville, KY 40201–1044, 502–582–6141

Gregory Hamilton, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7212

Joseph O'Connor, City Crescent Building, 10 South Howard Street, 5th Floor, Baltimore, MD 21201–2505, 410–962–2520

Richard A. Paul, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–6689

Jeanie E. Smith, Doctor A. H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, MS 39269–1016, 601–965–4765

James A Cunningham, Robert A. Young Federal Building, 1222 Spruce Street, Third Floor, St. Louis, MO 631286, 314–539–6524

Charles T. Ferebee, Koger Building, 2306 West Meadowview Rd, Greensboro, NC 27407–3707, 910–547–4005

John Riordan, 200 North High Street, Columbus, OH 43215–2499, 614–469–6743

David Long, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7571

Joyce Gaskins, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0624

Louis E. Bradley, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, 803–765–5564

Virginia Peck, John J. Duncan Federal Building, 710 Locust Street, Third Floor, Knoxville, TN 37902–2526, 423–545–4391

Katie Worsham, 1600 Throckmorton Street, PO Box 2905, Fort Worth, TX 76113–2905, 817–885–5483

John T. Maldonado, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–472–6820

Joseph K. Aversano, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4539

James H. McDaniel, 820 First Street NE, Suite 450, Washington, DC 20002–4205, 202–275–0994

Appendix B—Historically Black Colleges and Universities

Previously Funded By HUD During Fiscal Years 1991–1996

Alabama

1. Dr. John T. Gibson, President, Alabama A&M University, P.O. Box 1357, Normal, AL 35762, Phone: 205–851–5230, Fax: 205–851–5244, e-mail: jgibson@asnaam.aamu.edu
2. Dr. William H. Harris, President, Alabama State University, P.O. Box 271, Montgomery, AL 36101, Phone: 334–229–4200, Fax: 334–834–6861, e-mail: harris@asunet.alasu.edu
3. Dr. Cordell Wynn, President, Stillman College, 2706 Stillman Boulevard, P.O. Box 1430 Tuscaloosa, AL 35403, Phone: 205–366–8808, Fax: 205–758–0821
4. Dr. Joseph B. Johnson, President, Talladega College, 627 West Battle Street, Talladega, AL 35160, Phone: 205–240–9710, Fax: 205–362–2268
5. Dr. Benjamin Payton, President, Tuskegee University, Kresge Center, Tuskegee, AL 36088, Phone: 334–727–8501, Fax: 334–727–5276, e-mail: cpatt@acd.tusk.edu

Arkansas

6. Dr. Myer L. Titus, President, Philander Smith College, 812 West 13th Street, Little Rock, AR 72202, Phone: 501–370–5275, Fax: 501–370–5278
7. Dr. Lawrence A. Davis, Chancellor, University of Arkansas at Pine Bluff, 1200 North University Drive, P.O. Box 4008, Pine Bluff, AR 71601, Phone: 501–543–8471, Fax: 501–543–8003

District of Columbia

8. Dr. E. Patrick Swygert, President, Howard University, 2400 6th Street, N.W., Washington, D.C., 20059, Phone: 202–806–2500, Fax: 202–806–5934, hp__swygert@capstone.howard.edu
9. Dr. Julius F. Nimmons, Acting President, University of the District of Columbia, 4200 Connecticut Ave, NW, Washington, D.C. 20008, Phone: 202–274–5072, Fax: 202–274–5321, e-mail: nimmons@udcvm.bitnet

Georgia

10. Dr. Julius Scott, Interim President, Albany State College, 504 College Drive, Albany, GA 31705, Phone: 912–430–4604, Fax: 912–430–3836, e-mail: pshields@fld94.alsnet.peachnet.edu
11. Dr. Thomas W. Cole, Jr, President, Clark Atlanta University, James P. Brawley Drive at Fair Street, S.W., Atlanta, GA 30314, Phone: 404–880–8500, Fax: 404–880–8995 e-mail: tcole@cau.edu
12. Dr. Oscar L. Prater President, Fort Valley State College, 1005 State College Drive, Fort Valley, GA 31030, Phone: 912–825–6315, Fax: 912–825–6266, e-mail: pratero@mail.fvsc.peachnet.edu
13. Dr. Samuel D. Jolly, Jr., President, Morris Brown College, 643 Martin Luther King Drive, Atlanta, GA 30314, Phone: 404–220–0100, Fax: 404–659–4315
14. Dr. Johnnetta B. Cole, President, Spelman College, 350 Spelman Lane, S.W., Atlanta, GA 30314, Phone: 404–223–1400, Fax: 404–223–7523

Kentucky

15. Dr. Mary L. Smith, President, Kentucky State University, East Main Street Room 201 Hume Hall, Frankfort, KY 40601, Phone: 502–227–6260, Fax: 502–227–6490, e-mail: msmith@gwmail.kysu.edu

Louisiana

16. Dr. Raymond Hicks, President, Grambling State University, P.O. BOX 607, Grambling, LA 71245, Phone: 318–274–2211, Fax: 318–274–2398
17. Dr. Dolores R. Spikes, President, Southern University/A&M College system, Baton Rouge, LA 70813, Phone: 504–771–4680, Fax: 504–771–5522, e-mail: suspres@iamerica.net
18. Dr. Robert V. Gox, Chancellor, Southern University at New Orleans, New Orleans, LA 70126, Phone: 504–286–5313, Fax: 504–286–5131, e-mail: yatessubr@aol.com
19. Dr. Norman C. Francis, President, Xavier University of New Orleans, 7325 Palmetto Street, New Orleans, LA 70125, Phone: 504–483–7541, Fax: 504–482–2801 e-mail: nfrancis@xula.edu

Maryland

20. Dr. Nathanael Pollard, Jr., President, Bowie State University, 14000 Jericho Park Rd., Bowie, MD 20715, Phone: 301–464–6500, Fax: 301–464–7814 e-mail: nathanael.pollard@bowiestate.edu
21. Dr. Calvin W. Burnett, President, Coppin State College, 2500 West North Avenue, Baltimore, MD 21239, Phone: 410–383–5910, Fax: 410–333–5369, e-mail: cwburnett@coe.coppin.umd.edu
22. Dr. Earl S. Richardson, President, Morgan State University, Cold Spring Lane & Hillen Road, Baltimore, MD 21239, Phone: 410–319–3200, Fax: 410–319–3107

Mississippi

23. Dr. Clinton Bristow, Jr., President, Alcorn State University, P.O. Box 359, Lorman, MS 39096, Phone: 601–877–6111, Fax:

601–877–2975, e-mail: cbristow@lorman.alcorn.edu

24. Dr. James E. Lyons, Sr., President, Jackson State University, P.O. Box 17390, 1400 J.R. Lynch Street, Jackson, MS 39217, Phone: 601–968–2323, Fax: 601–968–2948, e-mail: jelyons@ccaix.jsums.edu
25. Dr. William W. Sutton, President, Mississippi Valley State University, 14000 Highway 82 West, Itta Bena, MS 38941, Phone: 601–254–3425/26, Fax: 601–254–6709
26. Dr. David L. Beckley, President, Rust College, 150 East Rust Avenue, Holly Springs, MS 38635, Phone: 601–252–2491, Fax: 601–252–6107

Missouri

27. Dr. Henry Givens, President, Harris-Stowe State College, 3026 Laclede Avenue, St. Louis, MO 63103, Phone: 314–340–3380, Fax: 314–340–3399
28. Dr. Donald Mullett, Interim President, Lincoln University, P.O. Box 29, Jefferson City, MO 63103, Phone: 573–681–5042, Fax: 573–681–6074, e-mail: mullettd@lincolnu.edu

North Carolina

29. Dr. Gloria R. Scott, President, Bennett College, 900 E. Washington Street, Greensboro, NC 27401, Phone: 910–370–8626, Fax: 910–272–7143, e-mail: gscott@bennett1.bennett.edu
30. Dr. Mickey L. Burnim, Chancellor, Elizabeth City State University, P.O. Box 790, Elizabeth City, NC 27909, Phone: 919–335–3230, Fax: 919–335–3731, e-mail: burnimml@alpha.ecsu.edu
31. Dr. Dorothy Cowser Yancy, President, Johnson C. Smith University, 100 Beatties Ford Road, Charlotte, NC 28216, Phone: 704–378–1008, Fax: 704–372–5746, e-mail: dyancy@msmail.jcsu.edu
32. Dr. Edward B. Fort, Chancellor, North Carolina A&T State University, 1601 E. Markey Street, Greensboro, NC 27411, Phone: 910–334–7940, Fax: 910–334–7082, e-mail: fort@jade.ncat.edu
33. Dr. Julius L. Chambers, Chancellor, North Carolina Central University, 1801 Fayeteville Street, Durham, NC 27707, Phone: 919–560–6304, Fax: 919–560–5014, e-mail: chambers@nccu.edu
34. Dr. Bernard W. Franklin, President, St. Augustine's College, 1315 Oakwood Avenue, Raleigh, NC 27610, Phone: 919–516–4200, Fax: 919–828–0817, e-mail: bfranklin@fs1.st-aug.edu
35. Dr. Talbert O. Shaw, President, Shaw University, 118 E. South Street, Raleigh, NC 27611, Phone: 919–546–8300, Fax: 919–546–8301, e-mail: toshaw@shawu.edu

Ohio

36. Dr. George E. Ayers, Interim President, Central State University, 1400 Brushrow Road, Wilberforce, OH 45384, Phone: 513–376–6332, Fax: 513–376–6138

Oklahoma

37. Dr. Ernest L. Holloway, President, Langston University, P.O. Box 907, Langston, OK 73050, Phone: 405–466–3388, Fax: 405–466–3461, e-mail: eholloway@speedy.lunet.edu

Pennsylvania

38. Dr. Niara Sudarkasa, President, Lincoln University, Lincoln, PA 19352, Phone: 610–932–8300, Fax: 610–932–8316, e-mail: president@lu.lincoln.edu

South Carolina

39. Dr. David Swinton, President, Benedict College, 600 Harden Street, Columbia, SC 29204, Phone: 803–254–7253, Fax: 803–253–5060
40. Dr. Henry N. Tisdale, President, Claflin College, 700 College Avenue, N.E., Orangeburg, SC 29115, Phone; 803–535–5412, Fax: 803–535–5402
41. Dr. Leroy Davis, President, South Carolina State University, 300 College Street, N.E., Orangeburg, SC 29117, Phone: 803–536–7013, Fax: 803–536–3622
42. Dr. Leonard Dawson, President, Voorhees College, Denmark, SC 29042, Phone: 803–793–3544, Fax: 803–793–4584, e-mail: dawson@voorhees.edu

Tennessee

43. Dr. Rutherford H. Adkins, Interim President, Fisk University, 1000 17th Avenue North, Nashville, TN 37208, Phone: 615–329–8555, Fax: 615–329–8576, e-mail: radkins@dubois.fisk.edu
44. Dr. George R. Johnson, Jr., President, Lemonye-Owen College, 807 Walker Avenue, Memphis, TN 38126, Phone: 901–942–7301, Fax: 901–942–3572, e-mail: george__johnson@qm.lemonye-owen.edu

Texas

45. Dr. Charles A. Hines, President, Prairie View A&M University, P.O. Box 188, Prairie View, TX 77446, Phone: 409–857–2111, Fax: 409–857–3928, e-mail: norma__tompkins@pvamu.edu
46. Dr. Charles A. Taylor, President, Saint Philip's College, 1801 Martin Luther King, Jr. Drive, San Antonio, TX 78203, Phone: 210–531–3591, Fax: 210–531–3590, e-mail: anwillia@accdvm.accd.edu
47. Mr. James M. Douglas, President, Texas Southern University, 3100 Cleburne Avenue, Houston, TX 77004, Phone: 713–313–7034, Fax: 713–313–1092, e-mail: preaplwillia@china.tsu.edu
48. Dr. Julius S. Scott, President, Wiley College, 711 Wiley Avenue, Marshall, TX 75670, Phone: 903–927–3200, Fax: 903–938–8100

Virginia

49. Dr. William R. Harvey, President, Hampton University, Hampton, VA 23668, Phone: 804–727–5231, Fax: 804–727–5746
50. Dr. Harrison B. Wilson, President, Norfolk State University, 2401 Corprew Avenue, Norfolk, VA 23504, Phone: 804–683–8670, Fax: 804–683–2342, e-mail: h__wilson@vger.nsu.edu
51. Dr. Thomas M. Law, President, Saint Paul's College, 115 College Drive, Lawrenceville, VA 23868, Phone: 804–848–2636, Fax: 804–848–0403, e-mail: prexy@richmond.infi.net

Appendix C—Historically Black Colleges and Universities

Previously Unfunded By HUD During Fiscal Years 1991–1996

Alabama

1. Dr. Yvonne Kennedy, President, Bishop State Community College, 351 North Broad Street, Mobile, AL 35503, Phone: 334–690–6416, Fax: 334–438–9523, e-mail: martyf@maf.mobile.al.us
2. Dr. Julius Jenkins, President, Concordia College, 1804 Green Street, Selma, AL 36703, Phone: 334–874–5708, Fax: 334–874–5755
3. Dr. Thomas Umphrey, President, Fredd State Technical College, 202 Skyline Boulevard, Tuscaloosa, AL 35405, Phone: 205–758–3361, Fax: 205–391–2311, e-mail: sshelto7@ua1ix.ua.edu
4. Dr. Perry W. Ward, President, Lawson State Community College, 3060 Wilson Road S.W., Birmingham, AL 35221, Phone: 205–925–2515 ext 300, Fax: 205–923–1649
5. Dr. Albert J.H. Sloan, II, President, Miles College, P.O. Box 3800, Birmingham, AL 35208, Phone: 205–929–1428/29, Fax: 205–929–1426
6. Dr. Delbert W. Baker, President, Oakwood College, Oakwood Road N.W., Huntsville, AL 35896, Phone: 205–726–7334, Fax: 205–726–7123 compu serve: shirley ihenacho 75374,1134
7. Dr. Willie L. Muse, President, Selma University, 1501 Lapsley Street, Selma, AL 36701, Phone: 334–872–2533, Fax: 334–872–7746
8. Dr. Johnny L. Harris, President, J.F. Drake Technical College, 3421 Meridian Street North, Huntsville, AL 35811, Phone: 205–539–4905, Fax: 205–539–7383
9. Dr. Leroy Bell, Jr., Interim President, Interim President, Trenholm State Technical College, 1225 Air Base Boulevard, Montgomery, AL 36108, Phone: 334–832–9000, Fax: 334–832–9777 e-mail: ka4wzd@mont.mindspring. comleroy__ka4wzd@msn.com

Arkansas

10. Dr. William T. Keaton, President, Arkansas Baptist College, 1600 Bishop Street, Little Rock, AR 72202, Phone: 501–372–6883, Fax: 501–375–9257
11. Dr. Katherine P. Mitchell, President, Shorter College, 604 Locust Street, North Little Rock, AR 72114, Phone: 501–374–6305 ext 202, Fax: 501–374–9333

Delaware

12. Dr. William B. DeLauder President, Delaware State University, 1200 North Dupont Highway, Dover, DE 19901, Phone: 302–739–4901, Fax: 302–739–6292, e-mail: delauder@dsc.edu

Florida

13. Dr. Oswald P. Bronson, President, Bethune-Cookman College, 610 Dr. Mary McLeod Bethune Boulevard, Daytona Beach, FL 32114, Phone: 904–252–8667, Fax: 904–257–7027
14. Dr. Lennette Pennington, Interim President, Edward Waters College, 1658 Kings Road, Jacksonville, FL 32209, Phone: 904–366–2500, Fax: 904–366–2544
15. Dr. Frederick S. Humphries, President, Florida A&M University, 400 Lee Hall,

Tallahassee, FL 32307, Phone: 904–599–3225, Fax: 904–561–2152, e-mail: fhumphries@crotaius.famu.edu
16. Dr. Albert E. Smith, President, Florida Memorial College, 15800 N.W. 42nd Avenue, Miami, FL 33054, Phone: 305–626–3604, Fax: 305–626–3769

Georgia

17. Dr. James H. Costen, President, Interdenominational Theological Center, 671 Beckwith Street, S.W., Atlanta, GA 30314, Phone: 404–527–7702, Fax: 404–527–0901
18. Dr. Walter Massey, President, Morehouse College, 830 Westview Drive, S.W., Atlanta, GA 30314, Phone: 404–215–2645, Fax: 404–659–6536, e-mail: wmassey@morehouse.edu
19. Dr. Louis W. Sullivan M.D., President, Morehouse School of Medicine, 720 Westview Drive, S.W., Atlanta, GA 30310, Phone: 404–752–1740, Fax: 404–752–1180
20. Dr. Shirley A.R. Lew, President, Paine College, 1235 15th Street, Augusta, GA 30910, Phone: 706–821–8230, Fax: 706–821–8333, e-mail: sl@mail.paine.edu
21. Dr. John T. Wolfe, Jr., President, Savannah State College, P.0. Box 20449, Savannah, GA 31404, Phone: 912–356–2240, Fax: 912–356–2998, e-mail: wolfej@tigerpaw.ssc.peachnet.edu

Louisiana

22. Dr. Samuel Dubois Cook, President, Dillard University, 2601 Gentilly Boulevard, New Orleans, LA 70122, Phone: 504–286–4640, Fax: 504–288–8663
23. Dr. Jerome Greene, Chancellor, Southern University at Shreveport/Bossier City, Shreveport, LA 71107, Phone: 318–674–3312 or 3300, Fax: 318–674–3374

Maryland

24. Dr. William P. Hytche, President, University Of Maryland Eastern Shore, Princess Anne, MD 21853, Phone: 410–651–6102, Fax: 410–651–6105, e-mail: whytche@umes3.umd.edu

Michigan

25. Dr. Marjorie Harris, President, Lewis College of Business, 17370 Myers Road, Detroit, MI 48235, Phone: 313–862–6240 ext 222, Fax: 313–862–1027

Mississippi

26. Dr. Vivian Presley, President, Coahoma Community College, 3240 Friars Point Road, Clarksdale, MS 38614, Phone: 601–627–2571 ext 101, Fax: 601–624–9516, e-mail: ccc1@misnet.com
27. Dr. Clyde Muse, President, Hinds Community College, 501 E. Main Street, Raymond, MS 39154, Phone: 601–857–3240
28. Dr. Russell S. Williams, Acting President, Mary Holmes College, P.O. Drawer 1257, West Point, MS 39773, Phone: 601–494–6820, Fax: 601–494–1881
29. Dr. Joe A. Lee, President, Tougaloo College, 500 E. County Line Road, Tougaloo, MS 39174, Phone: 601–977–7730, Fax: 601–977–7739

North Carolina

30. Dr. Sammie Potts, President, Barber-Scotia College, 145 Cabarrus Avenue, Concord, NC 28025, Phone: 704–789–2906, Fax: 704–789–2958
31. Dr. Willis B. McLeod, Chancellor, Fayetteville State University, 1200 Murchinson Road, Fayetteville, NC 28301, Phone: 910–486–1141, Fax: 910–486–4732
32. Dr. Burnett Joiner, President, Livingstone College, 701 W. Monroe Street, Salisbury, NC 28144, Phone: 704–638–5505, Fax: 704–638–5522
33. Dr. Alvin J. Schexnider, Chancellor, Winston-Salem State University, 601 MLK Jr. Drive, Winston-Salem, NC 27110, Phone: 910–750–2041, Fax: 910–750–2049, e-mail: schexnidera@wssu1.adp.wssu.edu

Ohio

34. Dr. John L. Henderson, President, Wilberforce University, 1055 North Bickett, Wilberforce, OH 45384, Phone: 513–376–2911 ext 704, Fax: 513–376–4742

Pennsylvania

35. Dr. W. Clinton Pettus, President, Cheyney State University, Cheyney, PA 19319, Phone: 610–399–2220, Fax: 610–399–2415, e-mail:cpettus@cuop.cheyney.edu

South Carolina

36. Dr. David T. Shannon, President, Allen University, 1530 Harden Street, Columbia, SC 29204, Phone: 803–376–5701, Fax: 803–376–5709
37. Dr. Cynthia Russell, President, Clinton Junior College, 1029 Crawford Road, Rock Hill, SC 29730, Phone: 803–327–7402 ext 23, Fax: 803–327–3261
38. Dr. Joann R.G. Boyd-Scotland, President, Denmark Technical College, Denmark, SC 29042, Phone: 803–793–5020, Fax: 803–793–5942
39. Dr. Luns C. Richardson, President, Morris College, North Main Street, Sumter, SC 29150, Phone: 803–775–9371 ext 211/221, Fax: 803–773–3687

Tennessee

40. Dr. Roland H. Harris, Interim President, Knoxville College, 901 College Street, Knoxville, TN 37921, Phone: 423–524–6514, Fax: 423–524–6603
41. Dr. Wesley McClure, President, Lane College, 545 Lane Avenue, Jackson, TN 38301, Phone: 901 426–7595, Fax: 901 427–3987, e-mail: mcclure@lc.lane-college.edu
43. Dr. John E. Maupin, Jr., President, Meharry Medical College, 1005 Dr. D.B. Todd, Jr. Boulevard, Nashville, TN 37208, Phone: 615–327–6904, Fax: 615–327–6540, e-mail: maupin37@ccvax.mmc.edu
44. Dr. James A. Hefner, President, Tennessee State University, 3500 John Merritt Boulevard, Nashville, TN 37209, Phone: 615–963–7401, Fax: 615–963–7407

Texas

45. Dr. Joseph T. McMillan, Jr., President, Huston-Tillotson College, 900 Chicon Street, Austin, TX 78702, Phone: 512–505–3003, Fax: 512–505–3190
46. Dr. Sebetha Jenkins, President, Jarvis Christian College, U.S. Highway 80, Hawkins, TX 75765, Phone: 903–769–5882, Fax: 903–769–4842
47. Dr. Lee Monroe, President, Paul Quinn College, 3837 Simpson Stuart Road, Dallas, TX 75241, Phone: 214–376–1000, Fax: 214–302–3559
48. Dr. Jack Evans, President, Southwestern Christian College, P.O. Box 10, Terrell, TX 75160, Phone: 972–524–3341, Fax: 972–563–7133
49. Dr. Heyward L. Strickland, President, Texas College, P.O. Box 4500, Tyler, TX 75712, Phone: 903–593–8311, Fax: 903–593–0588

Virginia

50. Dr. Eddie N. Moore, Jr., President, Virginia State University, P.O. Box 9001, Petersburg, VA 23806, Phone: 804–524–5070, Fax: 804–524–6506, e-mail: emoore@www.vsu.edu
51. Dr. S. Dallas Simmons, President, Virginia Union University, 1500 N. Lombardy Street, Richmond, VA 23220, Phone: 804–257–5835, Fax: 804–257–5833

West Virginia

52. Dr. Robert E. Moore, President, Bluefield State College, 219 Rock Street, Bluefield, WV 24701, Phone: 304–327–4030, Fax: 304–325–7747
53. Dr. Hazo W. Carter, President, West Virginia State University, P.O. Box 399, Institute, WV 25112, Phone: 304–766–3111, Fax: 304–768–9842 carterhw@ernie.wvsc.wvnet.edu

U.S. Virgin Islands

54. Dr. Orville Kean, President, University of the Virgin Islands, No. 2 John Brewer's Bay, St. Thomas, USVI 00802–9990, Phone: 809–693–1000, Fax: 809–693–1005

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BILLING CODE 4210–29–P

Monday
May 12, 1997

Part VIII

Department of Commerce

Economic Development Administration

Research and Evaluation, National Technical Assistance—Request of Proposals; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 970508107–7107–01]

RIN 0610–ZA04

Research and Evaluation, National Technical Assistance—Request for Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice of availability of funds.

SUMMARY: A total of $328,500,000 is available to EDA for all of its programs for FY 1997 (See Notice of Funding availability for FY 1997 at 61 FR 67434), of which approximately $1,780,000 is or will be available for National Technical Assistance and for Research and Evaluation for specific projects which will aid in better understanding the causes of and solutions to economic distress/underemployment and unemployment throughout the Nation in the specific priority areas described herein. Additional funding may or may not be available. EDA issues this Notice describing the conditions under which eligible applications for these National Technical Assistance under 13 CFR Part 307, Subpart C, and Research and Evaluation under 13 CFR Part 307, Subpart D, projects will be accepted and selected for funding. EDA is soliciting proposals for the specific projects described herein which will be funded if acceptable proposals are received. Remaining funding, if any, may be used to fund additional projects.

DATES: Prospective applicants are advised that EDA will conduct a pre-proposal conference on May 23, 1997, at 10:00 a.m. in the Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230, Room 1414, at which time questions on the National Technical Assistance and Research and Evaluation projects can be answered. Prospective applicants are encouraged to provide written questions (See **ADDRESSES** section below) by May 20, 1997. Prospective applicants unable to attend the pre-proposal conference may participate by teleconference. Teleconference information may be obtained by calling (202) 482–4085 between 8:30–5:00 EST on May 22, 1997.

Initial proposals for funding under this program will be accepted through June 9, 1997. Initial proposals received after 5:00 p.m. EST in Room 7001A, on June 9, 1997, will not be considered for funding.

By June 20, 1997, EDA will advise successful proponents to submit full applications (containing complete proposals as part of the application), OMB Control Number 0610–0094. Completed applications must be submitted to EDA by July 21, 1997. EDA will make these awards no later than September 30, 1997.

ADDRESSES: Send initial proposals to John J. McNamee, Acting Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7001A, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John J. McNamee, (202) 482–4085.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

The Public Works and Economic Development Act of 1965 (PWEDA), (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), as amended at § 3151 authorizes EDA to provide technical assistance which would be useful in reducing or preventing excessive unemployment or underemployment, and enhancing the potential for economic growth in distressed areas (42 U.S.C. 3151(a)); and a program of research to assist in the formulation and implementation of national, state, and local programs to raise income levels and other solutions to the problems of unemployment, underemployment, underdevelopment and chronic depression in distressed areas and regions (42 U.S.C. 3151(c)(B)). The Omnibus Consolidated Appropriations Act of 1997, Public Law 104–208, makes funds available for these programs.

B. Catalog of Federal Domestic Assistance

11.303 Economic Development—Technical Assistance Program; 11.312 Economic Development—Research and Evaluation Program.

C. Program Descriptions

For descriptions of these programs see PWEDA and EDA's regulations at 13 CFR Chapter III.

D. Briefings and Workshops

Unless otherwise noted, each of the proposals requested below includes a requirement that the applicant conduct a total of up to seven briefings and/or training workshops for individuals and organizations interested in the results of the project. These will take place when the project is completed and the results known. Potential applicants should be aware that the completion dates set forth below are for completion of the project and submission of the final written report. Briefings/workshops will take place no later than one year after completion of the project and submission of the final report, at seven locations and on seven dates at EDA's discretion.

E. Additional Information and Requirements

Applicants should be aware that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of EDA to cover pre-award costs.

The total dollar amount of the indirect costs proposed in an application under this program must not exceed either the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

Unless otherwise noted below, eligibility, program objectives and descriptions, application procedures, selection procedures, evaluation criteria, and other requirements for this program are set forth in PWEDA and EDA's regulations at 13 CFR Chapter III., and EDA's Notice of Availability for FY 1997 at 61 FR 67434.

No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received; or (3) other arrangements satisfactory to the Department of Commerce are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Applicants should be aware that a false statement on the application is grounds for denial of the application or termination of the grant award and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This notice involves a collection of information requirement subject to the provisions of the PRA and has been approved by OMB under Control Number 0610–0094.

II. How to Apply

A. Eligible Applicants

• National Technical Assistance—See 13 CFR 307.12. Eligible applicants are as follows: Public or private nonprofit organizations including nonprofit national, state, area, district, or local organizations; accredited educational institutions or nonprofit entities representing them; public sector organizations; Native American organizations, including American Indian tribes; local governments and state agencies. Technical Assistance grant funds may not be awarded to private individuals or for-profit organizations.

• Research and Evaluation—See 13 CFR 307.17. Eligible applicants are as follows: private individuals, partnerships, corporations, associations, colleges and universities, and other suitable organizations with expertise relevant to economic development research.

B. Proposal Submission Procedures

The initial proposals submitted by potential applicants may not exceed ten pages in length and should be accompanied by a proposed budget, resumes/qualifications of key staff, and proposed time line. EDA will not accept proposals submitted by fax. Proposals must be received in Room 7001A at the address and by the submission deadline indicated above, in order to be considered.

III. Areas of Special Emphasis

A. National Technical Assistance Program

• Leveraging Capital for Defense Adjustment Infrastructure Assistance

EDA invites proposals to examine the potential for using EDA's defense adjustment appropriations in combination with new or innovative techniques to leverage significant additional capital for defense adjustment assistance, including construction related to military base reuse.

Background: The capital required for most defense adjustment infrastructure (re)development exceeds the ability of many communities to raise. Public funding available for defense adjustment assistance is modest compared with the current need for infrastructure assistance. This project would develop, evaluate, and recommend, if appropriate, alternative ways for using EDA's defense appropriations to leverage other financing for defense adjustment infrastructure projects. This project is not to review, discuss or report on the wide array of development financing techniques presently available for funding public infrastructure. The area of interest for this project is intended to be highly focused on the potential use of relatively small amounts of EDA grant funds in innovative ways to raise or leverage larger amounts of other funds which, in turn, could be used to pay for infrastructure costs associated with the redevelopment of military bases and other economic development activities. In other words, this project will investigate the possibility of using EDA grants funds to raise or leverage money for public infrastructure, as opposed to the present practice of investing EDA grant funds, separately or in conjunction with other public or private funding partners, directly into infrastructure or other economic development activities. Such leveraging might involve using EDA defense appropriations to partially secure large bond issues, or to provide for the first several years of payment on large bond issues until new/future tenants, etc., can pick up the costs. It would also evaluate what role other Federal financing mechanisms might play. The feasibility of such alternatives are not known, but they could possibly serve to greatly extend the impact of limited Federal/EDA defense infrastructure funds. Alternatives considered need not be limited to those possible under EDA's current legislation and regulations, but may also include those that require changes to EDA's or other Federal legislation or regulations.

Scope of Work: The successful applicant will: (1) Bring together a panel of public and private sector financial experts to explore the full range of realistic, innovative financing alternatives for using EDA defense adjustment funds to leverage private or other public financing, including the relative advantages and disadvantages of each; (2) determine what legislative or regulatory changes will be required for implementation, if any; (3) prepare a comprehensive report; and (4) conduct briefings and/or training workshops as set forth in Section I.D. above.

Cost: If properly justified, the Assistant Secretary may consider a waiver of the required 25 percent local share of the total project costs. Part of the funding for this project will be provided by the Office of Economic Adjustment of the Department of Defense.

Timing: This project should be completed and the final report submitted by March 31, 1998.

• Trade Adjustment Assistance (TAA) Program Impact Evaluation

EDA invites proposals to develop evaluation criteria for and to evaluate the impact of the TAA Program on small and medium-sized manufacturing firms injured by increased imports.

Background: The TAA Program is rooted in the presumption that increased international trade is good for the nation as a whole, but there are firms, communities and industries that will suffer a disproportionate share of the impact of changing trade patterns. Each new round of trade agreements has led to the lowering of trade barriers and increased foreign competition for U.S. manufacturers. The EDA-administered TAA Program was developed to help U.S. manufacturing firms and industries injured by import competition regain the ability to compete in the global marketplace. The TAA Program assistance is provided to manufacturers through a network of twelve Trade Adjustment Assistance Centers (TAACs) located at universities and other nonprofit organizations throughout the Nation.

In order to qualify for assistance under the TAA Program, a manufacturer must show a decline in sales or production and a decline in employment, and that imports contributed importantly to such declines. Once a firm is certified, TAAC staff work with the firm to develop and implement recovery strategies based on the firm's own priorities and decisions.

EDA now seeks an evaluation of the impact of the TAA Program. EDA is interested in determining the measurable and ''value added'' aspects of the TAA Program process and in measuring overall program performance. In undertaking this analysis of the implementation of the recovery process, the applicant will need to examine selected grants. The target universe of assisted firms is approximately 550 firms that have completed at least one task of their approved adjustment proposal between FY 1990 and 1995 and are not doing any additional tasks with TAAC assistance. The applicant should select a representative sample of those firms. The resulting data must be appropriately analyzed and the results, with recommendations as appropriate, presented in a final report to be available for use by interested Federal and state agencies and other interested parties. All available project records are located in, or are accessible through, the twelve TAAC offices. Access to client records may require prior client approval.

EDA will not accept proposals for this project from TAACs, TAAC sponsoring organizations, or trade organizations that have received assistance under the TAA Program.

Scope of Work: The successful applicant will: (1) Evaluate the effectiveness of the TAA Program assistance, including as assessment of the appropriateness of the TAA Program assistance and the impact of the assistance on the firms' economic recovery; (2) examine the current TAA Program performance measures and recommend revisions as necessary; [The current performance measures are Project Outcomes at 2 Years and 4 Years After Completion: (a) The percentage of TAA Program client firms which have completed the adjustment process and have successfully restructured, and (b) Sales and employment after completing assistance compared to sales and employment two years before entering the program and at the time they entered the program.] (3) measure and assess the value and impact of the diagnostic and adjustment proposal process; (4) make recommendations for maintaining the status quo and/or improving both the assistance process and the TAA Program; (5) identify the features of the TAA Program that make the program effective in meeting the needs of its clients, the best practices in the TAACs and the best practices in other business assistance programs that could be incorporated into the TAA Program; and (6) conduct briefings and/or training workshops as set forth in Section I.D above.

Cost: If properly justified, the Assistant Secretary may consider a waiver of the required 25 percent local share of the total project costs.

Timing: An interim report on sections (1) (3) and (5) of the scope of work should be provided by February 28, 1998. The project should be completed and the final report submitted by June 30, 1998.

• Update Overall Economic Development Program

EDA seeks proposals for a cooperative agreement through which the successful applicant will review, evaluate, and make recommendations on the Overall Economic Development Program (OEDP) comprehensive planning process. The goal of this effort is to increase the benefits of the OEDP process and optimize the economic development capacity created at the local level with the assistance provided by the EDA planning programs. A lead applicant may partner with one or more other organizations.

Background: The OEDP is a process that requires a community or region to conduct an inclusive and comprehensive review of the factors and resources affecting the economic development of its area. The OEDP process:

• is intended to maximize the benefit of investments by responding to a locally-initiated economic development plan;

• should incorporate, when feasible, a number of recent or emerging approaches to comprehensive economic development, such as sustainable development, cluster development, and regionalism;

• should take into account planning processes that other Federal programs (EZ/EC, RDC, ISTEA, EPA, etc.) are initiating, to reduce the total administrative burden on planning entities and local communities.

Scope of Work: A cooperative agreement will be awarded to implement the scope of work. The work includes identifying and using diversified expertise from the many sectors dealing in economic development, conducting a series of working meetings, or contracts under the co-operative agreement, if necessary, for specific studies, preparing recommendations and a final report, and conducting briefings. Actions included are:

(1) Developing an agenda and selecting a panel of participants. The number of participants should not exceed 30, and should include:

—Economic development practitioners (representatives of Economic Development Districts, counties, Indian tribes, cities, states, university centers, and urban and rural areas);
—EDA staff (Planners, Regional Directors, Economic Development Representatives, Program Directors);
—Academicians (planning schools, experts in the field);
—National organizations such as for example, (NADO, NARC, CUED, NASDA, APA, Nature Conservancy, Wilderness Society, etc.);
—Other Federal agencies (USDA, HUD, EPA, DOT, DOD, etc.);

(2) Convening an initial meeting of all participants to determine what should be looked at, what issues or topics should be explored, what path to follow;

(3) Conducting specific studies or, if necessary, issuing contracts under the co-operative agreement for specific studies identified in the initial meeting, such as: research and analysis of issues; best practices, models, and success stories; definition of regions and planning areas; and identification of recommendations.

(4) Convening a final meeting to review and discuss the studies and recommendations, selecting best practices, and formalizing recommendations to be incorporated in the final report;

(5) Conducting briefings and/or training workshops as set forth in Section I.D. above.

The expected outcomes of this effort are:

• Incorporate the latest and most effective approaches to comprehensive economic development planning into a revitalized OEDP process;

• Maximize the economic benefit of Federal, other public, and private investments based on a comprehensive local economic development process;

• Standardize the use of a single comprehensive plan to guide the growth and development of the community, as well as to serve to qualify the area to receive assistance from EDA and other Federal and state programs.

Cost: If properly justified, the Assistant Secretary may consider a waiver of the required 25 percent matching share of the total project cost. The recipient organization (or group of organizations) will receive an award to cover the following activities:

• Coordinating the overall process;

• Conducting two general meetings, including the costs of meeting facilities, and the travel expense, lodging, and professional fees of the participants;

• If necessary, contracts under the co-operative agreement for specific studies, not to exceed an aggregate for all such contracts of $100,000;

• Preparing a final report, including recommendation;

• Conducting briefings and/or training workshops as set forth in Section I.D. above.

Timing: The project should be completed and the final report submitted by September 30, 1998.

• Demand for Economic Development Infrastructure

EDA requests proposals for conducting a study of the nature and approximate cost of the infrastructure that is needed for the economic development of (1) areas with high unemployment or low average income and of (2) areas impacted by defense downsizing.

Background: The study's purpose is to determine the demand for public works assistance in such areas. One of the principal ways that economic development assistance fosters the creation of private sector jobs in areas of economic distress is through financing critical public infrastructure. In recent years a number of efforts have been undertaken to assess the infrastructure needs of the United States. For example, in the late 1970s, EDA funded a study, at the direction of Congress, of historical public works investments in the United States and the implications for the then-current trends in such investments. In 1988, the National Council on Public Works Improvement issued a report on the nation's infrastructure, entitled Fragile Foundations. In 1990, the House Committee on Public Works and Transportation tasked the U.S. Army Corps of Engineers to compile abstracts of significant infrastructure studies, which resulted in Infrastructure Reports: Summaries (1992). Studies such as these deal with nationwide needs. EDA's current interest in learning the extent of infrastructure needs is more limited: EDA is interested in determining the critical infrastructure needs of areas suffering long-term economic distress or that are reasonably anticipated to experience defense downsizing, and therefore need such infrastructure in order to grow their local economies so private sector jobs can be created/retained and the economic vitality of the area restored and sustained. EDA is cognizant of the fact that well-defined infrastructure investment needs grow out of a local planning process where the community or region identifies, among other needs, the type of infrastructure that is needed for the economic development or economic adjustment of the area.

This request has two aspects:

• Under its Public Works program, EDA grants help distressed communities attract new industry, encourage private investment and business expansion, diversify local economies, and generate long-term, private sector jobs. It does so by funding critically-needed infrastructure such as water and sewer facilities for industry and commerce, access roads to industrial sites, business incubators, skill training facilities, and modern technological improvements. EDA's public works assistance is focused on areas experiencing significant economic distress, defined principally as unemployment substantially higher than the national average or per capita income substantially lower than the national average. Under this request, EDA is interested in assessing the infrastructure needs of these economically-distressed areas.

• Under its Defense Adjustment program, EDA helps areas to meet the serious structural economic changes caused by or threatened by the closure of military bases or the impacts of reduced defense expenditures by (1) Working with DoD's Office of Economic Adjustment to design adjustment strategies, and (2) helping to implement those strategies through a variety of types of projects, including infrastructure projects. While the process of fully implementing a base-reuse implementation strategy may take as long as twenty years and require significant private development financing, the early projects and access to public financing, such as through EDA's programs are widely viewed as very critical to successful long-term reuse. Under this request, EDA is interested in (a) assessing the actual and anticipated infrastructure needs growing out of defense downsizing at BRAC 88, 91, 93 and 95 base closure sites, (b) assessing the average timeframe from the date of BRAC announcement that is envisioned for full implementation of infrastructure-type projects related to base reuse strategies, and (c) determining an average timeline and level of investment related to the most critical early phase infrastructure for which base-reuse communities look to public funding sources, such as EDA for assistance. This request seeks to determine initially whether there is a relatively simple, and inexpensive, way to assess infrastructure needs in areas of actual economic distress or in areas affected by defense downsizing.

Scope of Work: The scope of work will take place in two phases.

A. In the first phase, EDA will select a grantee to determine whether there is a valid and cost-effective methodology to determine the demand for economic development infrastructure. The potential grantee would:

(1) Propose a method to assess (a) actual and anticipated defense adjustment needs growing out of base closing and realignment and defense downsizing; and (b) the timing when actual infrastructure financing needs will occur;

(2) Propose a method to assess public works needs of areas of economic distress;

B. If an acceptable, cost-effective methodology is developed in the first phase, in the second phase EDA will select a grantee to:

(1) Assess defense adjustment infrastructure needs and estimate the length of time from development of an adjustment strategy to actual financing of the resulting infrastructure;

(2) Assess public works infrastructure needs in areas of economic distress.

(3) Prepare a report; and

(4) Conduct briefings and/or training workshops as set forth in Section I.D. above.

Upon completion of the first phase, EDA may opt not to complete the second phase of the grant, or may extend the grant with the first phase grantee on a non-competitive basis to complete the second phase, or may make a competitive selection of a new grantee to complete the second phase. Completion of the second phase is dependent also on availability of funds in FY 1998.

Cost: If properly justified, the Assistant Secretary may consider a waiver of the required 25 percent local share of the total project cost.

Timing: The first phase of this project should be completed by February 27, 1998.

• Performance Measures for EDA's Planning and Local Technical Assistance Programs

EDA invites proposals to develop performance measures for EDA's planning and local technical assistance programs.

Background: EDA recently established a set of core performance measures for each of its grant program areas, and has begun to systematically test how effective the standards measure each program's performance, and what adjustments to the core measures may be necessary. EDA is interested in developing/validating measures for the performance of the 301(b) Economic Development District and Indian Planning Program, 302(a) State and Urban Planning Program and 301(a) Local Technical Assistance Program. Some types of measures are easy to define. These would include: input measures, such as the number of full-time employees administering the program, the total amount of grants awarded; output measures—the number of applications processed; and efficiency measures—the cost per client served. It is much more difficult to measure the success or outcomes of EDA's planning and local technical assistance programs, whose outcomes often cannot be measured in easily quantifiable ways, such as measuring the number of jobs created or saved.

The value of planning per se is difficult to measure. Planning activities include: the bringing together of community stakeholders with diverse interests to work in a collaborative manner; the gathering of comprehensive economic information; the identification of strengths, weaknesses, opportunities, and threats; the identification and agreement on goals, measurable objectives and strategies; ongoing feedback and evaluation; and communication of the collaborative process and the plan. Attempts to measure planning performance could focus on planning activities per se, or on the accomplishment of the measurable objectives that are developed as part of the planning process, or a combination of both.

It is also difficult to measure the performance of local technical assistance projects. They are often single-client and/or single-issue focused, such as technical or market feasibility studies, and grantees have little or no control over the outcomes of the projects.

Scope of Work: The successful applicant will: (1) Research the literature and consult with appropriate experts and practitioners; (2) examine a cross-section of EDA planning and local technical assistance projects; (3) develop proposed performance measures; (4) test the proposed performance measures on a sample of planning and local technical assistance grants; (5) prepare a report which identifies performance measures and provides the justification for their selection; and (6) conduct briefings and/or training workshops as set forth in Section I.D. above.

Cost: If properly justified, the Assistant Secretary may consider a waiver of the required 25 percent local share of the total project cost.

Timing: The project should be completed and the final report submitted by April 30, 1998.

B. Research and Evaluation Program

• State Incentives Evaluation

EDA invites proposals to develop a tool to evaluate state incentives.

Background: Incentives have been used in various forms since the founding of the nation to launch business enterprises, improve and settle states and territories, and open up the West. Following World War I, states used incentives to diversify their economies, provide work for their populations and improve the quality of life. ''Smokestack chasing'' began with the South to recruit companies to locate where operating and labor costs would be lower, and encouraged the substantial industrial shift which took place after World War II as companies searched for ways of reducing business costs. During the 1970s, foreign competition began to substantially affect American industry, and some communities lost much or all of their manufacturing base. Incentives packages assumed new importance as states, regions and localities competed with one another to develop strategies to attract and retain companies and assist them in expanding and creating jobs. Examples of controversial incentives packages are the location of a BMW plant in South Carolina and of a Mercedes Benz plant in Alabama. In these and similar cases, critics argue that immediate and long-term loss to the taxpayers and tax base are excessive and not justified by the job gains. What is now seen by some observers as a new ''war between the states,'' may have become too costly in the long-term: communities and states commit themselves to provide essential public services from a reduced tax base due to abatements to individual companies.

Communities do not have an adequate tool(s) to use in evaluating the potential impact of proposed incentives packages. EDA is interested in developing such a tool (or tools) for evaluating incentives packages that would help communities determine whether the outcomes, over the long-term, are commensurate with the investment.

Scope of Work: The successful applicant will: (1) Develop methodologies for analyzing incentive packages to determine, among other things, the costs/benefits, fiscal impact, and return on investment; (2) develop guidelines which state and local officials can use to craft, evaluate and negotiate recruitment policies; (3) develop recommendations on the appropriate role of the Federal Government with regard to incentives; and (4) conduct briefings and/or training workshops as set forth in Section I.D. above.

Cost: No local match is required for this project.

Timing: This project should be completed and the final report submitted by June 30, 1998.

• Outmigration/Population Loss as Indicator of Economic Distress

EDA invites proposals to assess outmigration/population loss as an indicator of economic distress and recommend an appropriate measure.

Background: EDA's primary and least controversial eligibility criteria are high unemployment and low income. In addition, areas may be eligible for assistance if they have had ''a substantial loss of population due to lack of employment opportunity.'' Elsewhere, EDA's authorizing legislation refers more specifically to ''outmigration,'' which is a component of population loss.

Some rural areas of the United States, such as Appalachia, experience outmigration and population loss in addition to high unemployment and/or low income. However, other areas, primarily in the Plains and Rocky Mountains, experience outmigration and population loss in the absence of high unemployment and low income. It is hypothesized that such population loss, by itself, constitutes economic distress, because of the loss of tax base, reduced services, school closures, expensive care for the remaining elderly who do not migrate, and so on.

Scope of Work: The successful applicant will:

(1) Examine all significant forms of dislocation and distress that accompany population loss/outmigration and the adverse effects of the loss/outmigration on the community. The hypothesis of population loss/outmigration as economic distress should be tested against the contrasting view that it is an alleviator of economic distress and its many symptoms. In this view, outmigration is the relief valve that allows the unemployed, underemployed, and those of low income to seek better circumstances elsewhere.

(2) Compare and contrast population loss/outmigration with other measures of economic distress, including high unemployment and low income. Any significant distress-based distinctions between population loss and its outmigration component should be examined and described.

(3) If population loss/outmigration is found to be an indicator of economic distress, evaluate and recommend specific measurements that can be used to quantify this indicator. For example, a high-unemployment-rate threshold can be set at some level above the prevailing national or state rate; and a low-income threshold can be set at some percentage of per-capita income. What threshold can be used to define areas experiencing excessive population loss/outmigration?

(4) Prepare a comprehensive final report containing the project background, methodology, findings, and recommendations.

(5) Conduct briefings and/or training workshops as set forth in Section I.D. above.

Cost: No local match is required for this project.

Timing: The project should be completed and the final report submitted by March 31, 1998.

• Socioeconomic Data Needed for Economic Development Practitioners

EDA invites proposals to assess the need for and quality of state, regional, and local socioeconomic data that are essential for effective economic development.

Background: The many kinds of data used by the economic development community are collected by a variety of agencies. Just at the Federal level, these include decennial population and quinquennial economic censuses by the Bureau of the Census, macroeconomic figures on output and its components and other much more industrially and geographically detailed income and employment data by the Bureau of Economic Analysis, and labor force data by the Bureau of Labor Statistics. All three agencies are variously responsible for the income/poverty data and unemployment data that are crucial to economic development programs. Local and state agencies are also important data sources.

Improvements in data are needed, but budget limitations require that they be prioritized so that the most broadly needed and useful are implemented first. The kinds of improvements most often discussed fall into four categories: (1) Additional topics: Among the many possibilities are improved breakdowns of poverty and unemployment data by minority status, gender status, industry, etc. (2) Greater frequency: Population Census data are collected only every ten years. Some advanced countries conduct their censuses more often. Since the usefulness of decennial data declines rapidly, and to address this concern, the Census Bureau has begun the start-up phase of the American Community Survey, which will start to provide data for sub-state areas in 2001 and, by late in the next decade, will provide annual social and economic profiles about the population for areas as small as city neighborhoods. (3) Finer geographical detail: Many data are available at the national level only. Other data are available no lower than the state or multistate regional levels. The Census Bureau has recently developed statistical models for the county level to produce income and poverty data (small area income and poverty estimates). This program is in its first stages and the first set of estimates is currently being evaluated. Even data available at the county level can be too coarse for purposes of inner-city/poverty-pocket program eligibility and analysis. (4) Greater accuracy: Accuracy can be improved in various ways, but it often involves larger samples, and attendant greater cost for the surveys in which the size is increased. Census Bureau plans for Census 2000 call for the use of sampling in place of some costly door-to-door visits and as a quality check. This will both reduce census costs and improve the accuracy of the totals. With the increased use of sampling, Census 2000 will be more accurate than past decennial censuses, which missed many millions of U.S. residents. Still other categories of data improvement beyond these four—through statistical modeling, for example—are possible and can be addressed by the respondents to this request.

Scope of Work: The successful applicant will:

(1) Be both bold and realistic in the needs assessment and recommendation of data augmentation. For example, a more frequent Census of Population is unlikely and would be extremely expensive. Many of its objectives would be met by the American Community Survey and modifications of the monthly Current Population Survey. Finer geographical detail is both expensive and statistically problematical; most data for small sub-populations have wide error ranges, wherein the reported figures are merely the midpoints. Additional data topics require new questions in the underlying surveys and censuses, bringing up questions of citizen privacy and inconvenience, as well as added expense.

(2) Where data are collected by different levels of government or by different entities, such as states, at the same level of government, examine the difficulties of data comparability and the need for data standards. For example, unemployment data collected by one state should not have biases towards higher or lower values that make such data incompatible with that collected by other states.

(3) Assess how existing data are used, or not used, by the economic development community, in order to understand how demands for new data might be partly satisfied by greater practitioner awareness of the data already available.

(4) Prepare a comprehensive final report containing the project background, methodology, findings, and recommendations.

(5) Conduct briefings and/or training workshops as set forth in Section I.D. above.

Cost: No local match is required for this project.

Timing: The project should be completed and the final report submitted by June 30, 1998.

• Microenterprise as an Economic Adjustment Tool

EDA invites proposals to evaluate the role of microenterprise as an economic adjustment tool.

Background: Microenterprise programs provide entrepreneurial assistance and small loans, sometimes as small as $100, to low and moderate income people, especially women and minorities, who would not be eligible for loans from traditional lending institutions. The programs active in the United States basically fall into two categories (1) Entrepreneur training and technical assistance and (2) access to capital, with many programs offering both services. Many of the programs, especially those which deal exclusively with low-income groups, also provide personal effectiveness assistance, mentoring, and peer support groups to promote and sustain in their clients the discipline of focus, self-confidence, and commitment, among other factors. The supportive environment assists the borrowers in developing the skills needed to start and grow a business, as well as to manage capital financing activities. Some programs also assist in promoting alliances among microenterprises and in connecting them with traditionally inaccessible markets.

For purposes of this evaluation, micro enterprises are defined as businesses with five (5) or fewer employees, and in programs offering access to capital, businesses receiving loans in the amount of 25 thousand dollars or less.

While microenterprise programs no doubt help to promote personal development and self-sufficiency among low income people who have had little opportunity to enter and participate in more traditional ways in the mainstream economy, the question remains as to what extent microenterprise programs meet the more conventional economic development objectives. For example, EDA presently makes grants to establish Revolving Loan Funds (RLFs) under the authority of its Economic Adjustment Program, which is directed at assisting communities struggling with structural economic change. Such changes can occur when significant sectors of a community's economic base are seriously damaged, such as by a natural disaster, or eliminated altogether, such as by a military base closing. The community's objective is to stabilize, diversify and replace the economic activity that was lost. To what extent can microenterprise activity offset such losses and contribute to economic recovery? Can microenterprise programs assist in the alleviation of the problems of unemployment and underemployment in distressed areas and make a contribution to job creation, creation of wealth, and tax base enhancement? Should microenterprise development be viewed as an appropriate part of overall structural economic recovery, perhaps encouraging the development of adequate services within a community to keep pace with other efforts to rebuild economies? Should EDA assistance, other than RLFs, focus on microenterprise, e.g., microenterprise incubator or technical assistance projects? These questions will be considered in an assessment of the impact of microenterprise programs, and whether they can be an effective tool for addressing the economic adjustment needs of communities facing structural economic problems.

Scope of Work: The successful applicant will: (1) Choose a broad sample of microenterprise programs to analyze, compare, and evaluate in terms of their impact on job creation and income enhancement for targeted groups in distressed areas; (2) assess the utility of microenterprise programs in different environments, e.g., urban, suburban, and rural; (3) determine whether, the extent to which, and under what conditions microenterprise is an effective economic adjustment tool; (4) present these matters in a final report, which will be available to interested parties; and (5) conduct briefings and/or training workshops as set forth in Section I.D. above.

Cost: No local match is required for this project.

Timing: This project should be completed and the final report submitted by September 30, 1998.

IV. Selection Process and Evaluation Criteria

Proposals will receive initial reviews by EDA to assure that they meet all requirements of this announcement, including eligibility and relevance to the specified project as described herein. The Office of Economic Adjustment of the Department of Defense will participate in evaluating proposals submitted for Leveraging Capital for Defense Adjustment Infrastructure Assistance and Demand for Public Works and Defense Adjustment Infrastructure projects described above. If a proposal is selected, EDA will provide the proponent with an Application form, and EDA will carry out its selection process and evaluation criteria as described in 13 CFR Chapter III, part 304 and Sections 307.13, 307.14, 307.18, and 307.19.

From the full proposals and applications, EDA will select the applicants it deems most qualified and cost effective. EDA anticipates that more full proposals and applications will be invited than will eventually be funded.

Dated: May 8, 1997.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 97–12492 Filed 5–9–97; 1:29 pm]

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federal register

Monday
May 12, 1997

Part IX

The President

Proclamation 7000—Peace Officers Memorial Day and Police Week, 1997

Proclamation 7001—Jewish Heritage Week, 1997

Federal Register
Vol. 62, No. 91
Monday, May 12, 1997

Presidential Documents

Title 3—

The President

Proclamation 7000 of May 7, 1997

Peace Officers Memorial Day and Police Week, 1997

By the President of the United States of America

A Proclamation

Law enforcement officers are true heroes, quietly risking their lives every day to protect our public safety and private property. The routine, everyday nature of their courage makes it all the more extraordinary. Day and night, these brave men and women leave home, put on their badges, and report for duty, putting their lives on the line for the rest of us.

Today, an estimated 587,000 men and women are sworn police officers, working to enforce our Nation's laws and maintain order in our society. As citizens we owe these officers respect and gratitude, and Police Week is a welcome time for us to join together and salute these officers for the selfless work they carry out so faithfully all year long.

Sadly, during Police Week we also pause, on Peace Officers Memorial Day, to remember our fallen officers. Last year, 117 Federal, State, and local officers were killed in the line of duty. Although this number dropped to the lowest level in over 30 years—and the number of police officers killed by firearms alone dropped to 55 from 71 the previous year—these statistics, compiled by the National Law Enforcement Officers Memorial Fund, remain a cause for great concern. The loss of any police officer is a tragedy, and as a Nation, we mourn and remember these men and women who made the ultimate sacrifice by giving their lives. While we can never repay the debt we owe to these fallen officers and their families, we can—and must—honor their memory by carrying on their crusade to make America a better and safer place.

By a joint resolution approved October 1, 1962 (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as ''Peace Officers Memorial Day'' and the week in which it falls as ''Police Week,'' and, by Public Law 103–322 (36 U.S.C. 175), has directed that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 15, 1997, as Peace Officers Memorial Day and May 11 through May 17, 1997, as Police Week. I call upon the people of the United States to observe these occasions with appropriate ceremonies, programs, and activities. I also request the Governors of the United States and of the Commonwealth of Puerto Rico, as well as the appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day on all buildings, grounds, and naval vessels throughout the United States and all areas under its jurisdiction and control. I also invite all Americans to display the flag at half-staff from their homes on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97–12556
Filed 5–9–97; 8:47 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7001 of May 8, 1997

Jewish Heritage Week, 1997

By the President of the United States of America

A Proclamation

The American Jewish community, with its rich and diverse culture, has served as a continuous source of ethical and moral values for our great Nation since its founding. The principles of Jewish heritage—family, community, faith, and service—parallel the ideals that inspired our country's founders and that anchor our modern democracy.

Members of the Jewish faith have long added to America's cultural life a legacy of law and human compassion, a struggle for freedom and fairness, and a love of learning and the arts. Drawing from their proud heritage, Jewish citizens have made vital contributions to every sector of society, as scientists and soldiers, judges and teachers, artists, entrepreneurs, and philanthropists.

Jewish traditions lend special meaning to the spring season. The recent celebration of Passover commemorates the exodus of Jewish slaves from ancient Egypt. The observance of this religious and historical milestone also honors the character of the Jewish people, who, despite continual hardship, clung to their enduring faith in God and the promise of a brighter future. The annual spring commemorations of Passover, Holocaust Memorial Day, and Israel's Independence are occasions for deep reflection by American Jewry and demonstrate to all Americans the importance of remembrance, faith, freedom, and justice.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 11 through May 18, 1997, as Jewish Heritage Week. I urge all Americans to observe this week with appropriate programs and to pay tribute to American Jews for sharing their message of hope and perseverance with all of us.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

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REMINDERS

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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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

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