4–10–98
Vol. 63 No. 69
Pages 17667–17930

federal register

Friday
April 10, 1998

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Now Available Online via
GPO Access

Free online access to the official editions of the *Federal Register, the Code of Federal Regulations* and other Federal Register publications is available on *GPO Access,* a service of the U.S. Government Printing Office at:

http://www.access.gpo.gov/nara/index.html

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 63 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 21, 1998 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Printed on recycled paper.

Contents

Federal Register

Vol. 63, No. 69

Friday, April 10, 1998

Agriculture Department
See Forest Service
See Rural Utilities Service

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17875–17876

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17876–17877

Coast Guard
RULES
Drawbridge operations:
New York, 17679–17680
PROPOSED RULES
Drawbridge operations:
New Jersey, 17781–17782
National Invasive Species Act of 1996; implementation, 17782–17792

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Romania, 17821–17822
Textile consultation; review of trade:
Mexico and Canada, 17822–17823

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Cantor Financial Futures Exchange, Inc., 17823

Customs Service
NOTICES
Automation program test:
Semi-montly filing and statement processing program prototype; correction, 17926–17927
Drilled softwood lumber; tariff classification; comment request, 17927
Truck user fee collection by means of electronic commerce technology; program test announcement, 17927–17928

Defense Department
See Navy Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Mauskar, Anant N., M.D.; correction, 17930

Employment and Training Administration
NOTICES
Adjustment assistance:
Dresser-Rand Co., 17893
Koch Refinery Co. et al., 17893–17894
Matsushita Home Appliance Corp., 17894
Umbro International et al., 17894–17895
UNOCAL, 17895
Agency information collection activities:
Proposed collection; comment request, 17895–17897
NAFTA transitional adjustment assistance:
Omak Wood Products, Inc., 17897
Umbro International et al., 17897

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 17897–17899

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission
PROPOSED RULES
Acquisition regulations:
Management and operating contracts and other designated contracts, 17800–17811
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Los Alamos National Laboratory, 17825–17826
Nevada Test Site, 17826
Oak Ridge Reservation, 17826
Secretary of Energy Advisory Board, 17826–17827

Energy Research Office
NOTICES
Meetings:
Biological and Environmental Research Advisory Committee, 17827

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Aerospace manufacturing and rework facilities Correction, 17930
Air quality implementation plans; approval and promulgation; various States:
Arkansas, 17680–17683
Pennsylvania, 17683–17686
Hazardous waste:
Municipal solid waste landfill facilities; corporate owners and operators; financial assurance mechanisms, 17706–17731
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bacillus thuringiensis, 17687–17690
Cyprodinil, 17699–17706
N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide, 17692–17699
Prometryn, 17690–17692

PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Pennsylvania, 17793
Air quality implementation plans; approval and promulgation; various States:
Arkansas, 17793
NOTICES
Clean Air Act:
Hazardous air pollutants; sources list, 17838–17855
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 17856
Weekly receipts, 17857
Meetings:
National Environmental Education Advisory Council, 17857
Ozone Transport Commission, 17857–17858
Superfund; response and remedial actions, proposed settlements, etc.:
XXKem Site, OH, 17858–17859
Water pollution control:
National pollutant discharge elimination system; State programs—
Idaho, 17859–17861

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Unprocessed timber from certain public lands; export prohibition, 17814–17815

Federal Aviation Administration
RULES
Airworthiness directives:
AERMACCI S.p.A., 17669–17670
Aerospatiale, 17670–17672
Bombardier, 17672–17674
Eurocopter France, 17674–17677
Robinson Helicopter Co., 17677–17679
PROPOSED RULES
Airworthiness directives:
Lucas Air, 17738–17740
Class D airspace, 17740–17742
Class E airspace, 17742–17744
NOTICES
Passenger facility charges; applications, etc.:
Roberts Field-Redmond Municipal Airport, OR, 17923
Sioux Gateway Airport, IA, 17923–17924

Federal Communications Commission
RULES
Radio stations; table of assignments:
Georgia, 17736
PROPOSED RULES
Radio stations; table of assignments:
Arkansas, 17799

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Alabama et al., 17732–17734
Florida et al., 17731–17732
Georgia et al., 17734–17736
PROPOSED RULES
Flood elevation determinations:
Maine et al., 17793–17799
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17861–17862
Submission for OMB review; comment request, 17862–17863
Disaster and emergency areas:
Minnesota, 17863
North Carolina, 17863–17864
Meetings:
Technical Mapping Advisory Council, 17864

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Florida Power Corp. et al., 17831–17836
Wolverine Power Supply Cooperative Inc., et al., 17836–17838
Applications, hearings, determinations, etc.:
High Island Offshore System, 17827–17828
Koch Gateway Pipeline Co., 17828–17829
ONEOK Resources Co., 17829–17830
Plains Petroleum Co. and Plains Petroleum Operating Co., 17830–17831
Romig, Bill C., 17831

Federal Highway Administration
PROPOSED RULES
Motor carrier safety standards:
Parts and accessories necessary for safe operation—
Shifting or falling cargo, protection; North American standard development; meeting, 17812

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Items processing and settlement and other services; prices, 17864–17872

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Leader Mutual Freight System Inc. et al., 17872

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 17872–17873
Formations, acquisitions, and mergers, 17873–17874
Formations, acquisitions, and mergers; correction, 17873
Permissible nonbanking activities, 17874
Meetings; Sunshine Act, 17874

Federal Trade Commission
NOTICES
Meetings; Sunshine Act, 17875

Fish and Wildlife Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Federal aid in sport fish and wildlife restoration; administrative projects, 17882–17886
Pipeline right-of-way applications:
Alabama, 17886

Food and Drug Administration
PROPOSED RULES
Pharmaceuticals and medical devices; inspection and evaluation reports; mutual recognition of FDA and European Community Member State conformity assessment
procedures, 17744–17771

Forest Service
NOTICES
Environmental statements; notice of intent:
Lawrence and Meade Counties, SD; Black Hills National Forest, 17813

Geological Survey
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17886–17887

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17877–17878

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17878–17880
Grants and cooperative agreements; availability, etc.:
Facilities to assist the homeless—
Excess and surplus Federal property, 17880–17882

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Tapered roller bearings, four inches or less in outside diameter and components, & tapered roller bearings, finished and unfinished and parts from—
Japan, 17815–17820

Justice Department
See Drug Enforcement Administration
See Justice Programs Office
See Parole Commission
NOTICES
Pollution control; consent judgments:
Aberdeen, MS, 17889
Dow Chemical Co. et al., 17889
Ferex Corp., 17889–17890
Florida Water Services Corp., 17890
Lancaster Battery Co. et al., 17890–17891
Nassau Metals Corp., 17891
Texaco Refining & Marketing, Inc., 17891
Young, Jane A., et al., 17891–17892

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17892–17893

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Northeast National Petroleum Reserve-Alaska; integrated activity plan; public subsistence-related hearing, 17887

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health standards:
Occupational noise exposure, 17781

National Bipartisan Commission on Future of Medicare
NOTICES
Meeting, 17899

National Capital Planning Commission
NOTICES
Environmental statements; notice of intent:
Prince George's County, MD; mixed-use waterfront destination resort; meeting, 17899–17900

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 17737
West Coast States and Western Pacific fisheries—
Salmon fisheries; in-season adjustments, 17736–17737
NOTICES
Fishery conservation and management:
Magnuson Act provisions—
Spiny dogfish; overfished fishery, 17820–17821

National Park Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17887–17888
Meetings:
Death Valley National Park Advisory Commission, 17888
Golden Gate National Recreation Area and Reyes National Seashore Advisory Commission, 17888
Manazar National Historic Site Advisory Commission, 17888–17889

National Telecommunications and Information Administration
NOTICES
Meetings:
Public Interest Obligations of Digital Television Broadcasters Advisory Committee, 17821

Navy Department
NOTICES
Base realignment and closure:
Surplus Federal property—
Guam, 17824

Environmental statements; availability, etc.:
Pacific missile range facility enhanced capability; public hearing, 17824–17825

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Power Authority of State of New York, 17902–17903
Sealed source and device evaluation and approval authority relinquishment by Oregon and reassumption by NRC, 17903–17904
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 17900–17902

Parole Commission
PROPOSED RULES
Federal prisoners; paroling and releasing, etc.:
District of Columbia Code; prisoners serving sentences, 17771–17781

Patent and Trademark Office
NOTICES
Patents:
PROVIGIL; U.S. Patent No. 4,177,290 one year interim extension, 17821

Personnel Management Office
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 17904–17905

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
American Heritage Rivers Initiative Advisory Committee; establishment (EO 13080), 17667–17668

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline Safety Advisory Committee, 17924

Rural Utilities Service
PROPOSED RULES
Telecommunications standards and specifications:
Materials, equipment, and construction—
Digital, stored program controlled central office equipment, standards and specifications, 17738

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 17918
Applications, hearings, determinations, etc.:
Harris & Harris Group, Inc., 17905–17906
Public utility holding company filings, 17906–17907
Salomon Brothers Variable Series Funds Inc, et al., 17907–17913
STI Classic Variable Trust, et al., 17913–17918

Small Business Administration
NOTICES
Disaster loan areas:
Alabama, 17918–17919
North Carolina, 17919

Surface Transportation Board
NOTICES
Motor carriers:
Finance applications—
Coach USA, Inc. et al., 17924–17925
Railroad operation, acquisition, construction, etc.:
Albany Bridge Co. Inc. et al., 17925–17926
Minnesota Commercial Railway Co., 17926

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Hearings, etc.—
WestJet Express Airlines, Inc., 17919
Unfair exclusionary conduct; enforcement policy statement, 17919–17922

Treasury Department
See Customs Service
NOTICES
Meetings:
Debt Management Advisory Committee, 17926

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Princes, Poets, & Paladins, 17928–17929

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Executive Orders:
13080.....17667

7 CFR
Proposed Rules:
1755.....17738

14 CFR
39 (6 documents) 17669, 17670, 17672, 17674, 17676, 17677
Proposed Rules:
39.....17738
71 (4 documents) 17740, 17741, 17742, 17743

21 CFR
Proposed Rules:
26.....17744

28 CFR
Proposed Rules:
2.....17771

30 CFR
Proposed Rules:
56.....17781
57.....17781
62.....17781
70.....17781
71.....17781

33 CFR
117.....17679
Proposed Rules:
117.....17781
151.....17783

40 CFR
52.....17680
62.....17683
63.....17933
180 (4 documents) 17687, 17690, 17692, 17699
258.....17706
Proposed Rules:
52.....17793
62.....17793

44 CFR
65 (2 documents) 17731, 17732
67.....17734
Proposed Rules:
67.....17793

47 CFR
73.....17736
Proposed Rules:
73.....17798

48 CFR
Proposed Rules:
915.....17799
970.....17799

49 CFR
Proposed Rules:
393.....17811

50 CFR
660.....17736
679.....17737

Federal Register
Vol. 63, No. 69
Friday, April 10, 1998

Presidential Documents

Title 3—

The President

Executive Order 13080 of April 7, 1998

American Heritage Rivers Initiative Advisory Committee

By the authority vested in me as President by the Constitution and the laws of the United States, including the Federal Advisory Committee Act, 5 U.S.C. App., as amended, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established the American Heritage Rivers Initiative Advisory Committee (''Committee''). The Committee shall consist of up to 20 members appointed by the President from the public and private sectors. Each member of the Committee shall be a person who, as a result of his or her training, experience, and attainments, is well qualified to appraise the quality of nominations for selection of rivers as American Heritage Rivers submitted by communities across the country. The expertise of members of the Committee shall be in areas such as natural, cultural, and historic resources; water quality; public health; scenic and recreation interests; tourism and economic development interests; industry; and agriculture. The President shall designate a Chair from among the members of the Committee.

Sec. 2. (a) The Committee shall review nominations from communities and recommend to the President up to 20 rivers for consideration for designation as American Heritage Rivers. From the rivers recommended for consideration, the President shall designate ten as American Heritage Rivers.

(b) In its review of nominations submitted by communities, the Committee shall provide its assessment of:

(1) The scope of each nomination's application and the adequacy of its design to achieve the community's goals;

(2) Whether the natural, economic (including agricultural), scenic, historic, cultural, and/or recreational resources featured in the application are distinctive or unique;

(3) The extent to which the community's plan of action is clearly defined and the extent to which the plan addresses all three American Heritage Rivers objectives—natural resource and environmental protection, economic revitalization, and historic and cultural preservation—either through planned actions or past accomplishments, as well as any other characteristics of the proposals that distinguish a nomination, such as:

(A) Community vision and partnership;
(B) Sustainability of products and projects, including project maintenance;
(C) Resources, both committed and anticipated, including means of generating additional support from both private and public sources;
(D) Anticipated Federal role as defined by the applicants;
(E) Schedule or timeline;
(F) Citizen involvement;
(G) Public education relating to the designation of the river;
(H) Logistical support, operating procedures, and policies;
(I) Prior accomplishments, if relevant, and relationship to existing plans and projects in the area; and
(J) Measures of performance.

(4) The strength and diversity of support for the nomination and plan of action as evidenced by letters from local and State governments, Indian tribes, elected officials, any and all parties who participate in the life and health of the area to be nominated, or who have an interest in the economic life and cultural and environmental vigor of the involved community.

(c) The Committee also should seek to recommend the selection of rivers that as a group:

(1) Represent the natural, historic, cultural, social, economic, and agricultural

diversity of American rivers;

(2) Showcase a variety of stream sizes and an assortment of urban, rural, and mixed settings from around the country, including both relatively pristine and degraded rivers;

(3) Highlight a variety of innovative programs in such areas as historic preservation, sustainable development through tourism, wildlife management, fisheries restoration, recreation, community revitalization, agricultural practices, and flood plain and watershed management;

(4) Include community efforts in early stages of development as well as those that are more well established; and

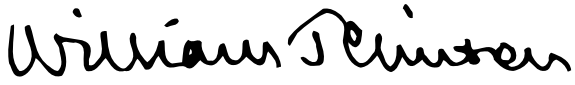
(5) Stand to benefit from targeted Federal assistance.

(d) The Committee shall report its recommendations for selection of rivers as American Heritage Rivers to the President through the Chair of the Council on Environmental Quality.

Sec. 3. *Administration.* (a) The heads of executive departments and agencies shall provide the Committee, to the extent practicable and permitted by law, such information with respect to river revitalization as the Committee requires to fulfill its functions.

(b) The Committee shall be supported both administratively and financially by the Secretary of Defense, acting through the Assistant Secretary of the Army for Civil Works.

Sec. 4. *General.* The Committee shall terminate no later than 2 years from the date of this order. The Chair of the Committee, with the approval of the designated Federal officer, shall call meetings of the American Heritage Rivers Initiative Advisory Committee.



THE WHITE HOUSE,
April 7, 1998.

[FR Doc. 98–9709
Filed 4–9–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 63, No. 69
Friday, April 10, 1998

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–144–AD; Amendment 39–10455; AD 98–08–06]

RIN 2120–AA64

Airworthiness Directives; AERMACCI S.p.A. S.205 Series and Models S.208 and S.208A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to AERMACCI S.p.A. S.205 series and Models S.208 and S.208A airplanes. This AD requires inspecting all flight control cables (elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems) for cracks in the eye end, and replacing any control cable with any crack in the eye end. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent loss of critical airplane functions because of cracked flight control cables, which could result in loss of control of the airplane if occurring during flight.

DATES: Effective May 26, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 26, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–144–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to AERMACCI S.p.A. S.205 series and Models S.208 and S.208A airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 2, 1998 (63 FR 5318). The NPRM proposed to require inspecting all flight control cables (elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems) for cracks in the eye end, and replacing any control cable with any crack in the eye end. Accomplishment of the proposed action as specified in the NPRM would be in accordance with SIAI Marchetti S.p.A. Mandatory Service Bulletin No. 205B58, not dated.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 70 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 20 workhours per airplane to accomplish the actions required by this AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $91,000, or $1,300 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–06 Aermacci S.P.A.: Amendment 39–10455; Docket No. 97–CE–144–AD.

Applicability: Models S.205–18/F, S.205–18/R, S.205–20/F, S.205–20/R, S.205–22/R, S.208, and S.208A airplanes, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent loss of critical airplane functions because of cracked flight control cables, which could result in loss of control of the airplane if occurring during flight, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect all flight control cables (elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems) for cracks in the eye end. Accomplish this inspection in accordance with SIAI Marchetti, S.p.A. Mandatory Service Bulletin No. 205B58.

(b) If any cracked flight control cable is found, prior to further flight after the inspection required by paragraph (a) of this AD, replace the cracked cable with a new cable of the same design that is found to be free of cracks in the eye end. The replacement(s) shall be accomplished in accordance with the applicable maintenance manual.

(c) As of the effective date of this AD, no person may install a flight control cable on an affected airplane, unless the cable has been found to be free of cracks in the eye end.

(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) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Questions or technical information related to SIAI Marchetti, S.p.A. Mandatory Service Bulletin No. 205B58, should be directed to SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) The inspection required by this AD shall be done in accordance with SIAI Marchetti, S.p.A. Mandatory Service Bulletin No. 205B58, dated December 31, 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 SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on May 26, 1998.

Issued in Kansas City, Missouri, on March 31, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9139 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–107–AD; Amendment 39–10457; AD 98–08–08]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–500 series airplanes. This action requires a one-time inspection to verify the installation of certain stringer clips at the junction of frame 34 and stringer 6, and installation of stringer clips, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fatigue cracking in the skin of the fuselage, which could result in loss of pressure inside the airplane.

DATES: Effective April 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–500 series airplanes. The DGAC advises that the manufacturer has reported that certain stringer clips were not installed during production on several in-service airplanes. The stringer clips are missing at the junction of frame 34 and stringer 6 of the fuselage. Without the installation of these clips, fatigue cracking may occur in the skin of the fuselage. This condition, if not corrected, could result in a loss of pressure inside the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Aerospatiale Service Bulletin ATR42–

53–0103, dated September 23, 1996, which describes procedures for installing stringer clips at the junction of frame 34 and stringer 6, on the left and right side of the airplane. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–132–065(B), dated July 3, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent fatigue cracking in the skin of the fuselage, which could result in loss of pressure inside the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between This AD, Foreign Airworthiness Directive, and Service Bulletin

Operators should note that this AD differs from procedures described in the foreign airworthiness directive and the service bulletin in that it requires a one-time inspection to verify whether installation of the stringer clips at the junction of frame 34 and stringer 6 has been accomplished, and installation of the stringer clips on the condition that the clips are not already installed. The foreign airworthiness directive and the service bulletin specify only that the stringer clips be installed at the junction of frame 34 and stringer 6. The FAA has determined that because the possibility exists that installation of stringer clips at the junction of frame 34 and stringer 6 has already been accomplished, before installing stringer clips, operators should first conduct an inspection of the junction of frame 34 and stringer 6 to ensure that installation of such clips has not already been accomplished.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 6 work hours to accomplish the installation, if necessary, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of this AD would be $360 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–107–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.

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:

98–08–08 Aerospatiale: Amendment 39–10457. Docket 98–NM–107–AD.

Applicability: Model ATR42–500 series airplanes, as listed in Aerospatiale Service Bulletin ATR42–53–0103, dated September 23, 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 prevent fatigue cracking in the skin of the fuselage, which could result in loss of pressure inside the airplane, accomplish the following:

(a) Within 3,000 flight cycles after the effective date of this AD, perform a one-time visual inspection to verify the installation of stringer clips at the junction of frame 34 and stringer 6, on the left and right side of the airplane.

(1) If the stringer clips have been installed, no further action is required by this AD.

(2) If any stringer clip has not been installed, prior to further flight, install the stringer clip, in accordance with Aerospatiale Service Bulletin ATR42–53–0103, dated September 23, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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 installation shall be done in accordance with Aerospatiale Service Bulletin ATR42–53–0103, dated September 23, 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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–132–065(B), dated July 3, 1996.

(e) This amendment becomes effective on April 27, 1998.

Issued in Renton, Washington, on April 3, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9343 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–05–AD; Amendment 39–10458]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–1A10 and CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. This amendment requires repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this amendment are intended to detect and correct cracking in the wing to fuselage frame-angles, which could result in reduced structural integrity of the airframe.

DATES: Effective July 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this amendment may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. TCA advises that fatigue cracking has been found in the wing box, front spar, and lower cap area around wing station 51 on three CL–215T airplanes. Such cracking has been attributed to metal fatigue caused by cyclic loading on the wing. Such cracking also may exist or develop on Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes, because they are similar in design to the CL–215T airplanes. Such cracking, if not corrected, could result in reduced structural integrity of the airframe.

Explanation of Relevant Service Information

Bombardier has issued Canadair Alert Service Bulletin 215–A476, Revision 1, dated January 14, 1997, which describes procedures for repetitive eddy current inspections to detect cracking of wing to fuselage frame–angles, and repair, if necessary. The procedures involve inspecting the wing to fuselage frame-angles on the front and rear spars on CL–215–1A10 airplanes, and the wing to fuselage frame-angles on the front spar of CL–215–6B11 airplanes. TCA classified this alert service bulletin as mandatory and issued Canadian

airworthiness directive CF–97–07, dated May 28, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this amendment is being issued to detect and correct cracking in the wing to fuselage frame-angles, which could result in reduced structural integrity of the airframe. This amendment requires repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between This Rule and the Alert Service Bulletin

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of repair conditions, this amendment requires that repair be accomplished in accordance with a method approved by the FAA.

Differences Between This Rule and the Foreign AD

This amendment would differ from the parallel Canadian airworthiness directive in that it would not permit further flight after any cracking has been detected. The FAA has determined that, due to the safety implications and consequences associated with such cracking, any cracking in the wing to fuselage frame-angles must be repaired prior to further flight.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this amendment, that it will take approximately 2 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 this amendment on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

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

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on the affected operator. In accordance with 14 CFR 11.17, unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received; at that time, the AD number will be specified, and the date on which the final rule will become effective will be confirmed. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and 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 amendment 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 amendment 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 98–NM–05–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 noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of 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:

Bombardier Inc. (Formerly Canadair): Amendment 39–10458. Docket 98–NM–05–AD.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the wing to fuselage frame-angles, which could result in reduced structural integrity of the airframe, accomplish the following:

(a) Perform an eddy current inspection of the wing to fuselage frame angles on the front and rear spars (for Model CL–15–1A10 series airplanes) or on the front spar (for Model CL–215–6B11 series airplanes), as applicable, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD; in accordance with Canadair Alert Service Bulletin 215–A476, Revision 1, dated January 14, 1997. Thereafter, repeat the inspection at intervals not to exceed 415 flight hours.

(1) Prior to the accumulation of 2,300 total flight hours, or

(2) Within 300 flight hours or 12 months after the effective date of this AD, whichever occurs first.

(b) If any crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

(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, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York 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 inspections shall be done in accordance with Canadair Alert Service Bulletin 215–A476, Revision 1, dated January 14, 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–07, dated May 28, 1997.

(f) This amendment becomes effective on July 9, 1998.

Issued in Renton, Washington, on April 3, 1998.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9340 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–27–AD; Amendment 39–10462; AD 98–08–13]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA 330F, G, and J, and AS 332C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA 330F, G, and J, and AS 332C, L, L1, and L2 helicopters. This action requires daily inspections of the root of each tail rotor head pitch change spider arm (spider arm) for cracks, and an inspection of the tail rotor head pitch change spider (spider) for cracks and fretting corrosion. A terminating action for the requirements of this AD is the installation of an airworthy modified spider, an airworthy replacement spider, or an airworthy repaired spider. This amendment is prompted by one in-service report of fatigue cracking on a Model AS 332 helicopter. This condition, if not corrected, could result in failure of the spider arm, loss of control of the tail rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective April 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–27–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA 330F, G, and J, and AS 332C, L, L1, and L2 helicopters. The DGAC advises that fatigue cracking in spider, part number (P/N) 332A330039.20 or .21, for Model AS 332 helicopters, and P/N 332A330039.20 or .21, or P/N 330A330104.20 or .21 for Model SA 330 helicopters, could result in failure of the spider arm, loss of control of the tail rotor blade and subsequent loss of control of the helicopter.

Eurocopter France has issued Eurocopter France SA 330 Service Bulletin (SB) No. 01.52 R1, Revision No. 1, and Eurocopter France AS 332 SB No.

01.00.43, Revision No. 1, both dated February 14, 1996, which specify a daily check of the root of the spider arm for cracks, and specify detailed inspections of the entire spider arm for cracks or fretting corrosion within 250 hours time-in-service (TIS). The DGAC classified these service bulletins as mandatory and issued AD 95–262–056(B)R1 for the Model AS 332 helicopters, and AD 95–263–073(B)R1 for the Model SA 330 helicopters, both dated April 10, 1996, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA 330F, G, and J, and AS 332C, L, L1, and L2 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of the spider arm, loss of control of the tail rotor blade, and subsequent loss of control of the helicopter. This AD requires a daily inspection, prior to the first flight of the day, of the root of each spider arm for cracks, and requires a detailed inspection of the entire spider arm for cracks and fretting corrosion within 250 hours TIS. A terminating action is provided in the AD by installing an airworthy modified spider, an airworthy replacement spider, or an airworthy repaired spider. The actions are required to be accomplished in accordance with the service bulletins described previously. This AD differs from the DGAC AD's in the required inspection schedule and in the type of inspection that is required. The DGAC AD's require inspections after the last flight of each day. The FAA considers that the most critical time to perform the inspections would be before the first flight of each day and has worded this AD as such. Also, the DGAC AD's require a visual inspection and, if it cannot be determined whether a crack is present, a subsequent dye-penetrant inspection; this AD requires a dye-penetrant inspection and doesn't allow the option of an initial visual inspection.

None of the Model SA 330 or AS 332 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 4.0 work hours to accomplish the required inspections, and 1.5 work hours to replace a spider arm at an average labor charge of $60 per work hour. Required parts would cost $100 each. Based on these figures, the cost impact of this AD to inspect and replace all 5 spider arms would be $1,190 per helicopter.

Since this AD action does not effect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–27–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation and therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, 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 a new airworthiness directive to read as follows:

AD 98–08–13 Eurocopter France: Amendment 39–10462. Docket No. 97–SW–27–AD.

Applicability: Model SA 330F, G, and J helicopters with tail rotor head pitch change spider arm (spider arm), part number (P/N) 330A330104.20 or .21, or 332A330039.20 or .21, installed and Model AS 332C, L, L1, and L2 helicopters with spider arm, P/N 332A330039.20 or .21 installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a spider arm, loss of control of the tail rotor blade, and subsequent loss of control of the helicopter, accomplish paragraphs (a) through (d) in accordance with the specified paragraphs of Eurocopter France Service Bulletin No. 01.52 R1, Revision No. 1, for Model SA 330 helicopters, or Eurocopter France AS 332 Service Bulletin No. 01.00.43, Revision No. 1, for Model AS 332 helicopters, both dated February 14, 1996:

(a) Prior to the first flight of each day, inspect the root of each of the spider arms for cracks in accordance with paragraph 1.C.1) of the applicable service bulletin.

(b) Within 250 hours time-in-service (TIS), or prior to the installation of a replacement spider arm, whichever occurs earlier, disassemble the tail rotor head and inspect each spider arm for cracks and fretting corrosion in accordance with Paragraph 2.B of the Accomplishment Instructions of the applicable service bulletin. The inspections in paragraph (a) of this AD are no longer required after accomplishment of the inspection specified in this paragraph.

(c) If any crack is found, replace the spider arm with an airworthy spider arm in accordance with Paragraph 2.B.1)b)1) of the Accomplishment Instructions of the applicable service bulletin. Replacement of a cracked spider arm with an airworthy spider arm constitutes terminating action for the requirements of this AD.

Note 2: Care should be taken to ensure that Revision 1 of the referenced service bulletins is used to set the shim thickness when attaching the spider arm upon reassembly. Operators who have complied with the initial release of the referenced service bulletins and not with Revision 1 of the service bulletins will not be in compliance with this AD.

(d) If fretting corrosion is found as a result of the inspection in paragraph (b) of this AD, either repair the fretting corrosion in accordance with paragraph 2.B.1)b)2) of the Accomplishment Instructions of the applicable service bulletin; or, if the fretting corrosion is not repairable in accordance with the applicable service bulletin, replace the spider arm with an airworthy spider arm in accordance with paragraph 2.B of the Accomplishment Instructions of the applicable service bulletin. Repair of fretting corrosion in accordance with this paragraph or replacement of the spider arm with an airworthy spider arm in accordance with the applicable service bulletin constitutes terminating action for the requirements of this AD.

(e) Installation of a spider that has been modified in accordance with MOD 330A07–66131 (for Model SA 330F, G, and J helicopters), or AMS 332A07–66151 (for Model AS 332C, L, L1, and L2 helicopters) constitutes a terminating action for the requirements of this AD.

(f) 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, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

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

(h) The inspections and replacements shall be done in accordance with Eurocopter France SA 330 Service Bulletin (SB) No. 01.52 R1, Revision No. 1, for Model SA 330 helicopters, or Eurocopter France AS 330 SB No. 01.00.43, Revision No. 1, for Model AS 332 helicopters, both dated February 14, 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on April 27, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 95–262–056(B)R1 for the model AS 332 helicopters, and AD 95–263–073(B)R1 for the Model SA 330 helicopters, both dated April 10, 1996.

Issued in Fort Worth, Texas, on April 3, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–9477 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–21–AD; Amendment 39–10463; AD 98–08–14]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA 365N, N1 and AS 365N2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Eurocopter France (Eurocopter) Model SA–365N, N1 and AS–365N2 helicopters that requires inspections of the main gearbox suspension diagonal cross-member (diagonal cross-member) for cracks, and removal of the diagonal cross-member and replacement with an airworthy diagonal cross-member if any crack is found. This amendment is prompted by several reports of the discovery of cracks in diagonal cross-members. The actions specified by this AD are intended to prevent failure of the diagonal cross-member which could cause the main gearbox to pivot, resulting in severe vibrations and a subsequent forced landing.

EFFECTIVE DATE: May 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

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 Eurocopter Model SA–365N, N1 and AS–365N2 helicopters was published in the **Federal Register** on December 9, 1997 (62 FR 64785). That action proposed to require inspections of the diagonal cross-member for cracks, and to remove

any diagonal cross-member and to replace it with an airworthy diagonal cross-member if any crack is found.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the exception of some editorial changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 47 helicopters of U.S. registry will be affected by this AD, that it will take approximately one work hour per helicopter to inspect the diagonal cross-member and 10 work hours per helicopter to replace the diagonal cross-member, if necessary, and that the average labor rate is $60 per work hour. Required parts will cost approximately $9,950. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $498,670, assuming one inspection per helicopter, and replacement of a diagonal cross-member on each helicopter.

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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 98–08–14 Eurocopter France: Amendment 39–10463. Docket No. 97–SW–21–AD.

Applicability: Model SA–365N, N1, and AS–365N2 helicopter with main gearbox suspension diagonal cross-member (diagonal cross-member), part number (P/N) 365A38–3023–20, –21, –23, or –24, installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the diagonal cross-member, which could cause the main gearbox to pivot, resulting in severe vibrations and a subsequent forced landing, accomplish the following:

(a) For Model SA–365N and N1 helicopters, prior to the accumulation of 50,000 operating cycles; and for Model AS–365N2 helicopters, prior to the accumulation of 30,000 operating cycles:

Note 2: The Master Service Recommendations and the flight log contain accepted procedures that are used to determine the cumulative operating cycles on the rotorcraft.

(1) Inspect the diagonal cross-member for cracks in the area of the center bore hole, using a borescope with a 90° angle drive, or a video assembly with optical fiber illumination, or any other appropriate device that makes it possible to visually inspect the center area of the part.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at intervals not to exceed 500 operating cycles, or 100 hours time-in-service, whichever occurs first.

(b) If any crack is found as a result of the inspections required by paragraphs (a)(1) or (a)(2) of this AD, remove the diagonal cross-member and replace it with an airworthy diagonal cross-member.

(c) Installation of modification MOD 073880 that installs a diagonal cross-member, P/N 356A38–3062–20, constitutes a terminating action for the requirements of this AD.

(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, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

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

(f) This amendment becomes effective on May 15, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–093–041(AB)R1, dated July 30, 1997.

Issued in Fort Worth, Texas, on April 3, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–9476 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–08–AD; Amendment 39–10461; AD 98–04–12]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–04–12 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (RHC)

Model R44 helicopters by individual letters. This AD requires an initial and repetitive measurement of the lateral cyclic trim spring shaft (shaft) diameter and replacement of the shaft spring assembly (spring assembly) if the shaft diameter is excessively worn. Replacement of the spring assembly with a modified spring assembly is considered terminating action for this AD. This amendment is prompted by an incident in which a pilot felt binding in the cyclic control when attempting to move it to the left. A precautionary landing was made using only right-hand turns. Subsequent inspection revealed that a notch was worn in the shaft, which caused the shaft and spring to move from the lower mount and interfere with the lateral control. Inspection of a second RHC Model 44 helicopter revealed similar wear. Excessive wear can create a notch on the shaft, which can cause the spring assembly to move out of its lower mount. This condition, if not corrected, could lead to the shaft interfering with lateral cyclic control, which could result in loss of control of the helicopter.

DATES: Effective April 27, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–04–12, issued on February 4, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–08–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505 telephone (310) 539–0508, fax (310) 539–5198. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562)–627–5232, fax (562)–627–5210.

SUPPLEMENTARY INFORMATION: On February 4, 1998, the FAA issued priority letter AD 98–04–12, applicable to RHC Model R44 helicopters, which requires an initial and repetitive measurement of the shaft diameter, and replacement of the spring assembly if the shaft diameter is excessively worn. That action was prompted by an incident in which a pilot felt binding in the cyclic control when attempting to move it to the left. A precautionary landing was made using only right-hand turns. Subsequent inspection revealed that a notch was worn in the shaft, which caused the shaft and spring to move from the lower mount and interfere with the lateral control. Inspection of a second RHC Model 44 helicopter revealed similar wear. Excessive wear can create a notch on the shaft, which can cause the spring assembly to move out of its lower mount. This condition, if not corrected, could lead to the shaft interfering with lateral cyclic control, which could result in loss of control of the helicopter.

The FAA has reviewed Robinson Helicopter Company R44 Service Bulletin SB–26, dated January 31, 1998, which describes procedures for measurement of the shaft diameter, and replacing the spring assembly with a modified spring assembly if the shaft diameter varies more than 0.004 inch in any 0.50 inch of length.

Since the unsafe condition described is likely to exist or develop on other RHC Model R44 helicopters of the same type design, the FAA issued priority letter AD 98–04–12 to prevent the shaft from interfering with lateral cyclic control, which could result in loss of control of the helicopter. The AD requires, within 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 20 hours TIS until replacement of the spring assembly with a modified spring assembly is accomplished, a measurement of the shaft diameter; and replacement of the C056–1 Rev. A through G spring assembly with a C056–1 Rev. H spring assembly if the shaft diameter measurement varies more than 0.004 inch in any 0.50 inch of length. Replacement of the C056–1 Rev. A through G spring assembly with a C056–1 Rev. H spring assembly is considered terminating action for the requirements of this AD. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on February 4, 1998 to all known U.S. owners and operators of RHC Model R44 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–08–AD.'' The postcard will be date stamped and returned to the commenter.

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

implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation 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 a new airworthiness directive to read as follows:

98–04–12 Robinson Helicopter Company: Amendment 39–10461. Docket No. 98–SW–08–AD.

Applicability: Model R44 helicopters, serial numbers 0002 through 0420, 0425, 0426, and 0427, with a C056–1 Rev. A through G spring assembly installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect excessive wear on the lateral cyclic trim spring shaft (shaft), which could allow the shaft to move from its lower mount and interfere with lateral cyclic control resulting in loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 20 hours TIS, measure the diameter of the shaft in accordance with the Compliance Procedure contained in Robinson Helicopter Company R44 Service Bulletin SB–26, dated January 31, 1998 (SB–26).

(b) If the shaft diameter varies more than 0.004 inch in any 0.50 inch of length, in the measurement area shown in Figure 1 of SB–26, replace the C056–1 Rev. A through G spring assembly with a C056–1 Rev. H spring assembly before further flight.

(c) Replacing the C056–1 Rev. A through G spring assembly with a C056–1 Rev. H spring assembly in accordance with the service bulletin is considered terminating action for the requirements of this AD.

(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, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

(e) Special flight permits will not be issued.

(f) The inspection shall be done in accordance with the Compliance Procedure contained in Robinson Helicopter Company R44 Service Bulletin SB–26, dated January 31, 1998. 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 Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 27, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–04–12, issued February 4, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on April 3, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–9478 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–018]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The District Commander, First Coast Guard District has issued a temporary deviation from the regulations listed under 33 CFR 117.789, governing the operation of the Willis Avenue Swing Bridge, mile 1.5, across the Harlem River in New York. This deviation allows the bridge owner, the City of New York, to not open the swing span on weekends to facilitate repairs to the bridge deck wearing surface. The east channel will be closed to marine traffic during the repairs but the west channel will be open to vessels which can pass under the bridge without a bridge opening.

DATES: This deviation is effective from 6 a.m. Saturdays to 8 p.m. on Sundays, March 14 & 15, 21 & 22, 28 & 29, April 4 & 5, 25 & 26, and May 2 & 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Chief, Bridge Branch at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Willis Avenue Swing Bridge, mile 1.5, over the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 30 feet at mean low water (MLW) in the closed position.

The City of New York requested a temporary deviation from the operating regulations for the Willis Avenue Swing Bridge in order to conduct repairs to the bridge deck wearing surface. This work is essential for public safety. The existing bridge deck wearing surface has deteriorated and must be replaced as soon as possible.

The repairs to the west channel deck have been completed. The remaining work will be performed on the bridge deck over the east channel and will require that the bridge be closed to navigation. Vessels that can pass under the bridge without an opening may use

the west channel during the closed periods.

This deviation to the operating regulations will allow the bridge to remain in the closed position from 6 a.m. on Saturdays through 8 p.m. on Sundays for the following weekends: March 14 & 15, 21 & 22, 28 & 29; April 4 & 5, 25 & 26; and May 2 & 3, 1998. This deviation from the normal operating regulations is authorized under 33 CFR 117.35.

Dated: March 16, 1998.

James D. Garrison,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 98–9516 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AR–2–1–5646a; FRL–5990–9]

Approval and Promulgation of Implementation Plans; Arkansas; Recodification of Air Quality Control Regulations and Correction of Sulfur Dioxide Enforceability Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves Arkansas Department of Pollution Control and Ecology (ADPC&E) Regulation #19, as adopted by the Arkansas Commission on Pollution Control and Ecology (Commission) on July 24, 1992, as a revision to the Arkansas State Implementation Plan (SIP). Regulation #19, ''Compilation of Regulations of the Arkansas State Implementation Plan for Air Pollution Control,'' replaces the air quality control regulations formerly in the ''Regulations of the Arkansas Plan of Implementation for Air Pollution Control'' (Regulations of the Plan), in the ''Prevention of Significant Deterioration Supplement to the Regulations of the Arkansas Plan of Implementation for Air Pollution Control,'' (PSD Regulations), and in the ''Regulations for the Control of Volatile Organic Compounds'' (VOC Regulations). Regulation #19 also corrects sulfur dioxide (SO_2) enforceability deficiencies in the Arkansas SIP. The effect of this action is to approve all sections of Regulation #19, except Section 19.8, into the Arkansas SIP.

DATES: This action is effective on June 9, 1998, unless adverse or critical comments are received by May 11, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of the State submittal and the EPA Evaluation Report are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219–8913.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253 at the address above.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA required the State of Arkansas to correct enforceability deficiencies in its SO_2 regulations and to correct continuous emission monitoring requirements in its Plan for Designated Facilities and Pollutants (111(d) Plan) for total reduced sulfur from kraft pulp mills. Since the compilation of the existing State air quality control regulations was somewhat confusing, the State decided to combine the federally approved air quality control regulations into a single Regulation #19. The State also decided to delete obsolete materials and update the regulations in the Regulations of the Plan. The EPA was supportive of the State making these revisions.

The Governor of Arkansas submitted Regulation #19, as adopted by the Commission on July 24, 1992, to EPA on September 14, 1992, as a revision to the Arkansas SIP. A public hearing on Regulation #19 was held on May 28, 1992, in Little Rock, Arkansas.

Sections 19.1 through 19.7 of Regulation #19 replace the SIP-approved regulations found in the Regulations of the Plan. Sections 19.9 and 19.10 are recodifications of the SIP-approved PSD Regulations and the SIP-approved VOC Regulations respectively.

Section 19.8, 111(d) Designated Facilities, is a revision to the State 111(d) Plan and is being acted upon in a separate **Federal Register** action.

II. SO_2 Enforceability Deficiencies Corrections

A nation-wide effort was undertaken to have SO_2 enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially codify underlying SIP requirements, it is important that the underlying SIP is enforceable so that permits themselves will be enforceable.

The EPA Region 6 Office used the ''SO_2 SIP Enforceability Checklist'' to review the Arkansas regulations for SO_2 to prepare a list of enforceability deficiencies in the Arkansas SIP. This checklist was included as an attachment to a November 28, 1990, memorandum from the EPA Office of Air Quality Planning and Standards to the EPA Regional Offices Air Branch Chiefs. The checklist focused on the following topics: clarity, averaging times consistent with protection of the SO_2 National Ambient Air Quality Standards (NAAQS), clear compliance determinations, continuous emissions monitoring, adequate reporting and recordkeeping requirements, director's discretion issues, and stack height issues.

These deficiencies in the Arkansas SIP have been corrected in Sections 19.3 and 19.7 in Regulation #19.

Arkansas currently is attainment statewide for the SO_2 NAAQS.

III. Organization of Regulation #19

Regulation #19 is organized as follows:

Section 19.1 Title & Purpose
Section 19.2 Definitions
Section 19.3 Protection of the National Ambient Air Quality Standards
Section 19.4 Permits
Section 19.5 General Emissions Limitations Applicable to Equipment
Section 19.6 Upset Conditions, Revised Emissions Limitations
Section 19.7 Sampling, Monitoring, and Reporting Requirements
Section 19.8 111(d) Designated Facilities
Section 19.9 Prevention of Significant Deterioration Supplement
Section 19.10 Regulations for the Control of Volatile Organic Compounds

IV. Review of Regulation #19

A brief discussion of each section of Regulation #19 is given below. A more detailed review of some sections is given in the EPA Evaluation Report.

A. Section 19.1 Title & Purpose

Section 19.1, Title & Purpose, replaces Sections 1, Title; Section 2, Purpose; Section 9, Severability; and Section 10, Effective Date, of the Regulations of the Plan. Two new sections have been added: Section 19.1(c), Format, and Section 19.1(d), Applicability. According to Section 19.1(d), the regulations in Regulation #19 ''* * * are applicable to only those sources that are required to be regulated under the Federal Clean Air Act.''

The first sentence in Section 19.1(a) states that Regulation #19 shall be referred ''* * * to as the 'Regulations of the Plan,' the 'Plan,' the 'State Implementation Plan,' the 'SIP,' and 'Regulation #19.' '' Regulation #19 is not the entire plan (i.e., the Arkansas SIP). The SIP-approved regulations are only one element of the State plan. Also, Regulation #19 does not contain all of the Arkansas SIP-approved regulations.

B. Section 19.2 Definitions

Section 19.2, Definitions, replaces Section 3, Definitions, in the Regulations of the Plan.

Definitions of the following terms are identical to the SIP-approved definitions in the Regulations of the Plan: Commission, Director, Stack, Flue, Existing equipment, New equipment, Construction, Major modification, Emission limitation, Emission standard, Particulate matter, Particulate matter emissions, PM_{10}, PM_{10} emissions, and Total suspended particulate.

The definitions of the following terms have been revised: Department, Equipment, Opacity, Modification, National Ambient Air Quality Standard, and Potential to emit.

The stack heights definitions required by section 123 of the Act have been moved to Section 19.5(d) where the stack height definitions found in 40 CFR 51.100 are incorporated by reference.

The following definitions have been deleted: Arkansas Air Pollution Control Code, Equipment used in a manufacturing process, Incinerator, Potential emission rate, Smoke, Standard smoke chart, Standard conditions, and Air quality increment. Deleted definitions are not required under the Federal Clean Air Act (the Act) or implementing regulations. Therefore deletions are considered clarifications for purposes of recodification.

Definitions of the following terms have been added: Air contaminant, EPA, Regulated air pollutant, Secondary Emissions, Stationary source, and Uncontrolled potential to emit. A definition of Upset condition has been added in Section 19.6 of Regulation #19. The added definitions are clarifications.

Terms are also defined in Sections 19.9 and 19.10.

C. Section 19.3 Protection of the National Ambient Air Quality Standards

Section 19.3 gives, in general terms, the responsibilities of the ADPC&E and of regulated sources in meeting and maintaining the NAAQS found in 40 CFR 50.

D. Section 19.4 Permits

Section 19.4, Permits, is almost identical to the SIP-approved Section 4, Permits, of the Regulations of the Plan. Section 4 of the Regulations of the Plan was approved by EPA on October 5, 1976 (41 FR 43904), with the original Regulations of the Plan. The only revision to Section 4 was approved by EPA on May 1, 1989 (54 FR 18494).

E. Section 19.5 General Emissions Limitations Applicable to Equipment

Section 19.5 replaces emission limitations in Section 5 and Section 8 of the Regulations of the Plan.

Section 19.5(c) is the visible emissions regulations from Sections 8(d) and 8(e) of the Regulations of the Plan.

Section 19.5(d) incorporates by reference the Federal stack height provisions of 40 CFR 51.118 and the Federal stack height definitions contained in 40 CFR 51.100(ff) through (kk).

The most obvious difference between Regulation #19 and the regulations it replaces is the deletion of the compliance schedules in Section 8(f) of the Regulations of the Plan. These compliance schedules are for particulate matter emission limits for specific units at sources. They were added to meet the compliance schedules requirements of 40 CFR 51. These emission limits are no longer required to be in the SIP regulations. The units that still exist are now covered by permits.

Figure 5(b) in the Regulations of the Plan, a graph showing Allowable Particulate versus Process Weight Rate, has been deleted because the figure is outdated and is no longer used by the State.

F. Section 19.6 Upset Conditions, Revised Emissions Limitations

Section 19.6 replaces Section 6, Upset Conditions, Revised Emissions Limitations, in the Regulations of the Plan. This section explains how the State will handle sources exceeding the emission limits established in the SIP-approved regulations.

G. Section 19.7 Sampling, Monitoring, and Reporting Requirements

Section 19.7 replaces Section 7, Sampling and Monitoring Requirements, in the Regulations of the Plan. In Section 19.7, the State strengthened the regulation by correcting enforceability deficiencies.

H. Section 19.8 111(d) Designated Facilities

Section 19.8 replaces Section 8.1, Designated Facilities, in the Regulations of the Plan. Section 8.1 was added to the Regulations of the Plan to meet the requirements of section 111(d) of the Act as implemented in 40 CFR 60 subpart B and 40 CFR 62. Section 8.1 was approved by EPA as part of the Arkansas 111(d) Plan on May 12, 1982 (47 FR 20490). Revisions to Section 8.1 and the State 111(d) Plan were approved by EPA on September 12, 1984, and November 10, 1986. The status of the Arkansas 111(d) Plan is given in 40 CFR 62 subpart E. No part of Section 8.1 has ever been approved as part of the Arkansas SIP.

The EPA is taking action on Section 19.8 as a revision to the Arkansas 111(d) Plan in a separate **Federal Register** action.

I. Section 19.9 Prevention of Significant Deterioration Supplement

Section 19.9 is almost identical to the PSD Regulations last adopted by the State on May 25, 1990, and approved by EPA in the **Federal Register** on May 2, 1991 (56 FR 20137). The State incorporates by reference, with exceptions, the Federal PSD regulations in 40 CFR 52.24 as in effect June 28, 1989. The status of the Arkansas PSD Regulations in the Arkansas SIP is given in 40 CFR 52.181.

J. Section 19.10 Regulations for the Control of Volatile Organic Compounds

1. Background of the Arkansas VOC Regulations

A **Federal Register** action published March 3, 1978 (43 FR 08962), determined that Pulaski County, Arkansas, did not meet the ambient ozone monitoring requirements and was classified as nonattainment for ozone. The VOC Regulations, first adopted by the Commission on March 23, 1979, were an element of a plan the State developed for reducing ozone levels in Pulaski County. The regulations were conditionally approved by EPA on January 29, 1980 (45 FR 06569).

Revisions to the regulations were approved by EPA on: August 15, 1980 (45 FR 54336), August 27, 1981 (46 FR 43146), ctober 13, 1981 (46 FR 50370), and February 8, 1983 (48 FR O5772). These VOC regulations enabled Pulaski County to be redesignated to attainment for ozone on September 26, 1984 (49 FR 37753). The Arkansas VOC Regulations apply only to Pulaski County, Arkansas.

2. Section 19.10 Recodification of the VOC Regulations

The only significant change between Section 19.10 and the SIP-approved VOC Regulations is that the term ''photochemical oxidant'' has been replaced with the word ''ozone''. The EPA originally promulgated the standard for photochemical oxidant rather than ozone. The EPA changed the chemical designation of the standard from photochemical oxidant to ozone on February 8, 1979 (44 FR 8202). The EPA approves of the State changing the term ''photochemical oxidant'' to ''ozone'' in this regulation. Other changes are only minor changes.

V. Final Action

The EPA is approving all sections, except Section 19.8, of ADPC&E Regulation #19, ''Compilation of Regulations of the Arkansas State Implementation Plan for Air Pollution Control,'' as adopted by the Arkansas Commission on Pollution Control and Ecology on July 24, 1992, effective August 30, 1992, and submitted by the Governor on September 14, 1992, as a revision to the Arkansas SIP. Regulation #19 replaces the federally approved air quality control regulations formerly in the ''Regulations of the Arkansas Plan of Implementation for Air Pollution Control,'' the ''Prevention of Significant Deterioration Supplement to the Regulations of the Arkansas Plan of Implementation for Air Pollution Control,'' and the ''Regulations for the Control of Volatile Organic Compounds.''

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 9, 1998 without further notice unless the Agency receives relevant adverse comments by May 11, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 9, 1998 and no further action will be taken on the proposed rule.

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

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Arkansas' audit privilege and immunity law (Arkansas Statutes Annotated Section 8–1–301 *et seq.* (1997)). The EPA will be reviewing the effect of the Arkansas audit privilege and immunity law on various Arkansas environmental programs, including those under the Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Arkansas to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Arkansas program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, Federal approval may be withdrawn, or other appropriate action may be taken, as necessary.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. The EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 26, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E—Arkansas

2. Section 52.170 is amended by adding paragraph (c)(29) to read as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(29) Revisions to the Arkansas State Implementation Plan submitted by the Governor on September 14, 1992.

(i) Incorporation by reference.

(A) Arkansas Department of Pollution Control and Ecology (ADPC&E) Minute Order No. 92–55 passed July 24, 1992.

(B) ADPC&E Regulation #19, ''Compilation of Regulations of the Arkansas State Implementation Plan for Air Pollution Control,'' except Section 19.8, as adopted by the Arkansas Commission on Pollution Control and Ecology on July 24, 1992, effective August 30, 1992.

(ii) Additional materials. None.

3. Section 52.181 is amended by revising paragraph (a) to read as follows:

§ 52.181 Significant deterioration of air quality.

(a) The plan submitted by the Governor of Arkansas on April 23, 1981 (as adopted by the Arkansas Commission on Pollution Control and Ecology (ACPCE) on April 10, 1981), June 3, 1988 (as revised and adopted by the ACPCE on March 25, 1988), and June 19, 1990 (as revised and adopted by the ACPCE on May 25, 1990), Prevention of Significant Deterioration (PSD) Supplement Arkansas Plan of Implementation for Air Pollution Control, as recodified in Regulation #19, Section 19.9, Prevention of Significant Deterioration Supplement, submitted by the Governor on September 14, 1992 (as adopted by the ACPCE on July 24, 1992), is approved as meeting the requirements of part C of the Clean Air Act for preventing significant deterioration of air quality.

* * * * *

[FR Doc. 98–9554 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA–107–4066a; FRL–5994–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Allegheny County, Pennsylvania; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the municipal solid waste landfill (MSW) 111(d) plan submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County for the purpose of controlling landfill gas emissions from existing MSW landfills. The plan was submitted to fulfill requirements of the Clean Air Act (the Act). The Allegheny County plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This final rule is effective June 9, 1998 unless within May 11, 1998 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Section, Mailcode 3AP22, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania; and Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 566–2190, or by e-mail at topsale.james@epamail.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Act requires that States submit plans to EPA to implement and enforce the Emission Guidelines (EG) promulgated for MSW landfills pursuant to Section 111(d) of the Act. Section 111(d) requires that the State submit the State Plan no later than 9 months after EPA promulgates the EG. On March 12, 1996, EPA promulgated the EG as 40 CFR part 60, subpart Cc. Accordingly, State Plans were due no later than December 12, 1996.

Under section 111(d) of the Act, the EPA established procedures whereby States submit plans to control existing sources of designated pollutants. A designated pollutant is defined as any air pollutant, emissions of which are subject to a standard of performance for new stationary sources, but for which air quality criteria have not been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the Clean Air Act. Accordingly, under the Clean Air Act, designated pollutants are regulated under section 111(d), criteria pollutants under section 108, and hazardous air pollutants (HAPS) under section 112. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance

standard (NSPS) that controls a designated pollutant, EPA establishes emissions guidelines in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the emission guideline for that source category as well as 40 CFR part 60, subpart B (40 CFR 60.23 through 60.26).

On March 12, 1996, EPA published Emission Guidelines (EG) for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (See 61 FR 9905–9944.) The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. To determine whether emissions control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991. The MSW landfill EG specify limits for landfill gas and require affected facilities to operate a control system designed to reduce collected NMOC concentrations by 98 weight-percent, or reduce the outlet NMOC concentration to 20 parts per million volume or less, using the test methods specified under section 60.754(d). Pursuant to 40 CFR 60.23(a), States were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG, in this case December 12, 1996. If there were no designated facilities in the State, then the State was required to submit a negative declaration by December 12, 1996.

Since the Summer of 1996, EPA has been involved in litigation over the requirements of the MSW landfill rule. On November 13, 1997, in accordance with section 113(g) of the CAA, EPA issued a document in the **Federal Register** (62 FR 60898) of a proposed settlement in *National Solid Wastes Management Association* v. *Browner, et al.*, No. 96–1152 (D.C. Cir). It is important to note that the proposed settlement does not vacate or void the existing landfill rule. Accordingly, the currently promulgated MSW landfill EG and compliance times, 40 CFR part 60, subpart Cc, are used as a basis for EPA approval of the Allegheny County, Pennsylvania MSW Landfill 111(d) Plan.

On October 23, 1997, the Commonwealth of Pennsylvania submitted on behalf of Allegheny County, the County's Section 111(d) plan for MSW landfills for implementing EPA's MSW landfill EG. The following provides a brief discussion of the requirements for an approvable State plan for existing MSW landfills and EPA's review of Allegheny County's submittal through the Pennsylvania Department of Environmental Protection (PADEP) with respect to those requirements. More detailed information on the requirements for an approvable plan and Allegheny County's submittal can be found in the Technical Support Document (TSD) accompanying this rulemaking, which is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

II. Review of the Allegheny County MSW Landfill Plan

EPA has reviewed the Allegheny County's section 111(d) plan for existing MSW landfills in the context of the requirements of 40 CFR part 60, subpart B and subpart Cc as follows:

A. Identification of Enforceable State Mechanisms Selected by the State for Implementing the EG

The Allegheny County MSW landfill 111(d) plan will use County Health Department Regulations as the ''enforceable mechanism'' to meet the requirements of the MSW landfill EG. The landfill NSPS (subpart WWW) and EG (subpart Cc) have identical requirements, except for certain compliance times and requirements relating to the determination of prevention of significant deterioration (PSD) related NMOC emission rates. Accordingly, the County has incorporated by reference subpart WWW requirements into a new regulation (Article XXI, section 2105.73) that has applicability to both new and existing landfills. The regulation also includes the required increments of progress leading towards compliance for each affected (i.e., existing) landfill. The ACHD regulation meets the requirements of 40 CFR 60.24(a) for an enforceable mechanism.

B. Demonstration of Legal Authority

The Allegheny County Health Department (ACHD) has the authority to make and enforce regulations to implement this plan through the authority of the Pennsylvania Air Pollution Control Act, Local Health Administration Law, Second Class County Code, and the Rules and Regulations of the Allegheny County Health Department. Under these regulations the County can obtain information necessary to determine compliance, conduct inspections, and make emissions data available to the public. This meets the requirements of 40 CFR 60.26.

C. Inventory of MSW Landfills in Allegheny County Affected by the EG

The ACHD identified three (3) existing MSW landfills that are subject to the 111(d) plan. There is a fourth landfill (i.e., USA Waste—Arnoni Brothers) that crosses into Allegheny County. However, this landfill is located primarily outside Allegheny County, and because of that, by mutual agreement, the Pennsylvania Department of Environmental Protection (PADEP) will include the landfill in its MSW landfill 111(d) plan and maintain all permits for the subject source. Existing MSW landfills are those that were constructed, reconstructed, or modified prior to May 30, 1991, and have accepted waste at any time since November 8, 1987, or that have additional capacity for future waste deposition. The submitted Allegheny County landfill inventory of sources meets the requirement of 40 CFR 60.25(a).

D. Inventory of Emissions From MSW Landfills in Allegheny County

The County 111(d) plan contains information on estimated NMOC emission rates in tons per year (TPY) for each existing landfill. This meets the emission inventory requirements of 40 CFR 60.25(a).

E. Emission Limitations for MSW Landfills

The ACHD MSW landfill regulation (i.e., Article XXI, section 2105.73) contains the emission limitations established in the EG. Existing landfills having design capacities greater than or equal to 2.5 million megagrams (Mg) by mass and 2.5 million cubic meters (m^3) by volume and an NMOC emissions rate of 50 Mg/year or greater must install a gas collection and control system. This meets the requirement of 40 CFR 60.24(c) that the State plan includes emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met). No

exception was requested by Allegheny County for any of its existing landfills.

F. A State Process of Review and Approval of Site-Specific Gas Collection and Control System Design Plans

The submitted Allegheny County 111(d) plan describes a process for the review and approval of site-specific design plans for gas collection and control systems. When an affected source in Allegheny County is required to submit a collection and control plan, it will be notified of its requirement to submit an installation permit application. The ACHD process consists of (1) reviews of submitted permit application for completeness and technical adequacy, (2) procedures to request additional information, (3) an opportunity for public comment, and (4) the issuance or denial of a permit as delineated in Article XXI, Chapters 2 and 3. The described process meets the requirements of 40 CFR 60.33c(b).

G. Compliance Schedule

The final compliance date and enforceable increments of progress under the 111(d) plan are tied to the effective date of the County's MSW landfill regulation (Article XXI, section 2105.73).

REPORTING AND REQUIRED INCREMENTS OF PROGRESS

Action item	Compliance date
Submit Design Capacity Report	Within 90 days of the effective date of Article XXI Regulation.*
Submit NMOC Emission Rate Report	As above.
Submit Collection and Control Design Plan	Within 1 year after NMOC emissions ≥50 Mg/yr.
Award Contracts for Construction of Collection and Control System.	No later than 20 months after the date the NMOC emissions rate is first calculated to exceed or equal 50 Mg/yr.
Start on-site construction of the collection and control system	No later than 24 months after the date the NMOC emissions rate is first calculated to exceed or equal 50 Mg/yr.
Complete construction	No later than 28 months after the date the NMOC emissions rate is first calculated to exceed or equal 50 Mg/yr.
Final compliance date	No later than 30 months after the date the NMOC emissions rate is first calculated to exceed or equal 50 Mg/yr.

*The regulation became effective on August 15, 1997.

A State section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. 40 CFR 60.36c provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a State emission standard for MSW landfills. 40 CFR 60.24(e)(1) provides that any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/installation of emission control equipment, and final compliance. The Allegheny County MSW Landfill Regulation establishes interim and final compliance dates, as required by 40 CFR 60.24(e)(1).

H. Testing, Monitoring, Record Keeping, and Reporting Requirements

The ACHD MSW landfill regulation contains provisions for testing, monitoring, reporting, and recordkeeping. The provisions are the same as those in the NSPS, except for PSD emission rate estimates for NMOC. This exception applies only to existing landfills, and does not void any applicable PSD requirement for new, reconstructed, or modified landfills. The ACHD landfill regulation meets the requirements of 40 CFR 60.34c, testing and monitoring, and 60.35c, reporting and recordkeeping requirements.

I. A Record of Public Hearing on the State Plan

The public hearing for the Allegheny County MSW landfill regulation, Article XXI, section 2105.73, was held May 19, 1997. The rule became effective August 15, 1997. The state provided evidence of complying with public notice and other hearing requirements, including a record of public comments received. The 40 CFR 60.23 requirement for a public hearing on the 111(d) plan has been met by Allegheny County.

J. Provision for Annual State Progress Reports to EPA

The County will submit to EPA on an annual basis a report which details the progress in the enforcement of the 111(d) plan in accordance with 40 CFR 60.25. The first progress report will be submitted to EPA one year after the approval of the Allegheny County MSW landfill regulation by EPA.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the Allegheny County MSW landfill 111(d) plan for the control of landfill gas emissions from affected facilities. Landfills located in other Pennsylvania counties will be addressed in separate rulemaking. As provided by 40 CFR 60.28(c), any revisions to Allegheny County section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the Commonwealth of Pennsylvania in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B, requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective June 9, 1998 without further notice unless the Agency receives relevant adverse comments by May 11, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the

public is advised that this rule will be effective on June 9, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Plan. Each request for revision to a State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning State Plans on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule pertaining to the Allegheny County MSW landfill 111(d) plan does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Non-methane organic compounds, Methane, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 31, 1998.

Stanley L. Laskowski,

Acting Regional Administrator, EPA Region III.

For the reasons set out in the preamble, 40 Part 62, Subpart NN, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart NN—Pennsylvania

2. A new center heading, consisting of sections 62.9630, 62.9631, and 62.9632 is added to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills [Section 111(d) Plan]

§ 62.9630 Identification of plan.

Section 111(d) plan for municipal solid waste landfills and the associated Allegheny County Health Department Regulation in Article XXI, section 2105.73, as submitted on October 23, 1997, by the Commonwealth of Pennsylvania.

§ 62.9631 Identification of sources.

The plan applies to all Allegheny County, Pennsylvania, existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 and have accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.9632 Effective date.

The effective date of the plan for municipal solid waste landfills is June 9, 1998.

[FR Doc. 98–9552 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300612; FRL–5770–4]

RIN 2070–AB78

Bacillus thuringiensis subspecies tolworthi Cry9C Protein and the Genetic Material Necessary for its Production in Corn; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a temporary exemption from the requirement of a tolerance for residues of the insecticide, *Bacillus thuringiensis* subspecies *tolworthi* Cry9C protein and the genetic material necessary for its production in corn for feed use only; as well as in meat, poultry, milk, or eggs resulting from animals fed such feed.

DATES: This regulation is effective April 10, 1998. Objections and requests for hearings must be received by EPA on or before June 9, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300612], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300612], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300612]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location, telephone number, and e-mail: Room CS15–W29, 2800 Jefferson Davis Highway, Arlington, VA, 703–308–8715, e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Plant Genetic Systems (America), Inc., 7200 Hickman Road, Suite 202, Des Moines, IA 50322 has requested in pesticide petition (PP 7G4921) the establishment of an exemption from the requirement of a tolerance for residues of the insecticide *Bacillus thuringiensis* subspecies *tolworthi* Cry9C and the genetic material necessary for its production in corn for feed use only. A notice of filing (FRL–5753–3) was published in the **Federal Register** (62 FR 63168, November 26, 1997), and the notice announced that the comment period would end on December 26, 1997; no comments were received. This temporary exemption from the requirement of a tolerance will permit the marketing of the above feed and food commodities when treated in accordance with the provisions of experimental use permit 70218–EUP–1, as amended and extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The data submitted in the petition and all other relevant material have been evaluated. Following is a summary of EPA's findings regarding this petition as required by section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as recently amended by the Food Quality Protection Act (FQPA), Pub. L. 104–170.

I. Risk Assessment and Statutory Findings

A. Use Practices

The experimental program will be conducted in the states of Alabama, New York, California, North Carolina, Colorado, Ohio, Delaware, Pennsylvania, Florida, Puerto Rico, Georgia, South Dakota, Hawaii, Tennessee, Illinois, Texas, Indiana, Virginia, Iowa, Wisconsin, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, and Nebraska. Corn containing this plant-pesticide are to be protected from the European corn borer.

B. Product Identity/Chemistry

The Cry9C gene was originally isolated from a *Bacillus thuringiensis* subsp. *tolworthi* strain. The gene was then synthesized with plant preferred codons before it was stably inserted into corn plants to produce a truncated and modified Cry9C protein. The tryptic core of the microbially produced Cry9C delta-endotoxin is similar to the Cry9C protein found in event CBH351 save for a single amino acid substitution in the internal sequence and the addition of two amino acids to the N-terminus. The Cry9C protein was produced and purified from a bacterial host to utilize in the mammalian toxicity studies due to the bacterium's greater production potential. Product analysis that compared the Cry9C protein from the two sources included: SDS-PAGE, Western blots, N- terminal amino acid sequencing, glycosylation tests (for possible post- translational modifications) and insect bioassays. No analytical method was included since this petition requests an exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Additionally, section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

A high-dose acute oral toxicity study (3,760 mg/kg body weight) showed no mortalities. Transient weight losses were seen in three female treated animals, with one not recovering her pre-dosing, pre-fast weight at 14 days after dose administration. The treated males showed no weight losses. Transient weight loss has been observed in similar studies conducted on other

purified Cry proteins as well as microbial pesticides containing Cry proteins and is not considered a significant adverse effect.

The *in vitro* digestibility study showed the Cry9C protein to be stable to pepsin digestion at pH 2.0 for 4 hours. The Cry9C protein is also heat stable, not being affected by incubation at 90° C for 10 minutes. The Cry9C protein in corn is the trypsin resistant core and is therefore stable to typtic digest.

A search for amino acid homology did not reveal any significant homology with known toxins or allergens.

The genetic material necessary for the production of the plant-pesticide active ingredient is the nucleic acids (DNA) which comprise genetic material encoding the Cry9C protein and its regulatory regions. Regulatory regions are the genetic material that control the expression of the genetic material encoding the proteins, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids as they appear in the subject plant-pesticide have been adequately characterized by the applicant and supports EPA's conclusion that no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the Cry9C protein.

D. Aggregate Exposure

The available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the Cry9C protein residue include dietary exposure and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the Cry9C plant-pesticide is contained within plant cells essentially eliminating these exposure routes or reducing these exposure routes to negligible. Drinking water is unlikely to be significantly contaminated with Cry9C protein due to the low expression of the protein in corn tissue, degradation of plant materials in the soil and low leaching potential of a protein from a soil matrix. Minimal to non-existent oral exposure could occur from ingestion of meat, poultry, eggs or milk from animals fed corn containing the plant-pesticide and from drinking water. While unlikely, meat, eggs or milk from animals fed corn containing the plant-pesticide could contain negligible but finite residues. This is viewed as a remote possibility due to the low Cry9C expression level in corn tissue (12 to 225 µg/gm fresh weight), the anticipated degradation and elimination of the Cry9C protein by the animal or the lack of uptake of such a large protein by the animal's intestinal tract. It is not possible to establish with certainty whether finite residues will be incurred, but there is no reasonable expectation of finite residues. However, the best available information on the uptake of intact proteins from the diet would indicate that the intact Cry9C protein would not be available in products from animals fed corn products containing Cry9C protein.

The use sites are all agricultural for control of lepidopteran insects under the associated experimental use permit. Therefore, exposure via residential or lawn use is not expected.

E. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on adults as well as on infants and children of such residues and other substances with a common mechanism of toxicity. Since there is no indication of mammalian toxicity to the Cry9C protein from the studies submitted, there is no reason to believe there would be cumulative toxic effects.

F. Safety Determination

The temporary tolerance exemption is limited to residues of the Cry9C protein resulting from feed use only. The basis of safety for this temporary tolerance exemption includes both the results of the acute oral study at high doses indicating no toxicity and the anticipated minimal to nonexistent human dietary exposure of the Cry9C protein via animal feed use.

Bt microbial pesticides, containing Cry proteins other than Cry9C, have been applied for more than 30 years to food and feed crops consumed by the U.S. population. There have been no human safety problems attributed to the specific Cry proteins. An oral dose of the tryptic core Cry9C protein of at least 3,760 mg/kg was administered to 10 animals without mortality demonstrating a high degree of safety for the protein. Transient weight loss in three female rodents was observed, but not in any males. Transient weight loss has been observed in similar studies conducted on other purified Cry proteins as well as microbial pesticides and this is not considered a significant adverse effect.

A comparison of the amino acid sequence of the Cry9C protein with those found in the PIR, Swiss-Prot and HIV AA data bases did not reveal any significant homology with known toxins or allergens.

The *in vitro* digestibility study showed the Cry9C protein to be stable to pepsin at pH 2.0. The Cry9C protein was shown to be stable to heat at 90 degrees C for 10 minutes and the Cry9C protein in corn is the trypsin resistant core and is therefore stable to tryptic digest.

The best available information to date would indicate that edible products derived from animals such as meat, milk and eggs, intended for human consumption, have not been shown to be altered in their allergenicity due to changes in the feed stock utilized. This information would include no transfer of allergenic factors from cattle fed soybeans to the derived meat or milk eaten by individuals with food sensitivity to soybeans.

G. Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that infants and children will consume only minimal, if any, residues of this plant-pesticide and that there is a finding of no toxicity.

Thus, there are no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

H. Other Considerations

1. *Analytical method.* The Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation;therefore, the agency has concluded that an analytical method is not required for enforcement purposes for this plant-pesticide.

2. *Effects on the endocrine systems.* EPA does not have any information

regarding endocrine effects for these kinds of pesticides at this time. The Agency is not requiring information on the endocrine effects of these plant-pesticides at this time; and Congress allowed 3 years after August 3, 1996, for the Agency to implement a screening and testing program with respect to endocrine effects.

I. Existing Tolerances

No tolerances or tolerance exemptions have been granted for the *Bacillus thuringiensis* subsp. *tolworthi* Cry9C and the genetic material necessary for the production of this protein in or on all raw agricultural commodities.

II. Conclusion

Based on the toxicology data cited and the limited exposure expected with animal feed use, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of *Bacillus thuringiensis* subspecies *tolworthi* Cry9C protein and the genetic material necessary for its production in corn. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, the temporary tolerance exemption is limited to feed use only. The conclusion of safety is supported by the lack of toxicity after administration of a high oral dose (3,760 mg/kg), the lack of homology to known toxins or allergens, and the minimal to nonexistent exposure via dietary and non-dietary routes. As a result, EPA establishes a temporary exemption from the requirement of a tolerance pursuant to FFDCA section 408(j)(3) for *Bacillus thuringiensis* subspecies *tolworthi* Cry9C protein and the genetic material necessary for its production in corn, on the condition that *Bacillus thuringiensis* subspecies *tolworthi* Cry9C protein and the genetic material necessary for its production in corn be used in accordance with the experimental use permit 70218–EUP–1, with the following provisions:

The total amount of the active ingredients to be used must not exceed the quantity authorized by the experimental use permits. Plant Genetic Systems (America) must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration (FDA).

This temporary exemption from the requirement of a tolerance expires and is revoked January 31, 1999. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the corn containing the plant-pesticide was legally planted during the term of, and in accordance with, the provisions of the amended experimental use permit and temporary exemption from the requirement of a tolerance.

This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe.

EPA will publish a document in the **Federal Register** to remove the revoked temporary exemption from the Code of Federal Regulations.

III. Objections and Hearing Requests

The new FFDAC section 408(g) provides essentially the same process for persons to ''object'' to a tolerance exemption regulation issued by EPA under new section 408(e) as was provided in the old section 408. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300612] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services, Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

V. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any

information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has 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 this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

2. Section 180.1192 is added to read as follows:

§ 180.1192 Bacillus thuringiensis subspecies tolworthi Cry9C protein and the genetic material necessary for its production in corn; exemption from the requirement of a tolerance.

The plant-pesticide *Bacillus thuringiensis* subspecies *tolworthi* Cry9C and the genetic material necessary for its production in corn is temporarily exempted from the requirement of a tolerance for residues, only in corn used for feed; as well as in meat, poultry, milk, or eggs resulting from animals fed such feed. This temporary exemption from the requirement of a tolerance will permit the use of the feed commodities and the marketing of animals fed such feed in this paragraph when treated in accordance with the provisions of experimental use permit 70218–EUP–1, which is being amended and extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked January 31, 1999. This temporary exemption from the requirement of a tolerance may be revoked at any time if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe.

[FR Doc. 98–9245 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300619A; FRL–5784–5]

RIN 2070–AB78

Prometryn; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of Prometryn in or on carrots to harmonize tolerances with Canada under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective April 10, 1998. Objections and requests for hearings must be received by EPA on or before June 9, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300619A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300619A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any from of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300619A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of February 28, 1998 (63 FR 9494)(FRL–5772–7) EPA published a notice that EPA on its own initiative proposed to amend 40 CFR 180.222(a) by establishing tolerances for residues of the herbicide Prometryn, 2,4-bis(isopropylamino)-6-methylthio-s-triazine in or on carrots at 0.1 parts per million (ppm) without a U.S. registration under the Federal Insecticide Fungicide Act, as amended for carrots imported from Canada.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

I. Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue*** .''

II. Final Action

The proposed rule summarizes EPA's risk assessment process, the scientific data bearing on the risk presented by prometryn and EPA's assessment of the aggregate risk proposed by prometryn. In that document EPA concluded that there is a reasonable certainly that no harm will result to the general population and major identifiable population subgroups from aggregate exposure to prometryn.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, the tolerance is established as set forth below.

III. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 9, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

IV. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300619A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any from of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper from. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper from as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

V. Regulatory Assessment Requirements

This action finalizes a tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR

58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 2, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.222 is amended as follows:

i. By adding a heading to paragraph (a).

ii. By alphabetically adding the raw agricultural commodity ''carrots'' to the table in paragraph (a).

iii. By designating the text in paragraph (b) as paragraph (c), and adding a heading to newly designated paragraph (c).

iv. By adding and reserving with headings new paragraphs (b) and (d).

The additions read as follows:

§ 180.222 Prometryn; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Carrots[1]	0.1
* * * *	

[1] There are no U.S. registrations as of April 10, 1998 for use on carrots.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–9548 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300636; FRL–5782–9]

RIN 2070–AB78

N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerances for the combined residues of the herbicide *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety [hereafter referred to as flufenacet, the proposed common chemical name] in or on certain raw agricultural commodities. Bayer Corporation requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–70). The tolerance will expire on April 30, 2003.

DATES: This regulation is effective April 10, 1998. Objections and requests for hearings must be received by EPA on or before June 9, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300636], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300636], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300636]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 2, 1997 (62 FR 15690)(5593–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 6F4631) for

tolerances by Bayer Corporation, P.O. Box 4913, Kansas City, MO 64120–0013. This notice included a summary of the petition prepared by Bayer Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the herbicide, FOE 5043, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in or on field corn grain at 0.05 parts per million (ppm), field corn forage at 0.4 ppm, field corn stover (fodder) at 0.4 ppm, soybean seed at 0.1 ppm, milk at 0.01 ppm, meat at 0.05 ppm, and meat by-products at 0.05 ppm. Bayer subsequently amended the petition by deleting the proposed milk, meat and meat by-products tolerances. The tolerance expression is also being editorially amended to read: *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety. The tolerances will expire and will be revoked on April 30, 2003.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue***.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure,

and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of flufenacet and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of flufenacet and its metabolites. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by flufenacet are discussed below.

1. A rat acute oral study with a LD_{50} of 1,617 milligrams (mg)/kilogram (kg) for males and 589 mg/kg for females.

2. A 84–day rat feeding study with a No Observed Effect Level (NOEL) less than 100 ppm [6.0 mg/kg/day] for males and a NOEL of 100 ppm [7.2 mg/kg/day] for females and with a Lowest Observed Effect Level (LOEL) of 100 ppm [6.8 mg/kg/day] for males based on suppression of thyroxine (T4) level and a LOEL of 400 ppm [28.8 mg/kg/day] for females based on hematology and clinical chemistry findings.

3. A 13–week mouse feeding study with a NOEL of 100 ppm [18.2 mg/kg/day for males and 24.5 mg/kg/day for females] and a LOEL of 400 ppm [64.2 mg/kg/day for males and 91.3 mg/kg/day for females] based on histopathology of the liver, spleen and thyroid.

4. A 13–week dog dietary study with a NOEL of 50 ppm [1.70 mg/kg/day for males and 1.67 mg/kg/day for females] and a LOEL of 200 ppm [6.90 mg/kg/day for males and 7.20 mg/kg/day for females] based on evidence that the biotransformation capacity of the liver has been exceeded, (as indicated by increase in LDH, liver weight, ALK and hepatomegaly), globulin and spleen pigment in females, decreased T4 and ALT values in both sexes, decreased albumin in males, and decreased serum glucose in females.

5. A 21–day rabbit dermal study with the dermal irritation NOEL of 1,000 mg/kg/day for males and females and a systemic NOEL of 20 mg/kg/day for males and 150 mg/kg/day for females and a systemic LOEL of 150 mg/kg/day for males and 1,000 mg/kg/day for females based on clinical chemistry data (decreased T4 and FT4 levels in both sexes) and centrilobular hepatocytomegaly in females.

6. A 1–year dog chronic feeding study with a NOEL was 40 ppm [1.29 mg/kg/day in males and 1.14 mg/kg/day in females] and a LOEL of 800 ppm [27.75 mg/kg/day in males and 26.82 mg/kg/day in females] based on increased alkaline phosphatase, kidney, and liver weight in both sexes, increased cholesterol in males, decreased T2, T4 and ALT values in both sexes, and increased incidences of microscopic lesions in the brain, eye, kidney, spinal cord, sciatic nerve and liver.

7. A rat chronic feeding/carcinogenicity study with a NOEL less than 25 ppm [1.2 mg/kg/day in males and 1.5 mg/kg/day in females] and a LOEL of 25 ppm [1.2 mg/kg/day in males and 1.5 mg/kg/day in females] based on methemoglobinemia and multi-organ effects in blood, kidney, spleen, heart, and uterus. Under experimental conditions the treatment did not alter the spontaneous tumor profile.

8. In a mouse carcinogenicity study the NOEL was less than 50 ppm [7.4 mg/kg/day] for males and the NOEL was 50 ppm [9.4 mg/kg/day] for females and the LOEL was 50 ppm [7.4 mg/kg/day] for males and the LOEL was 200 ppm [38.4 mg/kg/day] for females based on cataract incidence and severity. There was no evidence of carcinogenicity for flufenacet in this study.

9. A two-generation rat reproduction study with a parental systemic NOEL of 20 ppm [1.4 mg/kg/day in males and 1.5 mg/kg/day in females] and a reproductive NOEL of 20 ppm [1.3 mg/kg/day] and a parental systemic LOEL of 100 ppm [7.4 mg/kg/day in males and 8.2 mg/kg/day in females] based on increased liver weight in F_1 females and hepatocytomegaly in F_1 males and a reproductive LOEL of 100 ppm [6.9 mg/kg/day] based on increased pup death in early lactation (including cannibalism) for F_1 litters and the same effects in both F_1 and F_2 pups at the high dose level of 500 ppm [37.2 mg/kg/day in F_1 males and 41.5 mg/kg/day in F_1 females, respectively].

10. A rat developmental study with a maternal NOEL of 25 mg/kg/day and with a maternal LOEL of 125 mg/kg/day based on decreased body weight gain initially and a developmental NOEL of 25 mg/kg/day and a developmental LOEL of 125 mg/kg/day based on decreased fetal body weight, delayed

development [mainly delays in ossification in the skull, vertebrae, sternebrae, and appendages], and an increase in the incidence of extra ribs.

11. A rabbit developmental study with a maternal NOEL of 5 mg/kg/day and a maternal LOEL of 25 mg/kg/day based on histopathological finds in the liver and a developmental NOEL of 25 mg/kg/day and a developmental LOEL of 125 mg/kg/day based on increased skeletal variations.

12. An acute rat neurotoxicity study with a NOEL less than 75 mg/kg/day and a LOEL of 75 mg/kg/day based on decreased motor activity in males.

13. A rat subchronic neurotoxicity study with a NOEL of 120 ppm [7.3 mg/kg/day in males and 8.4 mg/kg/day in females] and a LOEL of 600 [38.1 mg/kg/day in males and 42.6 mg/kg/day in females] based on microscopic lesions in the cerebellum/medulla and spinal cords.

14. Flufenacet was negative for mutagenic/genotoxic effects in a Gene mutation/*In vitro* assay in bacteria, a Gene mutation/*In vitro* assay in chinese hamster lung fibroblasts cells, a Cytogenetics/*In vitro* assay in chinese hamster ovary cells, a Cytogenetics/*In vivo* mouse micronucleus assay, and an *In vitro* unscheduled DNA synthesis assay in primary rat hepatocytes.

15 A rat metabolism study showed that radio-labeled flufenacet was rapidly absorbed and metabolized by both sexes. Urine was the major route of excretion at all dose levels and smaller amounts were excreted via the feces.

16. A 55–day dog study with subcutaneous administration of Thiadone [flufenacet metabolite] supports the hypothesis that limitations in glutathione interdependent pathways and antioxidant stress result in metabolic lesions in the brain and heart following flufenacet exposure.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA has concluded that a risk estimate is required based on the LOEL of 75 mg/kg/day established in the acute neurotoxicity study. For this risk assessment a Margin of Exposure (MOE) of 900 is required based on 10 X for inter-species extrapolation, 10 X for intra-species variation, 3 X required to protect infants and children, and 3 X for the use of a LOEL.

2. *Short - and intermediate-term toxicity*. EPA has concluded that available evidence does not indicate any evidence of significant toxicity from short-term and intermediate-term dietary exposure.

3. *Chronic toxicity*. EPA has established the RfD for flufenacet at 0.004 mg/kg/day. This RfD is based on a LOEL of 1.2 mg/kg/day in the combined chronic toxicity/carcinogenicity study in rats with a 300-fold safety factor to account for inter-species extrapolation (10 X), intra-species variability (10 X), and a lack of a NOEL in a critical study (3 X). An extra safety factor to protect infants and children is not needed because the NOEL used in deriving the RfD is based on methemoglobinema and multi-organ effects (not developmental or neurotoxic effects) in adult rats after chronic exposure and thus are not relevant for enhanced sensitivity to infants and children.

4. *Carcinogenicity*. The Health Effects Division RfD/Peer Review Committee has classified flufenacet as ''not likely'' to be carcinogenic to humans based on the lack of carcinogenicity in rats and mice.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have not been established (40 CFR part 180) previously for the residues of flufenacet, in or on raw agricultural commodities. There is no reasonable expectation of residues of flufenacet or its metabolites occurring in meat, milk, poultry, or eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from flufenacet from the proposed use on soybeans and field corn as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An acute dietary risk assessment was conducted for flufenacet and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety based on the LOEL of 75.0 mg/kg/day from the acute neurotoxicity study. The acute analysis estimates the distribution of single-day exposures for the overall U.S. population and certain subgroups. The Margin of Exposure (MOE) is a measure of how closely the exposure comes to the LOEL and is calculated as a ratio of the LOEL to the exposure. The calculated MOE for acute risk of flufenacet and its metabolites for the general U. S. population was 50,000 and for the most exposed subgroups, infants (< 1 year old) and children (1–6 years old), the MOE was 37,500. These figures are above the MOE of 900 which is the level of concern based on interspecies extrapolation (10 X), intraspecies variability (10 X), the lack of a NOEL in the acute neurotoxicity study (3 X), and providing additional protection to infants and children (3 X).

ii. *Chronic exposure and risk.* The Reference Dose (RfD) for flufenacet is 0.004 mg/kg/day. This value is based on the systemic LOEL of 1.2 mg/kg/day in the rat chronic feeding/carcinogenicity study with a 300–fold safety factor to account for interspecies extrapolation (10 X), intraspecies variability (10 X), the lack of a NOEL in the rat chronic feeding/carcinogenicity study (3 X).

A DRES chronic exposure analysis was conducted using tolerance levels for field corn and soybeans and percent crop treated information to estimate dietary exposure for the general population and 22 subgroups. The chronic analysis showed that exposure from the tolerances in or on field corn, soybeans and rotated crops for non-nursing infants (the subgroup with the highest exposure) would be 6.5% of the Reference Dose (RfD). The exposure for the general U.S. population would be 2.6% of the RfD.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (a) That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; (b) That the exposure estimate does not underestimate exposure for any significant subpopulation group; and (c) If data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used.

The Agency used percent crop treated (PCT) information as follows. A routine chronic dietary exposure analysis for flufenacet was based on 16% of field corn crop treated and 26% of the soybean crop treated. The Agency believes that the three conditions listed above have been met. With respect to Unit II.B.1.ii.(a) of this preamble, EPA finds that the (PCT) information described above for flufenacet used on field corn is reliable and has a valid basis. Bayer Corporation's flufenacet production capacity does not exceed that needed to treat 16% of the total corn and 26% of the total soybean acres planted in the United States at the average application rates for products containing flufenacet. Before the petitioner can increase production of product, permission from the Agency must be obtained. As to Unit II.B.1.ii.(b) and (c) of this preamble, regional consumption information and consumption information for significant

subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which flufenacet may be applied in a particular area.

2. *From drinking water.* Drinking water estimated concentrations (DWECs) for groundwater (parent flufenacet and degradate thiadone) were calculated from the monitoring data to be 0.18 parts per billion (ppb) for acute and 0.03 ppb for chronic concentrations. The DWECs for surface water based on the computer models PRZM 2.3 and EXAMS 2.97.5 were calculated to be 17.0 ppb for the acute concentration and 14.2 ppb for chronic concentration (parent flufenacet and degradate thiadone).

3. *From non-dietary exposure.* There are no non-food uses of flufenacet currently registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Flufenacet is structurally a thiadiazole. EPA is not aware of any other pesticides with this structure. For flufenacet, EPA has not yet conducted a detailed review of common mechanisms to determine whether it is appropriate, or how to include this chemical in a cumulative risk assessment. After EPA develops a methodology to address common mechanism of toxicity issues to risk assessments, the Agency will develop a process (either as part of the periodic review of pesticides or otherwise) to reexamine these tolerance decisions. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, flufenacet does not appear to produce a toxic metabolite produced by other substances. For the purposes of these tolerance actions; therefore, EPA has not assumed that flufenacet has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute endpoint for flufenacet and its metabolites is 75 mg/kg/day. The acute exposure for flufenacet and its metabolites is 0.0015 mg/kg/day for the general U.S. population and 0.002 mg/kg/day for children 1–6 years of age. The drinking water level of concerns (DWLOCs) for acute exposure to flufenacet in drinking water calculated for the U.S. population was 2.87 ppm and for children (1–6 years old) was 813 ppb. These figures were calculated as follows. First, the acceptable acute exposure to flufenacet in drinking water was obtained by subtracting the acute dietary food exposures from the ratio of the acute LOEL to the acceptable MOE for aggregate exposure. Then, the DWLOCs were calculated by multiplying the acceptable exposure to flufencet in drinking water by estimated body weight (70 kg for adults, 10 kg for children) and then dividing by the estimated daily drinking water consumption (2 L/day for adults, 1 L/day for children). The Agency's SCI-Grow model estimates peak levels of flufenacet and its metabolite thiadone in groundwater to be 15.3 ppb. PRZM/EXAMS estimates peak levels of flufenacet and its metabolite thiadone in surface water to be 17 ppb. EPA's acute drinking water level of concern are well above the estimated exposures for flufenacet in water for the U.S. population and subgroup with highest estimated exposure.

2. *Chronic risk.* The chronic endpoint for flufenacet is 0.004 mg/kg body weight(bwt)/day. Using tolerance levels and percent crop treated, the residues in the diet (food only) are calculated to be 0.0001 mg/kg bwt/day or 2.6% of the RfD for the general U.S. population and 0.00023 mg/kg bwt/day or 5.8% of the RfD for children aged 1–6 years. Therefore, residues of flufenacet in drinking water may comprise up to 0.0039 mg/kg bwt/day (0.0040–0.0001 mg/kg bwt/day) for the U.S. population and 0.0038 mg/kg bwt/day (0.00400–0.00023 mg/kg bwt/day) for children 1–6 years old (the group exposed to the highest level of flufencet residues in both food and water).

The drinking water level of concerns (DWLOCs) for chronic exposure to flufenacet in drinking water calculated for the U.S. population was 136 ppb assuming that an adult weighs 70 kg and consumes a maximum of 2 liters of water per day. For children (1–6 years old), the DWLOC was 37.7 ppb assuming that a child weighs 10 kg and consumes a maximum of 1 liter of water per day.

The drinking water estimated concentration (DWECs) for groundwater (parent flufenacet and degradate thiadone) calculated from the monitoring data is 0.03 ppb for chronic concentrations which does not exceed DWLOC of 37.7 ppb for children (1–6 years old). The DWEC for surface water based on the computer models PRZM

2.3 and EXAMS 2.97.5 was calculated to be 14.2 ppb for chronic concentration (parent flufenacet and degradate thiadone) which does not exceed the DWLOC of 37.7 ppb for children (1–6 years old).

EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to flufenacet residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of flufenacet, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Although there is no indication of increased sensitivity to young rats or rabbits following pre- and/or post-natal exposure to flufenacet in the standard developmental and reproductive toxicity studies, an additional developmental neurotoxicity study, which is not normally required, is needed to access the susceptiblity of the offspring in function/neurological development. Therefore, EPA has required that a developmental neurotoxicty study be conducted with flufenacet and a threefold safety factor for children and infants will be used in the aggregate dietary acute and chronic risk assessment. Although there is no indication of additional sensitivity to young rats or rabbits following pre- and/or post-natal exposure to flufenacet in the developmental and reproductive toxicity studies; the Agency concluded that the FQPA safety factor should not be removed but instead reduced because: (1) There was no assessment of susceptibility of the offspring in functional/neurological developmental and reproductive studies. (2) There is evidence of neurotoxicity in mice, rats, and dogs. (3) There is concern for thyroid hormone disruption.

III. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in field corn, soybeans and livestock is adequately understood. The residues of concern for the tolerance expression are parent and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety. Based on the results of animal metabolism studies it is unlikely that secondary residues would occur in animal commodities from the use on field corn and soybeans.

B. Analytical Enforcement Methodology

An adequate analytical method, gas chromatography/mass spectrometry with selected ion monitoring, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 119E, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–305–5937).

C. Endocrine effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effect***.'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. Based on the toxicological findings for flufenacet relating to endocrine disruption effects, flufenacet should be considered as a candidate for evaluation as an endocrine disrupter when the criteria are established.

D. Magnitude of Residues

Based on the results of animal metabolism studies it is unlikely that significant residues would occur in secondary animal commodities from the use on corn and soybeans. EPA believes it is inappropriate to establish permanent tolerances for the uses of flufenacet at this time due to the exitence of data gaps. These data gaps are: (1) Data regarding the stability of the glucoside conjugate and the malonylalanine conjugate of thiadone and subsequent bioavailability of any released free thiadone or thiadone glucuronide in meat, poultry, eggs, and milk commodities. The glucoside and malonylalanine conjugates of thiadone are metabolies of parent flufenacet that are present in plant commodites. Data are needed to ensure that these metabolites are not further converted to free thiadone or thiadone glucuronide in animal commodities. (2) A revised analytical method incorporating editorial changes specified in the Agency review. (3) Validation of the product chemistry enforcement analytical methods. (4) Data for additional rotational crops. (5) A developmental neurotoxicity study. EPA believes that the existing data support time-limited tolerances to April 30, 2003. The nature of the residue in plants is adequately understood for the purposes of these time-limited tolerances.

E. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for flufenacet.

F. Rotational Crop Restrictions.

No tolerances for inadvertent residues of flufenacet are required in rotational crops. The restrictions that appear on the labeling proposed for registration under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), as amended, will prevent inadvertent residues that may occur in rotational crops for the use on field corn and soybeans.

IV. Conclusion

The analysis for flufenacet and its metabolites using crop tolerances, percentage of crop estimates, and estimated drinking water concentrations for all population subgroups examined by EPA shows the use on soybeans and corn will not cause exposure at which the Agency believes there is an appreciable risk during the period of time for the time-limited tolerance. Therefore EPA concludes there is a reasonable certainty of no harm from aggregate exposure to flufenacet. Based

on the information cited above, EPA has determined that establishing time-limited tolerances for the combined residues of the herbicide, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on field corn grain at 0.05 ppm, field corn forage at 0.4 ppm, field corn stover at 0.4 ppm, and soybean seed at 0.1 ppm will be safe. This time-limited tolerance will expire on April 30, 2003. Therefore, the tolerances are established as set forth below.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 9, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300636] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in **ADDRESSES** at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Bussiness Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and oher required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.527, to read as follows:

§ 180.527 N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; tolerances for residues.

(a) *General.* (1) Time-limited tolerances are established for combined residues of the herbicide, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Corn, field, forage ..	0.05	4/30/03
Corn, field, grain	0.4	4/30/03
Corn, field, stover ...	0.4	4/30/03
Soybean seed	0.1	4/30/03

(2) Residues in these commodities not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of the time-limited tolerance will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the above regulation.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–9549 Filed 4–7–98; 4:39 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300643; FRL–5785–1]

RIN 2070–AB78

Cyprodinil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyprodinil, 4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine in or on the folowing commodities: almond hulls at 0.05 ppm; almond nutmeats at 0.02 ppm; apple pomace, wet at 0.15 ppm; grapes at 2.0 ppm; pome fruit at 0.1 ppm; raisins at 3.0 ppm and stone fruit at 2.0 ppm. Novartis Crop Protection, Inc. requested these tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective April 10, 1998. Objections and requests for hearings must be received by EPA on or before June 9, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300643], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300643], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300643]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Acting Product Manager (PM) 21, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e–mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 2, 1997 (64 FR 15690)(FRL–5593–9) EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP 6F4656 and 6H5746) for tolerances by Novartis Crop Protection, Inc. Greensboro, NC 27419 (formerly Ciba Crop Protection). This notice included a summary of the petitions prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide cyprodinil, 4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine in or on the following commodities: almond hulls at 0.05 ppm; almond nutmeats at 0.02 ppm; apple pomace, wet at 0.15 ppm; grapes at 2.0 ppm; pome fruit at 0.1 ppm; raisins at 3.0 ppm and stone fruit at 2.0 ppm.

Note that the scientific assessments relevant to establishing these tolerances for cyprodinil were conducted jointly between EPA and the Pest Management Regulatory Agency (PMRA) of Canada as a pilot project under the North American Free Trade Agreement (NAFTA) and the Canadian United States Trade Agreement (CUSTA). Cyprodinil qualified as the first candidate for such a pilot program due to its classification as a reduced risk pesticide.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is

''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue***.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue

Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup, non-nursing infants, was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Reviews of the submitted data were conducted under a joint review between Pest Management Regulatory Agency (PMRA), Canada and the EPA. EPA has sufficient data to assess the hazards of cyprodinil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of cyprodinil in or on these commodities: almond hulls at 0.05 ppm; almond nutmeats at 0.02 ppm; apple pomace, wet at 0.15 ppm; grapes at 2.0 ppm; pome fruit at 0.1 ppm; raisins at 3.0 ppm and stone fruit at 2.0 ppm.

EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyprodinil are discussed below.

1. *Acute toxicity.* The acute toxicity data of cyprodinil show that this chemical is not acutely toxic by the oral, inhalation and dermal routes of exposure. Technical cyprodinil, however, is a dermal sensitizer.

2. *Subchronic toxicity.* i. In a range-finding subchronic toxicity study, cyprodinil was administered in the diet to rats at 0, 100, 600, 3,000 or 15,,000 ppm (males - 0, 10.3, 64.8, 316 or 1460 milligrams/kilogram/day (mg/kg/day); females - 0, 10.1, 62.2, 299 or 1390 mg/kg/day) for 28 days. In this study, the LOEL is 3,000 ppm (316 and 299 mg/kg/day for males and females respectively) based on lower bodyweight gains, microcytosis, increased cholesterol and phospholipid levels and hepatocyte hypertrophy. The NOEL is 600 ppm (64.8 and 62.2 mg/kg/day for males and females respectively).

ii. In a subchronic toxicity study, cyprodinil was administered to rats by gavage at dose levels of 0, 10, 100, or 1,000 mg/kg/day for 28 days. In this study, the LOEL is 100 milligrams/kilogram body weight/day (mg/kg bwt/day) for rats, based on increased liver weights and abnormalities in liver morphology. The NOEL is 10 mg/kg bwt/day.

iii. In a subchronic toxicity study, cyprodinil was administered in the diet to rats at dose levels of 0 or 12,000 ppm (0 or 810 mg/kg/day, respectively, for males; 0 or 803 mg/kg/day, respectively, for females), and to rats at dose levels of 50, 300, or 2,000 ppm (3.14, 19.0, or 134 mg/kg/day, respectively, for males; 3.24, 19.3, or 137 mg/kg/day for females) for 90 days. In this study, the LOEL is 300 ppm (19 mg/kg bwt/day) for rats, based on increased chronic tubular kidney lesions in males. The NOEL is 50 ppm (3.14 mg/kg/day).

iv. A 3–month range-finding study was carried out in mice where animals were fed diets containing 0, 500, 2,000 or 6,000 ppm (actual doses: males - 0, 73.3, 257 or 849 mg/kg/day; females - 0, 103, 349 or 1,121 mg/kg/day) of cyprodinil. In this study, the LOEL is 2,000 ppm based on histopathological changes in the liver. The NOEL is 500 ppm (males - 73.3; females - 103 mg/kg/day).

v. A 3–month study was carried out in Beagle dogs where animals were fed diets containing 0, 200, 1,500, 7,000 or 20,000 ppm (actual doses: males - 0, 6.07, 45.87, 210.33 or 559.66 mg/kg/day; females - 0, 6.79, 52.75, 231.93 or 580.95 mg/kg/day) of cyprodinil. In this study, the LOEL is 20,000 ppm (males - 560, females - 581 mg/kg/day) based on lower bodyweight gains and decreased food consumption in both sexes. The NOEL is 7,000 ppm (males - 210, females - 232 mg/kg/day).

vi. Groups of rats received repeated dermal applications of cyprodinil at doses of 0, 5, 25, 125 or 1,000 mg/kg/day, 6 hours/day, 5 days /week over a 28-day period. Hunched posture was observed in females at 125 mg/kg/day. In this study, the LOEL is 25 mg/kg/day for female rats and 1,000 mg/kg/day for male rats, based on alterations in clinical signs (piloerection). The NOEL is 5 mg/kg/day for females and 125 mg/kg/day for males.

3. *Chronic toxicity.* i. A 24–month chronic toxicity/carcinogenicity study was carried out in rats where animals (50 rats/sex/dose - carcinogenicity portion, plus 20/sex/dose laboratory investigations) were fed diets containing 0, 5, 75, 1,000 or 2,000 ppm cyprodinil (actual doses: males - 0, 0.177, 2.7, 35.6 or 73.6 mg/kg/day; females - 0, 0.204, 3.22, 41.2 or 87.1 mg/kg/day). An additional 10/sex/dose were fed test diets for 12 months (interim sacrifice). In this study the LOEL is 1,000 ppm (35.6 mg/kg/day) based on the degenerative liver lesions (spongiosis hepatis) in males. The NOEL for chronic toxicity is set at 75 ppm (2.7 mg/kg/day).

ii. In a chronic toxicity study, cyprodinil was administered to five Beagle dogs/sex/dose in the diet at dose levels of 25, 50, or 100 ppm for females (0.7, 1.6, or 3.1 mg/kg/day, respectively) and 50, 100, or 200 ppm for males (1.8, 3.0, or 5.7 mg/kg/day, respectively) for 52 weeks. An additional 1–year study was carried out in Beagle dogs where animals (4/sex/dose) were fed diets containing 0, 25, 250, 2,500 or 15,000 ppm (actual doses: males - 0, 0.72, 6.87, 65.63 or 449.25; females - 0, 0.76, 6.80, 67.99 or 446.37 mg/kg/day) cyprodinil. In this study, the LOEL is 15,000 ppm (males - 449.25, females 446.37 mg/kg/day) based on lower bodyweight gains and decreased food consumption and food efficiency. The NOEL is 2,500 ppm (males - 65.63, females - 67.99 mg/kg/day).

4. *Carcinogenicity*. i. For the discussion of the rat study, see Unit II.A.3.i. of this preamble. This study was tested to adequate levels based on signs of toxicity in males at 2,000 ppm and females at 5,000 ppm. There was no indication of carcinogenic potential at any dose level.

ii. An 18–month carcinogenicity study was carried out in mice where animals (50 mice/sex/dose - carcinogenicity portion, plus 10/sex/dose - hematology) were fed diets containing 0, 10, 150, 2,000 or 5,000 ppm (actual doses: males - 0, 1.15, 16.1, 212.4 or 630; females - 0, 1.08, 14.7, 196.3 or 558.1 mg/kg/day) of cyprodinil. In this study the LOEL is 2,000 ppm (males - 212.4 mg/kg/day) based on a dose-related increase in the incidence of focal and multifocal hyperplasia of the exocrine pancreas in males. The NOEL is 150 ppm (males - 16.1 mg/kg/day). This study was tested to adequate levels based on signs of toxicity in males at 2,000 ppm and females at 5,000 ppm. There was no indication of carcinogenic potential at any dose level.

5. *Developmental toxicity*. i. In a developmental toxicity study, cyprodinil was administered in 3% aqueous corn starch suspension by oral gavage to 20–23 female rats per dose of 0, 20, 200 or 1,000 mg/kg/day or gestation days 6–15. The LOEL for maternal toxicity is 1,000 mg/kg/day based on lower bodyweight/bodyweight gain and reduced food consumption. The NOEL for maternal toxicity was 200 mg/kg/day. The LOEL for developmental toxicity is 1,000 mg/kg/day based on lower mean fetal weights and an increased incidence of delayed ossification. The NOEL for developmental toxicity is 200 mg/kg/day.

ii. In a developmental toxicity study, cyprodinil was administered in 3% aqueous corn starch suspension to 19 inseminated female rabbits, dosed by gavage at dose levels of 0, 5, 30, 150, or 400 mg/kg/day from days 7 through 19 of gestation. In this study, the maternal LOEL is 400 mg/kg/day, based on decreased body weight gain. The maternal NOEL is 150 mg/kg/day. The fetal developmental LOEL is 400 mg/kg/day based on a slight increase of litters showing extra (13th) ribs. The fetal developmental NOEL is 150 mg/kg/day.

6. *Reproductive toxicity*. A two-generation reproduction study was carried out in rats, with one litter per generation. Animals (30 rats/sex/dose) received cyprodinil in the diet at doses of 0, 10, 100, 1,000 or 4,000 ppm (actual intake males - 0, 0.7, 6.7, 68 or 273; females - 0, 0.8, 8.2, 81 or 326 mg/kg/day) for a 10 week pre-mating period. In this study, the LOEL for maternal systemic toxicity is 4,000 (about 326 mg/kg/day) based on lower body weights in the F_0 females during the pre-mating period. The NOEL for maternal systemic toxicity is 1,000 ppm (about 81 mg/kg/day). The LOEL for reproductive/developmental toxicity is 4,000 ppm (about 326 mg/kg/day) based on decreased pup weights (F_1 and F_2). The NOEL for reproductive toxicity is 1,000 ppm (about 81 mg/kg/day).

7. *Neurotoxicity*. Neurotoxicity studies were not required for this chemical.

8. *Mutagenicity*. Mutagenicity studies with cyprodinil included gene mutation assays in bacterial and mammalian cells, a mouse micronucleus assay and *in vivo* unscheduled DNA synthesis (UDS) assays. The results were negative for mutagenicity in all studies.

9. *Metabolism*. In a metabolism study, single oral doses (0.5 or 100 mg/kg bwt) of phenyl or pyrimidyl-radiolabelled cyprodinil were administered to rats, with one low-dose group receiving unlabeled cyprodinil for 2 weeks prior to treatment with radiolabelled compound. Absorption was very rapid (t_{cmax}= 0.3 hours) with rapid clearance ($t_{cmax/2}$=1.2 hours). A minimum of 75% of the administered dose was absorbed. A biphasic first order kinetics was observed for radioactivity depletion, with a duration of 0.3–1.2 hours for the first phase, and 27–65 hours for the second phase. Excretion was rapid and almost complete, with urine as the principle route of excretion (48–68%), and > 90% of the administered dose detected in the urine and feces within 48 hours. Tissue residues declined rapidly, with the highest concentrations (≧ 1.8 ppm) found in kidneys, liver, lungs, spleen, thyroid, whole blood, and carcass. The urine, fecal, and bile metabolite patterns were complex, with 8 and 9 defined metabolite fractions, respectively. Unchanged parent compound was detected in feces extract only. Excretion, distribution and metabolite profiles were essentially independent of dose level, pretreatment, and type of label, although there were some sex-dependent qualitative differences in two urinary metabolite fractions.

Excreta (Group D1 and D2) and bile (Group G1) from radiolabelled cyprodinil-treated rats were used to characterize, isolate and identify metabolites of cyprodinil. Eleven metabolites were isolated from urine, feces and bile, and the metabolic pathways in the rat were proposed. All urinary and biliary metabolites (with the exception of 7U) were conjugated with glucuronic acid or sulfonated, and excreted. Cyprodinil was almost completely metabolized by hydroxylation of the phenyl ring (position 4) or pyrimidine ring (position 5), followed by conjugation. An alternative pathway involved oxidation of the phenyl ring followed by glucuronic acid conjugation. A quantitative sex difference was observed with respect to sulfonation of the major metabolite that formed 6U. The monosulfate metabolite (1U) was predominant in females, whereas equal amounts of mono- and disulfate (6U) conjugates were noted in males. Most of the significant metabolites in feces were exocons of biliary metabolites (2U, 3U, 1G). These were assumed to be deconjugated in the intestines, partially reabsorbed into the general circulation, conjugated again, and eliminated renally. The major metabolic pathways of cyprodinil were not significantly influenced by the dose, treatment regimen, or sex of the animal.

B. Toxicological Endpoints

1. *Acute toxicity*. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

2. *Short- and intermediate-term toxicity*. The dose of 25 mg/kg/day was selected as the toxicological endpoint for short- and intermediate-term risk calculations based on the repeated dose study in rats resulting in hunched postures in female rats at 125 mg/kg/day.

3. *Chronic toxicity*. EPA has established the RfD for cyprodinil at 0.03 mg/kg/day. This RfD is based on a chronic rat study with a NOEL of 2.7 mg/kg/day and an Uncertainty Factor of 100. Effects seen at the LOEL, 35.6 mg/kg/day, were histopathological alternations in the liver (spongiosis hepatis) in males.

4. *Carcinogenicity*. Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential, cyprodinil was classified as ''not likely'' human carcinogen according to EPA Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996).

C. Exposures and Risks

1. *From food and feed uses*. Currently, there are no established tolerances (40 CFR part 180) for the residue of cyprodinil, in or on any raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary

exposures and risks from cyprodinil as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No effects that could be attributed to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, a dose and endpoint were not identified for acute dietary risk assessment.

ii. *Chronic exposure and risk*. Chronic dietary (food only) exposure estimates were calculated by using the proposed tolerance levels for all pome fruit, stone fruit, almond and grape commodities. The required tolerances result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percent of the RfD: (only values greater than those for the U.S. population are listed below)

Subgroups	Percent of RFD
U.S. population (48 states)	5.8
Non-Hispanic White	6.2
Nursing Infants (< 1 year old) ...	14.0
Non-Nursing Infants (< 1 year old)	27.0
Females (13+ years, nursing) ..	6.5
Children (1–6 years old)	15.0
Children (7–12 years old)	7.5

EPA does not consider the chronic dietary risk to exceed the level of concern.

2. *From drinking water*—i. *acute exposure and risk*. No acute endpoint was identified, therefore no drinking water risk assessment is presented.

ii. *Chronic exposure and risk*. The drinking water levels of concern (DWLOC) are 990 parts per billion (ppb) for U.S. population and 200 ppb for non-nursing infants. The estimated maximum concentration in surface water is 16 ppb. The estimated average concentration in surface water is expected to be less than 16 ppb. Chronic concentrations in groundwater are not expected to be higher than the acute concentrations. The maximum estimated concentrations of cyprodinil in surface water are less than OPP's levels of concern for cyprodinil in drinking water as a contribution to acute aggregate exposure. Also, the estimated average concentrations in groundwater are less than OPP's levels of concern for cyprodinil in drinking water as a contributor to chronic aggregate exposure. Therefore, taking into account the proposed uses in this action, EPA concludes with reasonable certainty that residues of cyprodinil in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk.

EPA bases this determination on a comparison of estimated concentrations of cyprodinil in surface water and groundwaters to back-calculated ''levels of concern'' for cyprodinil in drinking water. These levels of concern in drinking water were determined after EPA has considered all other non-occupational exposures for which it has reliable data, including all uses considered in this action. The estimates of cyprodinil in surface water are derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water.

3. *From non-dietary exposure*. Cyprodinil is not currently registered for use on residential non-food sites. Therefore residential risk assessments are not required.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether cyprodinil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyprodinil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyprodinil has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk*. There was no acute dietary endpoint identified, since cyprodinil does not pose acute dietary risk.

2. *Chronic risk*. Using the Theoretical Maximum Residue Contribution (TMRC) exposure assumptions described above, EPA has concluded that aggregate exposure to cyprodinil from food will utilize 5.8% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (< 1 year old) discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cyprodinil in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from

aggregate exposure to cyprodinil residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyprodinil, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a prenatal developmental toxicity study, rats received oral administration of cyprodinil in 3.0% aqueous corn starch suspension at dose levels of 0, 20, 200 or 1,000 mg/kg/day during gestation days 6 through 15. For maternal toxicity, the NOEL was 200 mg/kg/day, and the LOEL was 1,000 mg/kg/day based on decreased body weight, decreased body weight gain, and decreased food consumption. For developmental toxicity, the NOEL was 200 mg/kg/day, and the LOEL was 1,000 mg/kg/day based on increased incidence of skeletal variations (primarily absent or reduced ossification of the metacarpals) and on decreased mean fetal weight.

In a prenatal developmental toxicity study, New Zealand White rabbits (19/group) received oral administration of cyprodinil in 3.0% corn starch suspension (4 ml/kg) at dose levels of 0, 5, 30, 150 or 400 mg/kg/day during gestation days 7 through 19. For maternal toxicity, the NOEL was 150 mg/kg/day and the LOEL was 400 mg/kg/day based on decreased body weight gain during the treatment period. For developmental toxicity, the NOEL was 150 mg/kg/day and the LOEL was 400 mg/kg/day, based on an increased incidence of 13th rib.

iii. *Reproductive toxicity study*. In a two-generation reproduction study, rats (30/sex/group) were fed diets containing cyprodinil at does levels of 0, 10, 100, 1,000 or 4,000 ppm (0.7, 6.7, 68 or 273 mg/kg/day in males and 0.8, 8.2, 81 or 326 mg/kg/day in females) For parental systemic toxicity, the NOEL was 1,000 ppm (81 mg/kg/day) and the LOEL was 4,000 ppm (326 mg/kg/day) based on decreased parental female premating body weight gain. In addition, significant increases in liver and kidney weight at 4,000 ppm were judged to be non-adverse due to lack of corroborative histopathological lesions. However, in light of the fact that the chronic study demonstrates liver toxicity, the EPA believes that these organ weight changes should be considered as supportive evidence of toxicity at the LOEL of 4,000 ppm. Organ weight changes at 1,000 ppm were not considered sufficient in magnitude to allow revision of the NOEL and LOEL for parental systemic toxicity. For offspring toxicity, the NOEL was 1,000 ppm (81 mg/kg/day) and the LOEL was 4,000 ppm (326 mg/kg/day), based on decreased F_1 and F_2 pup body weight during lactation and continuing into adulthood for F_1 rats.

iv. *Pre- and post-natal sensitivity*. The pre- and post-natal toxicology database is complete with respect to current toxicological data requirements. Based on the developmental and reproductive toxicity studies discussed above, there does not appear to be an extra sensitivity to pre- and post- natal effects.

v. *Conclusion*. EPA concludes that reliable data support use of the hundredfold uncertainty factor and that an additional tenfold factor is not needed to ensure the safety of infants and children from dietary exposure.

2. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to cyprodinil from food will utilize 14% of the RfD for nursing infants (< 1 year old), 27% of the RfD for non-nursing infants (< 1 year old), 15% of the RfD for children 1 to 6 years old and 7.5% of the RfD for children 7 to 12 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cyprodinil in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyprodinil residues.

III. Other Considerations

A. Metabolism in Plants and Animals

1. *Nature of residue — plants.* The nature of the residue in plants is understood. Acceptable metabolism studies using ^{14}C-labeled cyprodinil have been performed in stone fruit (peaches), pome fruit (apples), wheat, tomatoes, and potatoes. Cyprodinil is metabolized primarily by hydroxylation followed by sugar conjugation. Cleavage of the amino bridge, opening of the pyrimidine ring, opening of the cyclopropyl ring and formation of thiolactic acid conjugates are also minor pathways. Incorporation into starch was also observed in potato tubers and wheat grain.

EPA has determined that there are no cyprodinil metabolites of toxicological or regulatory concern in plants.

2. *Nature of residue— animals*— i. *Ruminants.* The nature of the residue in ruminants is understood. An acceptable metabolism study using ^{14}C phenyl-labeled cyprodinil has been performed in goats. Based on the structures characterized, the metabolism of cyprodinil proceeded predominantly via hydroxylation followed by conjugation with sulfuric and glucuronic acid. A breakdown of the pyrimidine ring was seen only in the liver and resulted in metabolite L1. Cleavage of the amino bridge between the phenyl and the pyrimidine ring was only a minor reaction as indicated by the small amounts of CGA 249287 found in the liver and kidneys of goats dosed with ^{14}C-pyrimidine cyprodinil.

For compounds with multiple rings, it is generally required that acceptable metabolism studies be performed with each ring labeled. However, as the acceptable metabolism study using ^{14}C-phenyl-labeled cyprodinil indicated that ring cleavage is a minor pathway and the available data from a supplementary ruminant metabolism study using ^{14}C-pyrimidine-labeled cyprodinil support this conclusion, further ruminant

metabolism studies for cyprodinil will not be required.

EPA has determined that there are no cyprodinil metabolites of toxicological or regulatory concern in animals based on the dietary burden associated with the proposed uses.

ii. *Poultry.* There are no poultry feed items associated with the proposed uses. Therefore data on the nature of the residue in poultry is not required for this petition.

B. Analytical Enforcement Methodology

An adequate enforcement methodology, AG–631B, is available to enforce the tolerance on stone fruits, pome fruits, almond hulls, almond nutmeats and grapes. Quantitation is by high performance liquid chromatography with column switching. Information about the analytical method is available to the public from: Calvin Furlow, Information Resources and Services Division, Public Information and Records Integrity Branch, 7502C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, office location and telephone number: Room 101FF, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–305–5229).

Because no tolerances for animal commodities are required, no analytical methods for animal commodities were required.

C. Magnitude of Residues

The residues of cyprodinil resulting from the proposed uses will not exceed almond hulls at 0.05 ppm; almond nutmeats at 0.02 ppm; apple pomace, wet at 0.15 ppm; grapes at 2.0 ppm; pome fruit at 0.1 ppm; raisins at 3.0 ppm and stone fruit at 2.0 ppm. .

D. International Residue Limits

There are no Codex or Mexican residue limits established for cyprodinil. As part of the joint review, Canada will be setting equivalent tolerances for pome fruits and stone fruits and equivalent import tolerances for almonds and grapes. Therefore no compatibility problems exist for the proposed tolerances.

E. Rotational Crop Restrictions

Stone fruit, pome fruit, almonds and grapes are not rotated, therefore rotational crop restrictions do not apply to this petition.

IV. Conclusion

Therefore, the following tolerances are established for residues of cyprodinil: almond hulls at 0.05 ppm; almond nutmeats at 0.02 ppm; apple pomace, wet at 0.15 ppm; grapes at 2.0 ppm; pome fruit at 0.1 ppm; raisins at 3.0 ppm and stone fruit at 2.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 9, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300643] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior

consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances set in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 6, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.532 to subpart C to read as follows:

§ 180.532 Cyprodinil, tolerances for residues.

(a) *General* . Tolerances are established for residues of the fungicide cyprodinil, 4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine in or on the following food commodities:

Commodity	Parts per million
Almond hulls	0.05
Almond nutmeats	0.02
Apple pomace, wet	0.15
Grapes	2.0
Pome fruit	0.1
Raisins	3.0
Stone fruit	2.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–9679 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–5994–7]

RIN 2050–AD77

Financial Assurance Mechanisms for Corporate Owners and Operators of Municipal Solid Waste Landfill Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is amending the financial assurance regulations under the Resource Conservation and Recovery Act (RCRA) for owners and operators of municipal solid waste landfills. Today's rule increases the flexibility available to owners and operators by adding two mechanisms to those currently available: a financial test for use by private owners and operators, and a corporate guarantee that allows companies to guarantee the costs for another owner or operator.

EFFECTIVE DATE: This regulation is effective April 10, 1998. This rule provides regulatory relief by establishing additional, less costly mechanisms for owners and operators to comply with existing financial assurance requirements.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–FTMF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials during these hours, 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 docket at no charge. Additional copies cost $0.15/page. The docket index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call the RCRA Hotline at 703 412–9810 or TDD 703 412–3323. You may also contact Dale Ruhter at 703 308–8192, or by electronic mail at ruhter.dale@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated entities

Entities potentially regulated by this action are private owners or operators of municipal solid waste landfills. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Privately owned municipal solid waste landfill facilities. Privately operated municipal solid waste landfill facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the

applicability criteria in §§ 258.1 and 258.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The docket index and the following supporting materials are available on the Internet: Comment Response Document for Financial Test and Corporate Guarantee for Private Owners or Operators of Municipal Solid Waste Landfill Facilities, October 12, 1994 Proposed Rule; Description of Data Used in the Analysis of Subtitles C and D Financial Tests; Analysis of Subtitle D Financial Tests in Response to Public Comments; memorandum entitled Bond Ratings and Investment Grade Status; memorandum entitled Updated Closure and Post Closure Cost Estimates for Subtitle C; Issue Paper, Relevant Factors to Consider in a Financial Test; Issue Paper, Recent Consolidation and Acquisitions Within the Solid Waste Industry; Issue Paper, Issues Relating to the Bond Rating Alternative of the Corporate Financial Test; Issue Paper, Accounting Issues Affecting the Corporate Financial Test; Issue Paper, Domestic Assets Requirement; Issue Paper, Reporting Timeframes; Issue Paper, Effects of the Financial Test on the Surety Industry; Issue Paper, Market Effects of the Financial Test; Issue Paper, Assessment of Financial Assurance Risk of Subtitles C and D Corporate Financial Test and Third-Party Financial Assurance Mechanisms; Issue Paper, Performance of the Financial Test as a Predictor of Bankruptcy; Issue Paper, Assessment of First Party Trust Funds; Issue Paper, Assessment of Trust Fund/Surety Combination.

Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/osw
FTP: ftp.epa/gov
Login: anonymous
Password: your Internet address
Files are located in /pub/OSWER.

Preamble Outline

I. Authority
II. Background
III. Summary of the Rule
A. Corporate Financial Test (§ 258.74(e))
1. Financial Component (§ 258.74(e)(1))
a. Minimum Tangible Net Worth
b. Bond Rating
c. Financial Ratios
d. Domestic Assets Requirement
2. Recordkeeping and Reporting Requirements (§ 258.74(e)(2))
a. Chief Financial Officer (CFO) Letter
b. Accountant's Opinion
c. Special Report From the Independent Certified Public Accountant
d. Placement of Financial Test Documentation and Annual Updates in the Operating Record
e. Alternate Financial Assurance
f. Current Financial Test Documentation
B. Corporate Guarantee (§ 258.74(g))
C. Calculation of Obligations
D. Combining the Financial Test and Corporate Guarantee With Other Mechanisms
E. Use of Alternative Mechanisms After the Effective Date
IV. National Solid Wastes Management Association (NSWMA) Petition
A. Discussion of the Petition
B. The Meridian Test
V. State Program Approval
VI. Response to Comments and Summary of Issues
A. Minimum Tangible Net Worth
1. Minimum Tangible Net Worth Requirement Is Too Low
2. The $10 Million Net Worth Requirement Is Too Restrictive
a. The Size of Closure Obligations
b. Recognition of Closure Obligations
c. Accuracy of the Test at Lower Net Worth Levels
d. Public Costs of Lower Net Worth Levels
3. Allow Firms To Include Closure and Post Closure Funds as Part of Net Worth
4. The Net Worth Requirement Reduces the Market for Sureties
5. Tangible Net Worth Does Not Have To Be Liquid
6. MSWLFs Should Have a Lower Minimum Net Worth Requirement Than Subtitle C Facilities
7. EPA's Proposed Net Worth Requirement Was Not the Best Investigated
8. The Tangible Net Worth Requirement Is Appropriate
B. Bond Ratings
C. Financial Ratios
D. Domestic Assets
E. Recordkeeping and Reporting Requirements
1. Qualified Accountant's Opinion
2. Special Report From the Independent Certified Public Accountant
F. Annual Updates
G. Current Financial Test Documentation
H. Corporate Guarantee
I. Impacts on Third Party Financial Assurance Providers
J. General Support of and Opposition to the Financial Test
K. First Party Trust
L. Comments on the Notice of Data Availability
VII. Miscellaneous
A. Executive Order 12866
B. Unfunded Mandates Reform Act
C. Regulatory Flexibility Act
D. Submission to Congress and the General Accounting Office
E. Paperwork Reduction Act
F. Environmental Justice
G. National Technology Transfer and Advancement Act

I. Authority

These amendments to Title 40, part 258, of the Code of Federal Regulations are promulgated under the authority of sections 1003(a), 1008, 2002(a), 4004, 4005(c), and 4010(c) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

II. Background

The Agency proposed revised criteria for municipal solid waste landfills (MSWLFs), including financial assurance requirements, on August 30, 1988 (see 53 FR 33314). The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post-closure care, and, when necessary, corrective action associated with MSWLFs.

In the August 30, 1988 proposal, rather than proposing specific financial assurance mechanisms, the Agency proposed a financial assurance performance standard. The Agency solicited public comment on this performance standard approach and, at the same time, requested comment on whether the Agency should develop financial test mechanisms for use by local governments and corporations. In response to comments on the August 1988 proposal, the Agency added several specific financial mechanisms to the financial assurance performance standard in promulgating 40 CFR 258.74 as part of the October 9, 1991 final rule on MSWLF criteria (56 FR 50978). That provision allows approved States to use any State-approved mechanism that meets that performance standard and thereby gives approved states considerable flexibility in determining appropriate financial mechanisms.

Commenters on the August 30, 1988 proposal also supported the development of financial tests for local governments and for corporations to demonstrate that they meet the financial assurance performance standard, without the need to produce a third-party instrument to assure that the obligations associated with their landfill will be met. (For a description of the third-party instruments available to MSWLF owners and operators, see 56 FR 50978.) The Agency agreed with commenters and, in the October 9, 1991 preamble, announced its intention to develop both a local government and corporate financial test in advance of the effective date of the financial assurance provisions.

On April 7, 1995, the Agency delayed the date by which MSWLFs must comply with the financial assurance requirements of the MSWLF criteria until April 9, 1997 (see 60 FR 17649) (remote, very small landfills as defined at 40 CFR 258.1(f)(1) must comply by October 9, 1997). See 40 CFR 258.70(b). EPA extended the compliance date to

provide additional time to promulgate financial tests for local governments and for corporations before the financial assurance provisions would take effect. The Agency proposed a local government financial test and a corporate financial test on December 27, 1993 (see 58 FR 68353) and October 12, 1994 (see 59 FR 51523), respectively. The proposed corporate financial test rule notice also included proposed amendments to the domestic asset requirements of the RCRA Subtitle C hazardous waste financial assurance rules. Promulgating these proposed changes to the Subtitle C rule, after considering and addressing public comments, will be part of an upcoming rulemaking on the Subtitle C financial assurance rules.

As part of the corporate test for MSWLFs rulemaking, on September 27, 1996 (61 FR 50787) EPA published a Notice of Data Availability for a document that had been inadvertently omitted from the rulemaking docket for part of the public comment period. This Notice provided a 30 day comment period on the missing document.

On November 27, 1996, EPA promulgated a final local government financial test rule for MSWLFs (61 FR 60328). That rule increases the flexibility of the financial assurance requirements in four important ways. First, it provides local governments owning or operating a MSWLF with the option of demonstrating financial assurance through a financial test. Second, it allows local governments to use the financial test to provide a guarantee for financial assurance for the owner or operator of a MSWLF. Third, the rule allows a State Director to waive the financial assurance requirements for up to twelve months until April 9, 1998 if the Director finds that an owner or operator cannot practically comply by April 9, 1997. Fourth, a State Director can allow the discounting of closure, post-closure, and corrective action costs for MSWLFs under certain conditions.

The flexibility to extend the effective date and to allow discounting are available to both locally and privately owned and operated MSWLFs under the November 27, 1996 final rule. In today's notice, EPA is taking final action on the corporate financial test and guarantee for MSWLFs under RCRA Subtitle D, that were proposed October 12, 1994. This notice extends to private owners and operators the flexibility that local governments have as a result of the November 27, 1996 final rulemaking notice.

III. Summary of the Rule

A. Corporate Financial Test (§ 258.74(e))

Today's rule allows private owners or operators of MSWLFs that meet certain financial and recordkeeping and reporting requirements to use a financial test to demonstrate financial assurance for MSWLF closure, post-closure care and corrective action costs up to a calculated limit. (Costs over the limit must be assured through a third-party mechanism such as a surety bond or trust fund, or, in approved States, through other appropriate mechanisms the State determines to meet the performance standard at existing § 258.74(l)). The financial test allows a company to avoid incurring the expenses associated with the existing financial assurance requirements which provide for demonstrating financial assurance through the use of third-party financial instruments, such as a trust fund, letter of credit, surety bond, or insurance policy. With the financial test, private owners or operators must demonstrate that they are capable of meeting their financial obligations at their MSWLFs through ''self insurance.'' The following sections discuss the requirements of the financial test in greater detail.

1. Financial Component (§ 258.74(e)(1))

The financial component is designed to measure viability of the owner or operator, based on its current financial condition. To satisfy the financial component, a firm must: (1) have a minimum tangible net worth of $10 million plus the costs it seeks to assure (e.g., closure, post-closure care, or corrective action costs); (2) satisfy a bond rating requirement or pass one of two financial ratios; and (3) meet a domestic asset requirement.

a. *Minimum Tangible Net Worth.* In § 258.74(e)(1)(ii)(A), the Agency is requiring firms using the financial test to have a tangible net worth at least equal to the sum of the costs they seek to assure through a financial test plus $10 million. Tangible net worth means the tangible assets that remain after deducting liabilities. Tangible assets do not include intangibles such as goodwill or rights to patents and royalties.

The Agency is also providing an exception to the minimum net worth requirement in § 258.74(e)(1)(ii)(B). In this exception, a State Director may allow a firm that has already recognized all of its environmental obligations on its financial statements to utilize the financial test so long as it has a minimum tangible net worth of $10 million and meets all of the remaining requirements of the financial test. The exception in § 258.74(e)(1)(ii)(B) acknowledges that the recognition of environmental obligations as liabilities in financial statements has become more widespread. As explained more fully in the Response to Comments and Summary of Issues (see section VI below), EPA does not want to place a firm that has fully recognized these obligations as liabilities at a disadvantage in its ability to use the test.

Under § 258.74(e)(3), the costs an owner or operator seeks to assure must be equal to the current cost estimates for closure, post-closure care, and corrective action or the sum of such costs to be covered, and any other environmental obligations assured by a financial test. The owner or operator must include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test: obligations associated with underground injection control (UIC) facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR part 280, polychlorinated biphenyl (PCB) storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities (TSDFs) under 40 CFR parts 264 and 265.

The Agency is requiring this minimum tangible net worth requirement to ensure that the costs of closure, post-closure care, and/or corrective action do not force a firm into bankruptcy. The minimum net worth is intended to help ensure that firms relying on the financial test have viable net worth to cover potential costs. EPA received several comments on the $10 million in net worth requirement which had also been part of the proposal. For the reasons discussed more fully in the Response to Comments and Summary of Issues section below, the Agency has retained this requirement in the final rule. The Agency believes that this minimum net worth should be required as an initial screen for corporations in demonstrating financial responsibility for the very large costs of closure, post-closure care, and corrective action. This requirement in addition to other financial criteria comprise the financial test adopted in this final rule.

b. *Bond Rating.* The Agency is promulgating regulations allowing firms that meet the minimum net worth requirement to satisfy the second requirement of the financial test in one of two ways.

Under § 258.74(e)(1)(i)(A), a firm can satisfy the financial component if its

senior unsecured bond rating is investment grade, that is, Aaa, Aa, A or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's. The Agency is promulgating this option because it believes that a firm's bond rating incorporates an evaluation of a firm's financial management practices. Bond ratings reflect the expert opinion of bond rating services, which are organizations that have established credibility in the financial community for their assessments of firm financial conditions. An analysis of bond ratings showed that bond ratings have been a good indicator of firm defaults, and that few firms with investment grade ratings have in fact gone bankrupt.

Including a bond rating option in this financial test is consistent with other Agency programs. For example, the regulations governing TSDFs under 40 CFR parts 264 and 265, petroleum underground storage tanks under 40 CFR part 280, UIC facilities under 40 CFR part 144, and PCB commercial storage facilities under 40 CFR part 761 all consider bond ratings as part of their financial tests. The local government financial test for owners and operators of MSWLFs under 40 CFR part 258, which was promulgated on November 27, 1996 (61 FR 60328), also allows a bond rating option.

In the local government test, EPA restricted the use of bond ratings to bonds which were not insured or collateralized. Insured bonds are increasingly popular for municipal issues and reflect the rating of the insurer, and not of the issuing municipality. Insured bonds are used less frequently for corporations. Similarly, a collateralized bond can receive a rating that is not indicative of the overall strength of the firm that issues it, but rather of the collateral backing it. In fact, a firm under financial distress may only be successful in issuing a bond if it pledges assets to back it. In this final rule, EPA is likewise adopting a regulation that effectively disallows the use of ratings based on collateralized bonds.

For the reasons described above, because bond ratings incorporate an evaluation of a firm's financial management practices, reflect the credible expert opinion of bond rating services and have been shown to be a good indicator of defaults, EPA proposed to include a bond rating option in the corporate financial test for MSWLFs. EPA proposed to implement the bond rating option using the rating for the last bond issued. (This is consistent with the current Subtitle C financial test and the revisions proposed on July 1, 1991 (56 FR 30201)). The reason for choosing the rating on the most recently issued bond was because the Agency considered this to be the most accurate indication of the firm's financial status. Under the assumption that the most recently issued bond would have had the most current analysis of its characteristics, EPA considered this the best indicator of the firm's ability to fulfill its financial obligations.

A commenter on the proposed corporate test for MSWLFs noted that the rating on a firm's senior debt was the best indicator of the firm's financial health. EPA reviewed its proposed position in response to the comment and found that bond ratings for corporations are continually being reviewed. Thus, there are more accurate indicators of a firm's financial health than the most recently issued bond. By using the rating on the firm's senior unsecured debt rather than on the most recent issue, EPA is ensuring that firms that use the bond rating alternative will not be qualifying on the basis of a secured obligation.

EPA recognizes that the use of a senior unsecured debt rating in this rule is potentially inconsistent with the financial test bond rating alternative in the hazardous waste financial assurance regulations in 40 CFR Part 264, Subpart H. EPA considers the arguments for adopting the use of the rating on senior unsecured debt to have considerable merit and is similarly considering adopting it as part of the revisions to the RCRA hazardous waste financial assurance requirements (proposed 56 FR 30201).

c. *Financial Ratios.* To provide the regulated community with additional flexibility in meeting the financial test, the Agency proposed to also allow financial test ratios that it is promulgating at § 258.74(e)(1)(i)(B)–(C) as an alternative to the bond rating. In order to satisfy the ratio requirement, a firm must have either:

- a debt-to-equity ratio of less than 1.5 based on the ratio of total liabilities to net worth. This ratio indicates the degree to which a firm is leveraged, and financed through borrowing; or
- a profitability ratio of greater than 0.10 based on the ratio of the sum of net income plus depreciation, depletion, and amortization, minus $10 million, to total liabilities. This ratio indicates cash flow from operations relative to the firm's total liabilities.

EPA is adopting these financial test ratios in § 258.74(e)(1)(i)(B)–(C) of today's rule. The Agency selected these two specific financial ratios with their associated thresholds based on their ability to differentiate between viable and bankrupt firms. The Agency's analysis demonstrated that debt-to-equity ratios (e.g., total liabilities/net worth) and profitability ratios (e.g. (cash flow minus $10 million)/total liabilities) are particularly good discriminators of financial health. The Agency selected as thresholds for these ratios values that, together with the other financial test criteria, minimized the costs associated with demonstrating financial responsibility. A more detailed discussion of this analysis can be found in the Background Document developed in support of the proposal, and the report entitled ''Analysis of Subtitle D Financial Tests in Response to Public Comment,'' which was developed to further assess the results of the Background Document in light of public comments. Both documents are available in the public docket for this rulemaking.

d. *Domestic Assets Requirement.* In § 258.74(e)(1)(iii), the Agency is promulgating a requirement that it had earlier proposed that all firms using the financial test have assets in the United States at least equal to the costs they seek to assure through a financial test. (See paragraph a. of this section, ''Minimum Tangible Net Worth,'' for more discussion on assured costs.) The domestic asset requirement is intended to ensure that the Agency has access to funds in the event of bankruptcy. Without this requirement, the Agency could experience substantial difficulty in accessing funds of bankrupt firms that have their assets outside of the United States. The Response to Comments and Summary of Issues section below discusses this requirement in more detail.

2. Recordkeeping and Reporting Requirements (§ 258.74(e)(2))

The rule requires that after a firm has determined that it is eligible to use this corporate financial test, it must document its use of the test by placing three items (discussed below) in the facility operating record. These requirements will help ensure that the self-implementing aspect of the test requirements have been met. In the case of closure and post-closure care, these items must be placed in the operating record prior to the initial receipt of waste or upon the effective date of the financial assurance requirements (see existing 40 CFR 258.70) whichever is later, or no later than 120 days after the corrective action remedy has been selected. This language is consistent with the language in the proposal, and in the other mechanisms allowable under 40 CFR 258.74. For example, the language for letters of credit in existing

258.74(c)(1) states ''The letter of credit must be effective before the initial receipt of waste or before the effective date of this section * * * whichever is later, in the case of closure or post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.''

EPA seeks to make clear that the deadline provision in today's rule allows the use of the financial test by an owner or operator of an existing facility for whom the financial responsibility requirements have already become effective. An owner or operator may change mechanisms for providing financial assurance. The regulations require that an owner or operator provide financial assurance without interruption. See, for example, 40 CFR 258.71(b), 258.72(b) and 258.73(c). However, qualifying owners or operators may choose from the mechanisms in § 258.74(a) through (j), and may substitute one mechanism for another in meeting financial assurance requirements (assuming all such mechanisms are available under the Federally-approved State program). For further information on this point, please see section III.E., below, Use of Alternative Mechanisms After the Effective Date.

The specific recordkeeping and reporting requirements are summarized below. Owners and operators must update these items annually, and must notify the State Director and obtain alternative financial assurance if the firm is no longer able to pass the financial test.

a. *Chief Financial Officer (CFO) letter.* Under § 258.74(e)(2)(i) of today's rule, the owner or operator must submit a letter from the firm's CFO. The letter must demonstrate that the firm has complied with the criteria of the test. Specifically, the letter must list all cost estimates covered by a financial test and provide evidence demonstrating that the firm satisfies the financial criteria of the test including: (1) The bond rating or financial ratios, (2) the tangible net worth requirement, and (3) the domestic asset requirement. The proposed regulatory language for the CFO's letter was inconsistent with the proposed regulatory language in § 258.74(e)(1) regarding the financial test. The regulatory language inadvertently omitting a cross-reference to the domestic asset requirement. The preamble to the proposed rule clearly provides that the CFO letter would document that the firm satisfies all the criteria of the financial test including the domestic asset requirement. 59 FR 51525. The final language clarifies that the letter must provide evidence that the owner or operator meets all of the requirements of Sec. 258.74(e)(1)(i), (ii), and (iii).

b. *Accountant's Opinion.* Under § 258.74(e)(2)(i)(B), the Agency requires an owner or operator to place in the facility's operating record the opinion from the independent certified public accountant of the firm's financial statements for the latest completed fiscal year. EPA expects that the documentation of the independent accountant's opinion will include the audited financial statements. An unqualified opinion (i.e., a ''clean opinion'') from the accountant demonstrates that the firm has prepared its financial statements in accordance with generally accepted accounting principles. Generally, an adverse opinion, disclaimer of opinion, or any qualification in the opinion would automatically disqualify the owner or operator from using the corporate financial test. The one potential exception is that the State Director of an approved State may evaluate qualified opinions on a case-by-case basis, and accept such opinions if the matters which form the basis for the qualified opinion are insufficient to warrant disallowance of the test.

c. *Special Report From the Independent Certified Public Accountant.* Under § 258.74(e)(2)(i)(C), the third item to be placed in the operating record is a special report of the independent certified public accountant upon examination of the chief financial officer's letter. In this report, the accountant would confirm that the data used in the CFO letter to pass the financial ratio test were appropriately derived from the audited, year-end financial statements or any other audited financial statements filed with the SEC. This report would not be required if the CFO uses financial test figures directly from the audited year end financial statements, or any other audited financial statements filed with the SEC. However, this report is required if the CFO letter uses data that are derived from and are not identical to the data in the audited annual financial statements or other audited financial statements filed with the Securities and Exchange Commission (SEC).

EPA has partially revised the proposed CPA's report in light of public comments. The proposal had included a requirement that the CPA provide negative assurance that ''no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted.'' 51 FR 51535. This proposed requirement is inconsistent with current American Institute of Certified Public Accountants standards which direct auditors not to use the types of language included in the proposed regulations. Instead the new language specifies that the independent certified public accountant should report on the findings from an agreed upon procedures engagement. Additionally, the language in today's rule clarifies that the accountant's report is about information used to calculate the financial ratios. Information that is not a part of the audited financial statements, such as the company's bond rating, is not subject to this requirement.

For example, in computing the financial ratios in § 258.74(e)(1)(i)(B) or (C) owners and operators are required to recognize total liabilities, including those associated with ''post-retirement benefits other than pensions (OPEB).'' The Financial Accounting Standards Board (FASB) allows the use of two different methods when accounting for these liabilities in annual financial statements. FASB 106 allows employers the option of accounting for OPEB obligations in one year (immediate recognition) or over a consecutive number of years (delayed recognition). Since both the immediate and delayed recognition methods are allowed by FASB 106, EPA does not require owners and operators that are demonstrating they meet the requirements of the financial test to use the same accounting method for OPEB obligations that is used for annual SEC submission purposes. For example, the owner or operator may use the immediate recognition method in the financial statement prepared for the SEC, but the delayed recognition method in computing liabilities for the purpose of demonstrating RCRA financial assurance.

As reflected in today's rule, EPA does not believe a separate CPA statement is needed where the CFO simply takes figures directly from an audited financial statement. This is a straight forward process. On the other hand, where the CFO ''derives'' the figures—for example, by using different accounting procedures to determine OPEB liabilities—the process may require a high level of financial expertise. In these cases, EPA believes review by an independent auditor is appropriate.

Consistent with the policy to confirm the accuracy of the information from the audited financial statement where it is not readily discernible, § 258.74(e)(2)(i)(D) of today's rule also includes a requirement for a report from the independent certified public

accountant when an owner or operator proposes to meet the tangible net worth requirement on the basis of having recognized all of the environmental obligations covered by a financial test as liabilities in the audited financial statements. This requirement is necessary to ensure that these liabilities have in fact been recognized since this would be difficult for the State Director to ascertain. There is also a requirement that the report ensure that at least $10 million in tangible net worth remains after any guarantees have been extended.

d. Placement of Financial Test Documentation and Annual Updates in the Operating Record. Section 258.74(e)(2)(ii) of today's rule requires firms to place the financial test documentation items specified in § 258.74(e)(2) in the operating record and notify the State Director that these items are there. Because the financial condition of firms can change over time, under § 258.74(e)(2)(iii), firms are required to update annually all financial test documentation, including each of the items described above, within 90 days of the close of the firm's fiscal year. The State Director is, however, allowed to extend this time by up to 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. This could occur in the case of a privately held firm which does not receive audited financial reports as early as publicly held firms. Under § 258.74(e)(2)(iv), the owner or operator is not required to submit the items specified in § 258.74(e)(2) when he substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or is released from the requirements of this section in accordance with § 258.71(b), § 258.72(b), or § 258.73(b).

e. *Alternate Financial Assurance.* Under § 258.74(e)(2)(v), if a firm can no longer meet the terms of the financial test, the owner or operator must notify the State Director and obtain alternative financial assurance within 120 days of the close of the firm's fiscal year. The alternative financial assurance selected by the owner or operator would have to meet the terms of this section and the required submissions for that assurance would have to be placed in the facility's operating record. The owner or operator would have to notify the State Director within 120 days of the close of the fiscal year that he no longer meets the criteria of the financial test and that alternate financial assurance has been obtained.

f. *Current Financial Test Documentation.* Under § 258.74(e)(2)(vi), the Director of an approved State may, based on a reasonable belief that the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, require the owner or operator to provide current financial test documentation. Although the Agency anticipates this provision will not be used often, it can be important in situations where the financial condition of the owner or operator comes into question. The State Director should have the flexibility to require the owner or operator to provide current financial test documents if information arises that raises questions about the financial conditions of the owner or operator. For example, an owner or operator may be forced into financial distress by a large, well-publicized liability judgment. In such cases and other appropriate situations, the State Director should be able to investigate the owner's or operator's change in financial condition, and require the owner or operator to demonstrate that it still meets the financial test.

B. Corporate Guarantee (§ 258.74(g))

As in the proposal, this rule allows owners and operators to comply with financial responsibility requirements for MSWLFs using a guarantee provided by another private firm (the guarantor). The language of the final rule includes clarifications of some of the deadlines in the proposal. Under such a guarantee, the guarantor promises to pay for or carry out closure, post-closure care, or corrective action activities on behalf of the owner or operator of a MSWLF if the owner or operator fails to do so. Guarantees, like other third-party mechanisms, such as letters of credit or surety bonds, ensure that a third party is obligated to cover the costs of closure, post-closure care, or corrective action in the event that the owner or operator goes bankrupt or fails to conduct the required activities. At the same time, a guarantee is an attractive compliance option for owners and operators because guarantees are generally much less expensive than other third-party mechanisms.

Section 258.74(g)(1) of the rule allows three types of qualified guarantors: (1) The parent corporation or principal shareholder of the owner or operator (i.e., a corporate parent or grandparent), (2) a firm whose parent company is also the parent company of the owner or operator (a corporate sibling), and (3) other related and non-related firms with a ''substantial business relationship'' with the owner or operator (including subsidiaries of the owner or operator). Guarantors also must meet the conditions of the corporate financial test.

To comply with the requirements of the corporate guarantee, the owner or operator must place in the facility operating record a certified copy of the guarantee contract and copies of all of the financial test documentation that is required of the guarantor as specified in the corporate financial test requirements. Pursuant to § 258.74(g)(3), the terms of the guarantee contract must specify that, if the owner or operator fails to perform closure, post-closure care, or corrective action in accordance with the requirements of part 258, the guarantor will either: (1) Carry out those activities or pay the costs of having them conducted by a third party (performance guarantee), or (2) fund a trust to pay the costs of the activities (payment guarantee). The required documentation must be placed in the operating record, in the case of closure and post-closure care, prior to the initial receipt of waste or before the effective date of the financial assurance requirements (see existing § 258.70), whichever is later, or in the case of corrective action, no later than 120 days following selection of a corrective action remedy. (See § 258.74(g)(2).) The financial test documentation from the guarantor must be updated annually, in accordance with the requirements of the corporate financial test.

The documentation required of the guarantor is the same as that required of a corporate financial test user with either one or two additional requirements depending upon the relationship of the guarantor to the owner or operator. First, for all users of the guarantee, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. Second, in cases where the guarantor is not a corporate parent, grandparent, or sibling, the letter from the chief financial officer also must address the ''substantial business relationship'' that exists between the owner or operator and the guarantor. In particular, if the guarantor is a firm with ''a substantial business relationship,'' the letter must describe the relationship and the consideration received from the owner or operator in exchange for the guarantee, which are necessary to ensure that the contract is valid and enforceable.

For purposes of its hazardous waste financial assurance regulations, EPA has defined ''substantial business relationship'' in 40 CFR 264.141(h) as ''the extent of a business relationship necessary under applicable State law to make a guarantee contract issued

incident to that relationship valid and enforceable.'' However, as noted in the preamble to that regulation, ''No single legal definition exists of what constitutes a business relationship between two firms that would justify upholding a guarantee between them. Furthermore, such a determination would depend upon the application of the laws of the States of the involved parties.'' (53 FR 33942). The responsibility for demonstrating that the guarantee contract is valid and enforceable rests with the guarantor. (See § 258.74(g)(1)).

This regulation requires that guarantors agree to remain bound under this guarantee for so long as the owner or operator must comply with the applicable financial assurance requirements of Subpart G of part 258, except that guarantors may initiate cancellation of the guarantee by sending notice to the State Director and to the owner or operator. The rule provides that such cancellation cannot become effective earlier than 120 days after receipt of such notice by both the State Director and the owner or operator. (See § 258.74(g)(3)(ii).)

If notice of cancellation is given, the regulations require the owner or operator to, within 90 days following receipt of the cancellation notice by the owner or operator and the State Director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days of the notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the State Director. (See § 258.74(g)(3)(iii).)

Under § 258.74(g)(4), if the corporate guarantor no longer meets the requirements of the financial test, the owner or operator must, within 90 days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, place evidence of the alternate assurance in the facility operating record, and notify the State Director. These requirements are designed to avoid potential lapses in financial assurance.

C. Calculation of Obligations

EPA currently allows financial tests as mechanisms to demonstrate financial assurance for environmental obligations under several programs. These include hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, petroleum underground storage tanks under 40 CFR part 280, UIC Class I hazardous waste injection wells under 40 CFR part 144, and PCB commercial storage facilities under 40 CFR part 761. Requiring that the owner or operator include all of the costs it is assuring through a financial test when it calculates its obligations prevents an owner or operator from using the same assets to assure different obligations under different programs. The Agency believes this is vital to assure the effectiveness of the financial test and assure that assets are available for all of the environmental obligations covered by the test. Thus, consistent with Agency policy, § 258.74(e)(3) of today's rule requires a firm using a financial test for its MSWLF obligations also to include those costs covered by a financial test under other Agency programs when it calculates assured costs.

D. Combining the Financial Test and Corporate Guarantee With Other Mechanisms

When EPA promulgated the financial test and guarantee for municipal owners and operators of municipal solid waste landfills (61 FR 60328, November 27, 1996), EPA inadvertently omitted the provisions allowing private owners and operators to use the financial test and corporate guarantee in combination with other mechanisms in 40 CFR 258.74(k). Thus, EPA is clarifying in today's rule that an owner or operator may use the financial test or guarantee and another payment mechanism at a single facility, thereby realizing greater flexibility and cost savings from this regulation. EPA is promulgating a change to 258.74(k) that allows the use of the financial test and corporate guarantee with the other mechanisms. In promulgating this change to add the omitted cross-references, EPA is repeating the entire paragraph solely for the convenience of the reader.

E. Use of Alternative Mechanisms After the Effective Date

Consistent with the other existing financial assurance mechanisms at 40 CFR 258.74, the language of today's regulations includes a requirement that the financial test or guarantee must be effective before the initial receipt of waste or before the effective date of the basic requirement that owners or operators of MSWLF units have financial assurance, whichever is later, in the case of closure or post-closure care. See § 258.74(e)(2)(ii) and § 258.74(g)(2). The effective date of the financial assurance requirement for owners or operators of MSWLF units is established under existing 40 CFR 258.70. For most, but not all, MSWLFs the effective date is April 9, 1997. The provisions establishing the compliance deadlines are to ensure that an existing MSWLF has financial assurance mechanisms in place by the effective date of the regulations and that a new MSWLF has the mechanisms in place by the first receipt of waste. In the case of corrective action, today's regulations for the financial test and guarantee, like the existing regulations for the other mechanisms, provides that the mechanism has to be in place no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 40 CFR 258.58. See § 258.74(e)(2)(ii) and § 258.74(g)(2).

The requirement that financial assurance be in place by a specific deadline does not in any way preclude an owner or operator from subsequently switching to another eligible mechanism. The operative requirement is for an owner or operator of an MSWLF unit to have an eligible financial assurance mechanism in place by the specific compliance deadlines that ensures that the funds necessary to meet the costs of closure, post-closure care, and corrective action will be available whenever they are needed, and to provide such coverage continuously until the owner or operator is released from financial assurance requirements. See existing 40 CFR 258.71(b), 258.72(b), and 258.73(c). An owner or operator in compliance with the financial assurance requirement using one eligible mechanism may switch to another eligible mechanism so long as the relevant requirements are met.

The Agency's regulations expressly allow an owner or operator to substitute one mechanism for another in this manner. The regulations establishing specific Federal mechanisms (40 CFR 258.74(a)–(h)) each allow the termination of a financial assurance mechanism when a substitute mechanism has been established (or, of course, if the owner or operator is no longer subject to the requirement to have financial assurance). Today's rules establish a similar substitution provision for the financial test and the guarantee. See § 258.74(e)(2)(iv) and § 258.74(g)(5). Thus, the Federal regulations would allow an owner or

operator complying with the financial assurance requirements through, for example, a letter of credit mechanism to switch to a financial test or vice versa, assuming the owner or operator qualifies for the mechanisms and the mechanisms are available under the approved State program. In this way, the Federal regulations give owners and operators of MSWLF units broad flexibility in the mechanisms used to satisfy the financial assurance requirement.

In switching mechanisms, the owner or operator would be subject to the applicable requirements of the new mechanism. For example, each of the Federal mechanisms contains a specific requirement to provide notice to the State Director, to maintain particular documentation, and/or satisfy other requirements. For an owner or operator of an MSWLF unit to meet the operative requirement that it have an eligible financial assurance mechanism in place by the specific compliance deadlines that ensures that the funds necessary to meet the costs of closure, post-closure care, and corrective action will be available whenever they are needed, then the owner or operator must comply with all of the relevant requirements upon switching mechanisms and may not allow lapses in financial assurance compliance. Additionally, owners and operators should be aware that a State may have more stringent requirements in place and may not allow all of the mechanisms provided for under the Federal rules.

IV. National Solid Wastes Management Association (NSWMA) Petition

A. Discussion of the Petition

On February 16, 1990, NSWMA submitted a rulemaking petition to the Agency requesting that EPA revise various financial assurance requirements. The Agency noted in the preamble to the proposal of this rule (59 FR 51523) that it had addressed many of the concerns raised in the petition in a July 1, 1991 proposed rule (56 FR 30201) and a September 16, 1992 final rule (57 FR 42832). Among the changes in the September 16, 1992 final rule was the adoption of provisions allowing for guarantees by non-parent firms for Subtitle C closure and post-closure care financial responsibility requirements. This request had been part of the NSWMA petition. In adopting similar provisions in this rulemaking, EPA is extending this flexibility to private owners and operators of MSWLFs. Local governments already have the flexibility to provide guarantees for MSWLFs under 40 CFR 258.74(h). See 61 FR 60328.

In addition, when EPA promulgated the final rule on the local government financial test for MSWLFs, it established regulations (40 CFR 258.75) giving State Directors the discretion to allow the discounting of MSWLF costs (61 FR 60328). As noted in the Background Section of today's preamble, this discretion applies to both municipal and private owners and operators of MSWLFs. Discounting of costs was another issue in the petition. While today's final rule addresses the use of a financial test and guarantee for financial assurance for MSWLF closure, post-closure care, and, as necessary, corrective action costs, and one more issue (an alternative financial test) raised in this petition, it does not represent the full Agency response to NSWMA's petition. The Agency continues to examine the concerns raised in the NSWMA petition.

B. The Meridian Test

As part of its rulemaking petition, NSWMA submitted an analysis performed by Meridian Corporation which proposed an alternative to EPA's current Subtitle C financial test. In the docket to the proposal for today's rule, EPA included a copy of an analysis performed for EPA that evaluated the test in comparison with the one that EPA proposed to amend the current Subtitle C test. EPA also on September 27, 1996 published a Notice of Data Availability (61 FR 50787) providing additional opportunity to comment on this analysis. A summary of the comments EPA received on this notice and the Agency's response appear in the Response to Comments and Summary of Issues section of this preamble.

In evaluating public comments for the Subtitle D rule adopted today, EPA further examined the Meridian Test using the cost estimates and financial information which it had developed to assess other alternative tests. See Analysis of Subtitle D Financial Tests in Response to Public Comments, which is available in the public docket. This analysis allowed EPA to assess the Meridian Test along with several other potential tests on a consistent basis using updated information, and to determine whether the Meridian Test would be better than the financial test EPA had proposed for private owners and operators of MSWLFs.

The analysis showed that the Meridian Test would have public costs approximately 2.36 to 3.45 times larger than those of the test that EPA proposed and is issuing in final form in this rulemaking. (The range in estimates result from varying specifications of the net worth requirements and interpretations of how firms are accounting for financial responsibility requirements in their financial statements.) As discussed in the preamble to the proposed amendments to the financial test for Subtitle C owners and operators (56 FR 30201 at page 30210), selection of a test that results in lower public costs is consistent with the Agency's position that it is equitable to make the party that creates the environmental obligation pay for it.

In its petition, NSWMA noted that the current Subtitle C financial test is less available to some firms to cover large obligations than other alternative tests. In the Analysis of Subtitle D Financial Tests in Response to Public Comments, EPA found that the use of the financial test being adopted in this rulemaking will allow private MSWLF owners and operators to cover 71.67% of their obligations. Further, EPA's analysis estimates that the private cost of the Meridian Test could range from 42.1% to 122% of the private cost of EPA's test. Again, this range depends upon the net worth specification and interpretations of how firms are accounting for financial responsibility requirements in their financial statements. However, in all the permutations analyzed, the sums of the public and private costs for the Meridian Test are higher than for the test being promulgated in this rule. This provides an additional basis for rejecting the Meridian Test beyond EPA's concern with its higher public cost. EPA believes that this analysis further substantiates its decision not to establish a financial test for private owners or operators of MSWLFs based upon the Meridian Test, and that the Agency has adopted a test for MSWLF obligations that reasonably addresses the concerns in the NSWMA petition about a test that would be more available than the Subtitle C financial test.

V. State Program Approval

Section 4005(c) of RCRA provides that each State adopt and implement a ''permit program or other system of prior approval and conditions'' adequate to assure that each facility that may receive household hazardous waste will comply with the revised MSWLF criteria. EPA is to ''determine whether each State has developed an adequate program'' pursuant to section 4005(c).

The Agency has procedures for reviewing revised applications for State program adequacy determinations should a State revise its permit program in light of today's final rules. A State

that receives permit program approval prior to the promulgation of today's rule and later elects to adopt the financial test and guarantee mechanisms should work with its respective Regional EPA office as it proceeds to make changes to its permit program.

As stated above, today's proposal would amend part 258 by adding options for corporations to use when demonstrating financial assurance for the costs of closure, post-closure care, and clean-up of known releases. EPA generally encourages States to adopt the additional flexibility for financial assurance mechanisms reflected in these final rules. EPA believes that these mechanisms will result in significant cost savings for owners and operators subject to financial assurance requirements. At the same time, EPA believes the financial assurance mechanisms adopted today effectively delineate eligible owners and operators who have a low probability of business failure from owners and operators that are unable to meet their obligations. By restricting the financial test and guarantee to viable firms, the mechanisms in these final rule avoid undue public costs.

However, States may choose to regulate more stringently than the minimum federal requirements in Part 258. Thus, States may decline to adopt options under this final rule that they deem undesirable. States that have previously adopted Federally-approved financial assurance requirements without this financial test and guarantee are not required to take any action and may elect to retain only their current options. Further, such States may choose to establish their own financial assurance programs so long as they meet the minimum financial assurance requirements in the Federal performance criteria detailed in the October 9, 1991 final rule. (See existing § 258.74(i))

The criteria that the financial mechanism would need to meet are the following: (1) Ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed; (2) ensure that funds will be available in a timely fashion when needed; (3) guarantee the availability of the required amount of coverage from the effective date of the requirements under 40 CFR 258, Subpart G, or prior to the initial receipt of waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58, until the owner or operator is released from financial assurance requirements under Secs. 258.71, 258.72 and 258.73; and (4) be legally valid, binding, and enforceable under State and Federal law. *See generally* 40 CFR 258.74(l).

As a result, while the Agency has developed financial tests that are designed to meet these performance criteria (the financial test promulgated in this **Federal Register** and the financial test promulgated November 27, 1996 (61 FR 60328)), approved States could develop their own financial tests that could be used by owners and operators of MSWLFs within those States for demonstrating financial responsibility so long as those tests are determined to have met the performance criteria.

Similarly, States initially seeking approval for the financial assurance portion of their MSWLF program would have flexibility in adopting Federally-promulgated standards. The State can simply adopt the Federal standard or could adopt a mechanism that meets the Federal performance criteria described above. In the latter case, the mechanism could be used by owners or operators for demonstrating financial responsibility for their MSWLF obligations in that State.

Owners and operators who can use the options in today's rule under Federally-approved State programs would be required to maintain appropriate documentation of the mechanism in the facility's operating record. They would not be required by Federal rules to submit that documentation to the State, but only to notify the State Director that the required items have been placed in the operating record. However, the Federal rules establish several minimum recordkeeping and reporting requirements. For example, owners and operators using the financial test or guarantee would also be required to update all required financial test information on an annual basis, and retain this information in their operating records. In addition, an owner or operator (or guarantor) that becomes unable to meet the financial test criteria would be required to notify the State Director and establish alternate financial assurance within specified deadlines. Finally, in order to cancel a guarantee, the guarantor would have to notify both the State Director and the owner or operator at least 120 days prior to cancellation.

However, EPA cautions owners and operators that wish to use the options in the Federal program that they should examine the options available under State law. If the State's rules do not include the option that the owner or operator wishes to use, the owner or operator would run the risk of being out of compliance with State law.

In unapproved States, if State law did not preclude the use of options established today (either because it did not include any financial assurance requirements, included only a general requirement that left the choice of mechanism to the discretion of the owner or operator, or included mechanisms like those promulgated today), an owner or operator would be able to use the corporate test or guarantee described in today's rule to satisfy both State and Federal law.

The Agency believes that most Tribes have an accounting structure similar or identical to those of most local governments. Tribes should be eligible to use the local government financial test to demonstrate financial responsibility for their obligations under the MSWLF criteria to the extent that they meet the provisions of that test. However, the Agency recognizes that there may be Tribes and local government units that use an accounting system similar or identical to those of most corporations. Those Tribes and local government units would be eligible to use the corporate financial test established today to demonstrate financial responsibility for their MSWLF obligations to the extent that they meet the relevant requirements.

VI. Response to Comments and Summary of Issues

EPA has endeavored to provide ample opportunity to comment on its October 12, 1994 proposed rule. EPA held a 60-day public comment period on its proposed rule. 59 FR 51523. On September 27, 1996, EPA also published a Notice of Data Availability for a document inadvertently omitted from the docket, and provided additional opportunity to comment on the information. 61 FR 50787.

EPA received thirty comments (twenty-eight on the original proposal and two on the supplemental notice of data availability) on the proposed rule with the largest number of comments from insurance companies and sureties. The States of Texas, Nebraska, Michigan, and California also commented along with several corporations and associations. EPA has considered and responded to all significant comments in adopting its final rule. The Docket contains a compilation of the comments and EPA's responses. See ''Comment Response Document for Financial Test and Corporate Guarantee for Private Owners or Operators of Municipal Solid Waste

Landfill Facilities, October 12, 1994 Proposed Rule.''

Many of the comments raised issues that were outgrowths of topics that had been dealt with in the original proposal, but that benefitted from additional scrutiny in light of public comment. In performing this analysis EPA studied particular topics in additional depth and prepared issue papers on these topics which were used in responding to the public comments. For example, several commenters questioned the appropriateness of the $10 million tangible net worth requirement in the financial test. The proposal had included this requirement, and the analysis of public and private costs had examined the financial information for firms with more than $10 million in net worth. To assess the potential impact of changing this requirement, EPA assembled financial information from Dun and Bradstreet on additional owners and operators of MSWLFs, i.e. those with both more and less than $10 million in net worth. EPA then applied the same methodology it had used in support of the proposal to determine the public and private costs of alternative specifications of the financial test (including an alternative test that had been developed by Meridian Research Incorporated for the National Solid Wastes Management Association). The results of this analysis appear in the docket in a report entitled ''Analysis of Subtitle D Financial Tests in Response to Public Comments.''

The next sections summarize the major comments and the Agency's response.

A. Minimum Tangible Net Worth

Several commenters raised a variety of issues with the requirement in the proposed rule that firms have a minimum tangible net worth of $10 million plus the amount of obligations being covered by the financial test. One commenter suggested that the requirement was too little, particularly in the case of firms owning multiple landfills. Some comments agreed with its reasonableness. Others characterized the requirement as overly strict because it limited the availability of the test to larger firms.

In evaluating comments on the impact of the net worth requirement, EPA acquired updated financial information on the MSWLF industry. This information allowed EPA to examine further the net worth requirements, and determine whether the financial ratios were appropriate. The additional analysis included firms with net worth lower than $10 million. This analysis relied upon financial information which EPA acquired from Dun and Bradstreet, bond ratings from Standard and Poor's and Moody's, and EPA cost estimates which had supported the proposal analysis, and on which EPA had received no comments. A full description of the data base and the analysis appears in the memoranda entitled ''Description of Data Used in the Analysis of Subtitles C and D Financial Tests,'' and ''Analysis of Subtitle D Financial Tests in Response to Public Comments'' which are available in the public docket for this rulemaking.

As examined further below, EPA received comments that the proposed minimum net worth requirement creates a competitive disadvantage for and affects smaller firms. EPA emphasizes that today's rule does not impose new regulatory requirments on any firm but would allow owners and operators of MSWLFs additional flexibility in meeting the existing financial assurance requirements. The existing financial assurance requirements are to ensure that owners and operators of MSWLF units will have the funds available to meet the costs of closure, post-closure care, and corrective action whenever they are needed. The existing regulations meet that objective by establishing a number of third-party mechanisms, as well as performance criteria for additional State-approved mechanisms, that could be used by owners or operators in meeting the financial assurance requirement. Today's rulemaking adds a financial test and a corporate guarantee as two additional, less costly mechanisms that could be used by eligible private owners or operators of MSWLFs to demonstrate financial responsibility under the existing regulatory requirements. Entities able to use these mechanisms would be allowed to demonstrate financial responsibility without incurring the costs of obtaining a third-party mechanism.

No small or large entity will be required to use the alternative mechanisms promulgated today. Further, as noted, States are not required to make these mechanisms available under their programs. However, all entities in States that allow these new mechanisms and that choose to make use of, and meet the relevant criteria for, the financial test or guarantee established by this rule will benefit from the savings that these alternative mechanisms offer. While presumably both small or large entities will choose to use one of the new mechanisms only if it is in their interest to do so, requirements apply to any firm ultimately seeking to use one of the alternative mechanisms. EPA has endeavored to reasonably minimize the requirements associated with the mechanisms and thereby promote private cost savings while at the same time limiting the public costs.

As noted above, the basic purpose of the financial assurance program is to ensure that corporate owners and operators of MSWLF units are financially able to meet their obligations for closure, post-closure care, and corrective action. The existing financial assurance requirements apply to all such owners and operators, regardless of their size, in view of the potential harm and public costs that can result if an owner or operator is unable to meet its responsibility for closure, post-closure care, and corrective action at a MSWLF unit. Today's rule adds a financial test that allows a less costly means of providing financial assurance to entities financially capable of covering the costs themselves, through self-insurance, or relying on a guarantor that meets the financial test. The basis for the financial test is necessarily tied to the financial capability of the MSWLF or guarantor. Later in the discussions of the public comments sections entitled Tangible Net Worth Does Not Have to Be Liquid and Bond Rating, EPA also examined the question of whether the financial test would create an uneven playing field and did not find that the savings potentially available from this rule would be sufficient to create a significant competitive advantage.

After examining the minimum net worth requirement in light of the public comments on the proposal, EPA concluded that the increase in public costs under a financial test that did not include this requirement would not justify the anticipated reduction in private costs. As noted in the section entitled Public Costs of Lower Net Worth Levels, there is an equity issue involving higher public costs. Higher public costs mean that costs that should have been borne by the owner or operator (and customers) of a landfill that goes bankrupt are unfairly transferred to society in general. Because of this fairness issue and other factors discussed below, EPA determined that it was appropriate to retain this component of the financial test even though the test EPA is establishing has a higher calculated sum of public and private costs than would have been the case had EPA selected this test with a lower minimum tangible net worth requirement. The test EPA is establishing has lower public costs and provides substantial private savings. Of course, if contradictory new information

is presented to EPA in the future, EPA will further examine this issue.

Further, EPA's existing rules for financial assurance under 40 CFR part 258, subpart G provide States with broad flexibility to fashion financial assurance mechanisms so long as the mechanisms meet the performance criteria at 40 CFR 258.74(l). Thus, in implementing the existing regulations, States can make specific judgments about additional flexibility in meeting the financial assurance requirements. Such judgments are more difficult in a general national rulemaking, where broader delineations must be made. Indeed, EPA encourages States to make reasoned judgments in implementing the performance criteria in the existing rules, including providing flexibility for firms in circumstances that States determine to reasonably balance the public and private cost of financial assurance. However, in this national rulemaking, EPA was faced with the choice of allowing eligible firms the potential regulatory flexibility of a financial test or foregoing the regulatory flexibility of a financial test altogether because it may not benefit all firms in the MSWLF industry. Faced with that choice, EPA determined it was reasonable to provide the regulatory flexibility for qualifying firms.

1. Minimum Tangible Net Worth Requirement Is Too Low

Comment: The minimum tangible net worth requirement is inadequate for firms with multiple facilities.

Response: The concern that the net worth minimum is inadequate for firms with multiple facilities overlooks the interrelationships between the net worth requirement and the other components of the test. For a firm to use the financial test, it can only assure an amount that is up to $10 million less than its net worth, unless it has already recognized all of its environmental obligations as liabilities. Firms with multiple landfills will have high levels of assets which must be matched by the sum of their liabilities and net worth. It is an axiom of accounting that assets minus liabilities equals net worth. An example will illustrate why a firm with more landfills and a correspondingly higher level of assets will also have a higher level of net worth than the $10 million minimum. Suppose a firm had multiple landfills such that it had $200 million in assets. For it to meet the liability to net worth (leverage) ratio of 1.5 under the financial test adopted in today's rule, it would have liabilities of less than $120 million and a net worth of at least $80 million which is substantially in excess of the $10 million minimum.

If, on the other hand, the hypothetical firm with $200 million in assets attempted to pass the financial test with only $20 million in net worth and $180 million in liabilities through the profitability ratio alternative of the test, it would have to show substantial profitability to succeed. In the profitability ratio alternative of the test, the ratio of the sum of net income plus depreciation, depletion, and amortization, minus $10 million, to total liabilities must be greater than 0.10. With $180 million in liabilities, the hypothetical firm would have to have a cash flow (the sum of net income plus depreciation, depletion, and amortization) of more than $28 million, even after paying interest on a substantial debt. This amounts to over 140% of net worth, and would be difficult to achieve. Furthermore, the additive requirement restricts the amount that could be covered through the financial test. For firms that have not recognized all of their environmental obligations as liabilities, the additive requirement restricts the amount that can be covered to $10 million less than their net worth. In this particular example, the firm would be able to cover $10 million in environmental obligations which is much less than the $28 million in net income plus depreciation, depletion and amortization necessary to utilize the profitability ratio under the test. Like the leverage ratio, the profitability ratio of the test favors firms with relatively low debt ratios, and correspondingly high net worth ratios. Additional information on this point appears in Issue Paper, Recent Consolidation and Acquisitions in the Solid Waste Industry, which is available in the public docket.

Bond rating agencies also favor firms with relatively low debt levels, and tend to grant more favorable ratings to firms with large net worth. Thus, under the bond rating alternative as well as the financial ratio alternatives, firms with several operations and large assets would have to have substantially more than the $10 million minimum net worth to utilize the financial test. For example, EPA's analysis estimated that the two largest firms expected to be able to use the financial test have MSWLF financial assurance obligations which are approximately $1.7 and $1.4 billion, respectively. Their corresponding net worth are $5.3 and $2.8 billion, figures substantially higher than the $10 million minimum net worth requirement.

The additive requirement (tangible net worth of $10 million plus the amount being assured), limits the amount of environmental obligations that a firm can assure when it has passed the financial test. For the firms in EPA's analysis with the third and fourth largest number of landfills, EPA's estimate of their closure and post closure financial assurance obligations exceeds their net worth. The additive requirement means that these firms may need to provide a third party instrument for some of their obligations.

2. The $10 Million Net Worth Requirement Is Too Restrictive

Comment: Several commenters objected to the $10 million in tangible net worth requirement as being overly strict and restricting the test to larger firms.

Response: In analyzing these comments EPA considered several factors including the value of the obligations that could potentially be assured by the test, how these obligations are reflected in the firms' financial statements, the accuracy of the financial test at lower net worth levels, and the increase in costs that could be borne by the public if a firm that uses the financial test would go bankrupt and be unable to fulfill its obligations. Based upon analyses of these factors, EPA has decided to retain the $10 million in net worth requirement for the test being promulgated today.

a. *The Size of Closure Obligations.* The net worth of a firm equals the value of its assets minus the value of its liabilities. As provided in 40 CFR 264.141, ''liabilities'' mean ''probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.'' EPA estimated in the analysis supporting the proposal that closure and post-closure obligations for MSWLFs range from $5.1 million (for a landfill with less than 275 tons per day) to $24 million for a landfill of more than 1125 tons per day. EPA received no public comments on the accuracy of these estimates, and so in the additional analysis supporting this notice merely updated them for inflation so that they would be in 1995 dollars like the financial information on the firms. This led to estimates ranging from $5.5 million to $26.1 million. (See the memorandum entitled ''Analysis of Subtitle D Financial Tests in Response to Public Comments.'') These costs represent substantial liabilities that are largely paid at the end of the landfill's life when there would be no revenue from tipping fees. Therefore it is

important to ensure that adequate provisions have been made for their recognition and payment.

These estimates can represent several multiples of a firm's liabilities (and net worth). These cost estimates combined with the financial information on firms with less than $10 million in net worth show that firms with relatively small net worth can accrue relatively large liabilities for closure and post-closure obligations. Under such a circumstance a firm that would have to undertake closure would be forced into bankruptcy (negative net worth) by closure.

b. *Recognition of Closure Obligations.* The financial analysis of firms with net worth between $1 million and $10 million show that these environmental obligations may not be universally recognized. When EPA examined the liabilities, net worth and estimated financial assurance amounts for forty firms with net worth between $1 and $10 million, it found that many of these firms had estimated financial assurance obligations that exceeded their net worth (thirty-seven) and their reported liabilities (thirty-five). In the instances of firms with financial assurance obligations that exceed their liabilities, this strongly implies that they are not recognizing these obligations as liabilities, particularly because liabilities also include money owed to creditors such as banks. This inconsistent reporting of landfill closure obligations has been reported by the Financial Accounting Standards Board (See, for example, pages 1 and 2 *Exposure Draft, Proposed Statement of Financial Accounting Standards, Accounting for Certain Liabilities Related to Closure or Removal of Long-Lived Assets*, No. 158–B, February 7, 1996, Financial Accounting Standards Board).

Firms that do not recognize their closure and post-closure care obligations as liabilities also may be overstating their ability to pass a financial test if they had to recognize their environmental obligations as liabilities. This arises because both financial test ratios utilize liabilities as a factor and require that the ratio meet a particular threshold (e.g. total liabilities divided by net worth must be less than 1.5). A higher amount of recorded liabilities for the same net worth or cash flow can make it more difficult for a firm to qualify for the financial test.

EPA is interested in having more uniformity in the reporting of financial assurance obligations. EPA is concerned that the absence of a minimum net worth requirement may have the undesirable effect of favoring firms that do not record their environmental obligations as liabilities. The provision of the rule that requires a firm to have at least $10 million in tangible net worth over the amount of environmental obligations being covered ensures that firms that have not recognized their obligations as liabilities will still have adequate net worth to fulfill their obligations.

If a firm has already recognized all of its environmental obligations as liabilities, it could demonstrate less ability to cover them through the financial test than if it had not recognized them as liabilities. EPA received comments that the additive requirement would have an impact on small owners or operators and effectively required a higher coverage ratio for them. To address these concerns, and to assist smaller owners or operators who have already recognized their environmental obligations as liabilities, EPA is establishing a special provision. Under this provision, a firm that has recognized all of its MSWLF closure, post closure care, or corrective action liabilities under 40 CFR 258.71, 258.72 and 285.73, obligations associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265 can utilize the financial test if it meets the other requirements of the test, receives the approval of the State Director, and still maintains a tangible net worth of at least $10 million plus the amount of any guarantees it has undertaken that have not been recognized as liabilities. See § 258.74(e)(1)(ii)(B). This addition of any guarantees is necessary because EPA does not expect that a guarantee extended by a corporation will appear on that company's financial statement until it is drawn upon and is recorded as a liability. The Agency believes that the additional flexibility allowed by this provision creates an incentives for owners or operators to fully recognize their environmental obligations in their audited financial statements.

For an owner or operator to qualify for this alternative, it will be necessary for the letter from the chief financial officer to include a report from the independent certified public accountant verifying that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reporteed, and that the net worth of the firm is at least $10 million plus the amount of any guarantees provided. See § 258.74(e)(2)(i)(D).

EPA recognizes that its treatment in this rule of environmental obligations that have already been recognized as liabilities differs from the treatment in the hazardous waste financial test in 40 CFR 264.151(f) and in the proposed amendments to those rules (56 FR 30201, July 1, 1991). In the current hazardous waste rules and the proposed amendments, closure and post closure care obligations which have already been recognized as liabilities can be deducted from the liabilities and added back to net worth for purposes of calculating the financial test. This adjustment provision was incorporated into the regulations ''in order not to penalize those firms that do include these costs in their liabilities'' (47 FR 15037, April 7, 1982). The proposal for today's rule did not include a similar adjustment provision, nor did the Agency receive comments suggesting incorporating such a provision. The proposal was consistent with the research in the Background Document which found a high availability of the test without incorporating an adjustment of liabilities or net worth as allowed by the current Subtitle C regulations. This finding was supported in the analysis associated with the public comments which found that the financial test would be available to cover approximately 72% of obligations even in the absence of the adjustment.

EPA does not have information on the extent to which companies have recognized all of their environmental obligations as liabilities. However, in its analysis of alternative tests, EPA examined a test designated as Test 58–10 that required the same bond ratings and financial ratios as the final rule, but would allow a firm with at least $10 million in tangible net worth that passed the requirements to cover any amount of environmental obligation with the financial test. Conceptually, the results from this test provide an upper bound estimate of approximately 82% for the maximum percent of obligations that could be covered with the adjustment if allowed by the State Director.

EPA believes that substantial progress has been made since the issuance of the 1982 hazardous waste financial assurance regulations in the recognition of environmental obligations as liabilities. Further, the rationale for allowing this adjustment was based upon fairness to firms who had recognized these obligations as liabilities, rather than a belief by EPA that these obligations should not be treated as liabilities. The Agency

continues to consider environmental obligations for closure, post-closure care, and corrective action as meeting the definition of liabilities as ''probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.'' (40 CFR 264.141(f)) As more firms recognize these obligations as liabilities, the basis for granting an adjustment to the liability and net worth measures in financial statements because of fairness has diminished, while their recognition as liabilities has become more accepted in the financial community. Thus, there is less of a need to allow an adjustment of liabilities and net worth in the calculation of the financial ratios.

This final rule allows those firms who have already recognized all of their environmental obligations as liabilities in their financial statements and who pass the financial test to assure for a potentially higher amount of obligations than would otherwise be allowed. EPA believes that this approach has preserved fairness while maintaining the notion of these environmental obligations as liabilities, and reduced the administrative burden of adjusting figures on the balance sheets. EPA will continue to assess the utility of the adjustment provision proposed for 264.151(f), and may determine that it is appropriate to promulgate a final Subtitle C financial test regulation that would take a similar approach to that used in this regulation.

c. *Accuracy of the Test at Lower Net Worth Levels.* EPA also examined whether its financial test would operate as well for firms with less than $10 million in net worth. Practically, no financial test can perfectly discriminate between firms that should be allowed to use the financial test and, therefore, not have to pay the cost of a third party mechanism, and firms that will go bankrupt and so should have to use a third party instrument. As a test becomes less stringent so that it becomes more available (such as by reducing the net worth requirement), it carries a higher risk that firms will qualify for the test that will enter bankruptcy. The worse the test is at screening out firms that will enter bankruptcy, the higher its misprediction rate. Moreover, since a test will not be perfect at screening out firms that will enter bankruptcy, a test that allows more obligations to be covered with a financial test will have a higher dollar amount of misprediction. EPA's analysis assessed the misprediction of the various tests and the attendant public costs. These public costs are the costs to the public sector of paying for financial assurance obligations for firms that pass the test but later go bankrupt without funding their obligations. This analysis revealed that the financial test had a 66% higher misprediction rate (1.067%) when applied to firms with less than $10 million in net worth than to firms with more than $10 million (0.644% to 0.233%) (See Issue Paper, Relevant Risk Factors to Consider in a Financial Test, which is available in the public docket). This means that without the $10 million net worth requirement, the test would not be as good at screening out firms that will enter bankruptcy at the lower net worth levels.

d. *Public Costs of Lower Net Worth Levels.* The higher misprediction rate for the test with a lower net worth requirement leads to higher public costs. Since these public costs are the costs to the public sector of paying for financial assurance obligations for firms that pass the test and later go bankrupt without fulfilling their obligations, an increase in public costs represents a departure from the Agency's ''polluters pay'' philosophy. Higher public costs in this instance would mean that costs that should have been borne by the owner or operator (or the landfill's customers) were transferred to society in general. This means that the customers of landfills that do not go bankrupt unfairly subsidize the customers of landfills that did not provide the funds for proper closure and post-closure care. This subsidy is through government expenditures for closure and post-closure care of the bankrupt landfills. EPA estimates that reducing the minimum net worth requirement for the financial test from $10 million to $1 million would increase the public cost of the financial test from $11.7 million to $13.2 million annually. This would have represented a 13% increase in public costs. In light of the substantial closure costs involved compared to the net worth of firms with less than $10 million in net worth, the reduced ability of the test to screen out firms that will go bankrupt, and the increased public cost of reducing the net worth requirement, EPA has declined to change this requirement. However, as discussed above, in light of concerns about impacts on smaller owners and operators, EPA has established a provision that would allow firms that have recognized all of their environmental obligations as liabilities additional flexibility in meeting the minimum net worth requirement, subject to the approval of the State Director.

3. Allow Firms to Include Closure and Post Closure Funds as Part of Net Worth

Comment: One company suggested that EPA allow any funded liability such as Closure/Post-Closure Trust Funds to be added to tangible net worth when calculating the size requirement.

Response: The financial test provides a mechanism that companies may use to demonstrate financial responsibility for closure, post-closure and, if necessary, corrective action obligations. The obligations covered by the financial test are those for which the company has not already provided financial assurance through a third party mechanism. Under the commenter's suggestion, funds in a trust for closure costs not covered by the financial test would be added to tangible net worth. EPA has historically deferred judgments on accounting matters to generally accepted accounting principles (See, for example, 40 CFR 264.141(f)). In this instance as well, EPA defers to the application of generally accepted accounting principles to determine the assets, liabilities and resultant net worth of the company. If the application of generally accepted accounting principles determines that the trust funds are assets of the company, then they can be counted against the tangible net worth to the extent allowed by the recognition of the company's liabilities.

Furthermore, the information on firms' financial statements which EPA used to assess the financial tests for the proposed and this rulemaking were based upon the application of generally accepted accounting principles. EPA used the information based upon generally accepted accounting principles to determine the public and private costs of the financial test. EPA does not have information on how a test would operate based upon some other system of financial measurement. Therefore EPA has declined to specify particular additions to net worth for purposes of the financial test, but would interpret the tangible net worth requirement to be determined consistent with generally accepted accounting principles.

4. The Net Worth Requirement Reduces the Market for Sureties

Comment: Other commenters objected to the net worth requirement as unnecessary because it would allow the financially stronger companies with greater net worth to utilize the financial test and thereby remove these companies from the market for sureties and other third party instruments.

Response: The financial test allows those companies with the lowest

probability of failure, and hence the least need for a third party financial responsibility instrument, to self insure. EPA estimates that the closure and post-closure obligations for private owners and operators total approximately $6.4 billion. The cost for private owners or operators to obtain third party mechanisms, such as letters of credit or surety bonds, to assure these obligations is estimated at approximately $123 million. With today's rule, EPA estimates that the private cost of third party mechanisms would be $45.6 million for obligations that cannot be covered by the financial test. This will provide savings to owners and operators of MSWLFs of approximately $77 million annually.

The effect of this rule may be to reduce the market for certain types of third party financial responsibility instruments, but it does not eliminate the market which would still total approximately $45.6 million annually. This rule does not eliminate any of the third party instruments as options for a firm to use to comply with the regulations. In addition to sureties, the allowable instruments include trust funds, irrevocable standby letters of credit, insurance, or state-approved mechanisms. Therefore, even if sureties or insurers were to decide not to provide financial assurance (an outcome which EPA does not expect), owners or operators would still have mechanisms available for demonstrating financial assurance. EPA notes that the types of instruments available for demonstrating financial assurance for MSWLFs are similar to those for Subtitle C facilities, and other financial responsibility programs which help to sustain this market. It is EPA's experience that sureties provide financial assurance mechanisms for Subtitle C facilities, even though many Subtitle C facilities are able to utilize the financial test.

EPA also examined whether the availability of the financial test would cause some form of adverse selection whereby only ''bad risk'' firms would form the market for third party instruments and these ''bad risk'' firms would be unable to obtain a third party guarantee. EPA's financial test maximizes the availability of the test to strong firms while minimizing the number of firms allowed to use the test that later go bankrupt without covering their environmental obligations. Since no test can perfectly discriminate between financially viable firms and nonviable firms, a number of viable, financially sound firms will be unable to use the test. The financial test is a conservative predictor of long term viability and therefore a particular firm's inability to cover all or some of its obligations using the financial test does not necessarily mean that it poses an unreasonable risk for third-party guarantors of financial responsibility such as the insurance or surety industry.

Even though a firm does not pass the financial test, it remains a viable candidate for third party instruments. While such firms are not candidates for EPA's financial test, banks provide direct lending to these types of firms. Banks, for example, have the flexibility to require collateral or charge a higher interest rate to control their risk. A surety company also has ways to control its risk such as filing with a state a rating plan that decreases its rates for firms that meet certain financial strength requirements and charges higher rates to higher risk firms. For additional information on these points, please see the Issue Paper in the docket entitled Effects of the Financial Test on the Surety Industry.

5. Tangible Net Worth Does Not Have To Be Liquid

Comment: One commenter on the net worth requirement objected to the selection of tangible net worth because there was not a requirement that the assets had to be liquid, it can fluctuate dramatically so that a firm could qualify and then not qualify for the financial test, and it would create an uneven playing field with smaller owners and operators being unable to utilize the financial test.

Response: The proposed financial test did not include a requirement that owners or operators maintain a certain amount of liquid assets in addition to the other requirements such as minimum tangible net worth. The proposal relied upon two financial ratios, a leverage ratio of less than 1.5 based on the ratio of total liabilities to net worth, and a profitability ratio of greater than 0.10 based on the ratio of the sum of net income plus depreciation, depletion, and amortization, minus $10 million, to total liabilities. The leverage ratio and profitability ratios are highly effective in discriminating between viable and bankrupt firms, but liquidity ratios which measure firms' liquid assets are not as effective in discriminating between viable and bankrupt firms. In fact, liquidity ratios can be misleading as firms in financial distress often liquidate fixed assets to generate cash to continue operations. (For more information on these points, please see Chapter 4 of the Background Document, Revisions to the Subtitle C Financial Tests for Closure, Post-Closure Care and Liability Coverage, which was prepared in support of the July 1, 1991 proposed changes to the Subtitle C financial test 56 FR 30201).

While the market valuation of a corporation's stock can vary significantly, its net worth is a much more stable measure. Since net worth reflects the accounting value of the corporation's assets minus its liabilities, it will not have the volatility associated with the value of the company's stock that varies with the stock market's expectations of future dividends and interest rates. While it is possible that a firm could have a tangible net worth value close to the $10 million threshold, it seems unlikely that many would have a value close to this requirement and have losses and profits that would alternately bring them above or below the threshold. Also, the requirement for at least $10 million in net worth is reasonable in light of the substantial ($5.5 million for a 275 ton per day MSWLF to $26 million for a 1125 ton per day MSWLF) closure and post-closure costs for a MSWLF (See ''Analysis of Subtitle D Financial Tests in Response to Public Comments''), and other factors analyzed above.

Further, the use of the financial test does not create a significant competitive advantage. The cost of providing financial assurance through an alternative third party mechanism such as a letter of credit is approximately $1.35 to $0.94 per ton for 375 to 1500 ton per day landfills. This is not a large enough price difference to change substantially the competitive structure in many markets. Other factors are more important to competition within the industry. For example, transportation costs for transfer facilities can amount to $4.30 per ton, and an additional $4.30 to $7.50 per ton for every 100 miles for rail and truck hauling respectively. (For further information please see Issue Paper, Market Effects of the Financial Test.) Further, the alternative of maintaining the status quo would withhold greater flexibility for financially viable firms. EPA believes it is reasonable to extend regulatory flexibility to firms expected to be viable.

6. MSWLFs Should Have a Lower Minimum Net Worth Requirement Than Subtitle C Facilities

Comment: One commenter suggested that since MSWLFs pose less risk than hazardous waste activities, that the use of the same $10 million threshold for entry into the industry is much more appropriate for Subtitle C than for firms operating only in the MSWLF industry, and that EPA should choose a lower threshold for the municipal solid waste sector.

Response: This comment confuses the criteria for the financial test, which is one of the mechanisms for demonstrating financial responsibility, with EPA's broader requirement that companies demonstrate financial responsibility. For municipal solid waste landfills, EPA has long established financial assurance requirements at 40 CFR 258.71 for closure, 258.72 for post-closure care, and 258.73 for corrective action. These provisions already made a distinction between the financial responsibility requirements for MSWLFs and those for hazardous waste operations. Under 40 CFR 264.147 and 265.147 hazardous waste operations must maintain liability coverage for accidental occurrences, while EPA has deferred a corresponding requirement for MSWLFs (56 FR 51105). The fundamental requirements to maintain financial responsibility are not the subject of this rulemaking. Rather, this rule provides additional flexibility for private owners and operators to meet the financial responsibility requirements.

The demonstration of financial assurance can be through several mechanisms, including a financial test. There is no net worth requirement for firms to enter either the hazardous or municipal waste industry. The $10 million in net worth is only to qualify for the use of the financial test.

7. EPA's Proposed Net Worth Requirement Was Not the Best Investigated

Comment: Two commenters preferred a test with a net worth requirement at least equal to the amount being assured to EPA's proposal of at least $10 million plus the amount being assured. They noted that the two tests had the same public and private costs, and argued that this meant that the test EPA proposed was therefore not preferable to the other.

Response: The preamble to the proposed MSWLF financial test includes calculated private and public costs for three candidate tests which incorporate the same leverage and cash flow ratios or bond rating requirements, but differ in the amount of obligations that could be covered through the financial test. Test 562, which is the test that EPA proposed, allows a firm to cover obligation up to $10 million less than its net worth (i.e. the test requires a net worth at least $10 million greater than the amount being assured). Test 130 allows a firm with at least $10 million in net worth to cover obligations up to the amount of its net worth. Test 58 allows a firm with $10 million in net worth to cover any amount of obligations. Based upon the commenters' suggestion that EPA's proposal had wrongly rejected Test 130 in favor of Test 562, EPA reviewed all three tests using updated financial information from Dun and Bradstreet, Moody's and Standard & Poor's. This analysis appears in the docket under the title ''Analysis of Subtitle D Financial Tests in Response to Public Comments.''

Under the proposed test (identified as number 562–10 in the report), an owner or operator who meets the other test criteria can assure obligations as long as the firm's tangible net worth is at least $10 million larger than the obligation. This test has a private cost of $45.6 million and a public cost of $11.7 million for a total cost of $57.3 million. The private cost of the test represents the cost for owners or operators to provide a third party instrument (e.g. letter of credit) to demonstrate financial responsibility under the existing financial assurance requirements. The public costs represent the costs to the public sector of paying for financial assurance obligations (e.g. closure or post-closure costs) for firms that pass the test but later go bankrupt without funding their obligations. The cost figures for this and the other tests analyzed differ from the costs in the preamble to the proposal largely because the analysis performed in response to public comments included firms with less than $10 million in net worth. Therefore the private cost figures include not only the cost of securing a third party instrument for firms with more than $10 million in net worth, but also for firms with less than $10 million in net worth.

Under Test 130–10 the owner or operator with at least $10 million in net worth and meeting the other criteria of the test can assure obligations up to the net worth of the firm. For this test the private cost is lower at $43.2 million because a larger value of obligations can be assured. However, the public cost is higher than for Test 562 at $12.2 million for a total cost of $55.4 million.

Under Test 58–10 the owner or operator who passes the other criteria of the test could assure any amount of obligations so long as the company has a tangible net worth of at least $10 million. This test has a private cost of $32.9 million and a public cost of $14.1 million for a total cost of $46.9 million.

These cost estimates demonstrate that there are differences between Test 562, Test 130 and Test 58. Most notably, Test 562 has the lowest public costs of the three tests. EPA is concerned that allowing a company to assure environmental obligations up to the amount of its net worth, or any amount of obligations, could mean that these obligations could, of themselves, cause a firm's bankruptcy and so in the final rule adopted a regulation based upon the criteria in Test 562. However, the commenter's suggestion that EPA re-examine the relative merits of the tests led EPA to re-consider the appropriateness of Test 562 for firms that fully recognize environmental obligations as liabilities in financial statements. The provisions of today's rule which allow a firm that has recognized all of its environmental obligations as liabilities to assure them as long as it has at least $10 million in net worth (plus the amount of any guarantees not recognized on its financial statements) and meets the other criteria of the financial test means that these provisions with these important qualifications, are conceptually similar to the requirements of Test 58. As such these companies can assure a higher level of obligations than they could under Test 130. Therefore EPA believes that this provision potentially provides a larger amount of regulatory relief than the adoption of Test 130 since Test 58 has a lower private cost.

8. The Tangible Net Worth Requirement Is Appropriate

In addition to comments objecting to the proposed tangible net worth requirement, EPA also received comments supporting it. These comments came from the Texas Natural Resources Conservation Commission, and Browning-Ferris Industries. In addition, the State of Nebraska commented that they had no objection to the proposed financial test.

B. Bond Ratings

Comment: One commenter suggested that the proposed financial test accept ratings by Duff & Phelps, and Fitch in addition to bond ratings by Moody's, and Standard & Poor's.

Response: Both Standard & Poor's, and Moody's publish information on how often bonds with various ratings have defaulted. This information confirms that bonds with investment grade ratings from these rating agencies have low default rates. The default rate information allows EPA to determine the risk associated with accepting particular bond ratings and to compare the default rates of bonds with various ratings given by the rating agencies. While Duff & Phelps and Fitch also provide bond ratings, they do not publish information on default rates by bond rating and so EPA is unable to assess the default rate for bonds rated by Duff & Phelps and Fitch. When EPA

promulgated the financial test for Subtitle C facilities on April 7, 1982 (47 FR 15036), it limited the use of bond ratings to the services that could provide information on the performance of their bond ratings over time. Today's rule is consistent with that policy.

Long after the close of the public comment period and as this rule was undergoing Agency review, EPA received information from Fitch Investor Services about default rates. EPA has requested additional and clarifying information about Fitch's default rates to help it evaluate this issue. EPA decided not to delay the promulgation of this rule while it is reviewing this issue. Instead, EPA consider this information and other information it obtains on the accuracy of bond ratings by services other than Standard & Poor's, and Moody's in the forthcoming promulgation of changes to the Subtitle C financial test. A copy of the information from Fitch and EPA's follow-up correspondence is available in the public docket for the rulemaking proposing revisions to the Subtitle C financial test. (56 FR 30201)

Comment: While supporting the use of bond ratings, one commenter noted that the proposed rule and preamble make no distinction relative to the seniority of the debt.

Response: The commenter correctly noted that the only qualification on the bond to be rated was that it be the most recent. As noted above, an analysis of bond ratings showed that bond ratings have been a good indicator of firm defaults. Part of the basis of the bond ratings is the assurances for timely repayment for the bond. A bond which is collateralized or insured will, in general, carry a higher rating than otherwise.

The bond rating in the financial test is an indicator of the certainty that environmental obligations being assured will be fulfilled. A bond may be of investment grade only because it is collateralized or insured. Because the financial test does not require establishment of collateral or a third party assurance, allowing a rating on an insured or collateralized bond could easily overestimate the certainty of the fulfillment of environmental obligations which are not collateralized or otherwise guaranteed. Since an investment rating on the most recent bond would not require a firm to pass any of the financial ratios, a firm using, for example, the investment rating on a bond that it had been forced to collateralize, would inappropriately pass the financial test.

Therefore, in light of this public comment, EPA has decided to base the bond rating alternative of the financial test on the rating of the firm's senior debt. This rating is readily available, regularly monitored by the rating agency, and avoids the issues of whether a particular bond has been collateralized or insured. Because the rating of the firm's senior debt reflects the rating agency's judgement of the overall financial management of the firm, it is a better indication of the financial health of the firm.

Comment: One commenter noted that bond ratings while an indicator of an owner/operator's financial standing, do not guarantee that funds will be available for closure and post closure care. As evidenced by recent events involving highly rated entities, bond ratings are not infallible, and often times can fluctuate rapidly.

Response: While not infallible, bond ratings are excellent predictors of whether bonds will be repaid with more highly rated bonds having lower default rates than bonds with lower ratings. Overall, the annual assurance risk for investment grade bonds is 0.126% for Moody's and 0.175% for Standard and Poor's. (See Issue Paper, Issues Relating to the Bond Rating Alternative of the Corporate Financial Test in the public docket.)

Because bond rating organizations regularly re-evaluate the financial soundness of the firms, bond ratings change with the financial circumstances of the firm. These changes in ratings are widely available through financial news sources and the Internet and so would be available to a State more quickly than the update based upon annual financial statements. EPA considers this re-evaluation of the firm's financial outlook another advantage of the bond rating alternative which, combined with the low default rate on investment grade bonds, supports the use of bond ratings in the financial test. Thus, EPA believes that bond ratings together with the other elements of the financial test are sound reliable predictors of an owner or operator's financial viability.

Rating agencies can revise the ratings of bonds up or down for several reasons which will be of interest to investors because of the effect on the price of the bonds. (Higher grade bonds demand a higher price than lower rated bonds.) In this process, rating agencies frequently will place an issue on a ''watch list'' to signify that its rating may change. However, most of these changes will be within a ratings category (e.g. A to A−) or from one investment grade rating to another (BBB to A) and be inconsequential for purposes of the financial test. Studies from rating agencies demonstrate that the vast majority of entities with investment grade ratings retain them. For example, Standard & Poor's reports that from 1981 to 1996 an average of 93.87% of entities with investments grade ratings at the beginning of the year had an investment grade rating at the end of the year. (See Table 9 of ''Ratings Performance 1996, Stability and Transition,'' Standard & Poor's, February 1997.) These data, and similar results from Moody's (See Exhibit 6 of ''Moody's Rating Migration and Credit Quality Correlation, 1920–1996,'' Moody's, July 1997), do not substantiate the commenter's claim that ratings often times can fluctuate rapidly. (These studies do, however, provide additional substantiation for EPA's use of the rating on the firm's senior unsecured debt as it is these ratings that form the basis for default rate studies by Standard & Poor's, and Moody's.) For the financial test, a change in rating only matters if it moves a firm from investment grade to speculative. The test does not distinguish between investment grade ratings. Therefore, while bond ratings do fluctuate, the minor fluctuations will not often affect a firm's ability to use the financial test.

Comment: The bond rating alternative would be of advantage to only three firms in the industry. This is a further anticompetitive advantage for large firms. The proposed rules create a significant competitive advantage for larger firms and will lead to less competition and higher prices.

Response: The use of bond ratings provides a financial test that is highly reliable as shown by the low default rate on investment grade bonds. In addition to the bond rating alternative, EPA has allowed the use of financial ratios which also are accurate predictors of the financial viability of a firm. These two mechanisms provide additional flexibility for firms subject to the financial responsibility requirements which already provide several mechanisms by which a company can demonstrate financial assurance.

While the commenter notes that only three firms in the industry would meet the bond rating alternative, this appears to be an incomplete picture. EPA obtained bond ratings from Standard & Poor's, and Moody's for firms in the MSWLF industry. At the time of this data gathering, EPA was able to obtain ratings for nine firms (with their ratings in the parentheses): Allied Waste Industries, Inc. (BB−, B2); Browning-Ferris Industries (A, Aa2); Laidlaw, Inc. (BBB+, Baa2); Mid-American Waste Systems (Ca1); Norcal Waste Systems, Inc. (BB−, B3); Sanifill, Inc. (BB+); United Waste Systems, Inc. (BB+); USA

Waste Services, Inc. (BBB−), and WMX Technologies (A+, A1). Four of these firms had investment grade ratings and so could have qualified to use the financial test if they met the other qualifications, and four others had BB ratings, just below investment grade. If the financial situation for the four firms with BB ratings were to improve such that the rating agencies were to upgrade their ratings, they would also have been eligible to utilize the financial test. Were EPA not to adopt the bond rating alternative, this compliance option would be foreclosed to potentially more than the three firms suggested by the commenter.

EPA notes that some of these firms no longer exist independently, or have decided to sell their operations to other firms. For example, Allied Waste Industries has acquired the solid waste operations of Laidlaw, and USA Waste Services has acquired the operations of Mid-American Waste Systems, Sanifill, and United Waste Systems. These sales have occurred between the time that EPA gathered this information and the publication of this rule. This consolidation has occurred in the absence of a corporate financial test, and indicates that factors beyond this rule are influencing the number of competitors in the industry. As the ownership patterns for municipal solid waste companies has changed substantially in the past, it is difficult to predict future directions. Eliminating the regulatory option of a bond rating alternative could preclude a future company from being able to utilize the financial test even if the analyses by bond rating agencies would show the company to be a good credit risk. Conversely, because bond ratings have been excellent predictors of bankruptcy, eliminating the bond rating alternative would deny to State Directors an effective test of companies' financial health. In response to this and other similar comments, the Agency further examined whether the financial test would change the relative competitiveness of large versus small operations. (See Issue Paper, Market Effects of the Financial Test). The principal findings of that investigation were that even if a large landfill were to use a third-party financial assurance mechanism rather than the financial test, it would still face lower costs per ton than a smaller landfill. Further, for both small or large landfills third-party financial assurance costs constitute only two to three percent of total costs.

Also, in the context of a host of other factors affecting tipping fees, including location, fixed costs, and pricing strategies, financial assurance costs are not likely to play a key role in competition within the MSWLF industry. In particular, costs to transport waste to a larger facility may more than offset potentially lower tipping fees that the larger landfill might charge as a result of using the financial test to demonstrate financial assurance. Therefore, EPA does not believe that the financial assurance test will be a significant factor in influencing the competitive nature of the industry.

C. Financial Ratios

Comment: One commenter agreed with the use of bond ratings but disagreed with the use of a financial test involving only a single ratio. The commenter instead recommended at least three ratios to determine a firm's changes in cash flow, revenues and expenditures, and equity. The commenter stated that the use of three ratios would also be consistent with the three ratios required in the local government test and other Agency programs.

Response: EPA's financial test adopted in today's rulemaking action includes two alternative ratios that consider either the ratio of total liabilities to net worth (§ 258.74(e)(1)(i)(B)), or the ratio of net income plus depreciation, depletion, and amortization, minus $10 million, to total liabilities (§ 258.74(e)(1)(i)(C)). The analysis supporting the proposal indicated that the two alternative ratios do very well at allowing firms to qualify for the test while distinguishing between firms which will and will not go bankrupt. (This information can be found in Section VI of the preamble to the proposed rule (59 FR 51523)). Additional analyses, conducted in response to this and other comments confirmed these findings as shown by Exhibit 6 of the Analysis of Subtitle D Financial Tests in Response to Public Comments. This exhibit shows the high availability of the test (71.67% of obligations) and its low public cost ($11.7 million). By comparison, the current Subtitle C test, which uses three ratios, has a much lower availability (24.44% of obligations). While the analysis of the current Subtitle C test shows a low public cost of $4.3 million, this happens because of its low availability rather than because it is a better predictor of bankruptcy than the test being adopted today. A comparison of the misprediction of a test (M(f)) divided by its availability (A(f)) shows that the test EPA selected (Test 562–10) has a better ratio (0.362) than the current Subtitle C test (0.380). These ratios can also be taken from a single year's financial information.

To design a test as recommended by this commenter would involve a substantial degree of complexity, and with the variables cited (changes in cash flow, and revenue and expenditures) could also lack reliability and have a degree of redundancy. For example, measuring changes in cash flow could discriminate against a firm which previously had an exceptionally profitable year, but had only normal profitability in the most recent year. This occurs because the change in cash flow would be negative, even though the profitability was still acceptable. Measurements of changes in revenues and expenditures will incorporate much of the information in changes in cash flow and so may yield little additional information. Further, the variables that the commenter suggests do not directly include measures of debt which EPA's research found are crucial in the prediction of bankruptcy.

While the current Subtitle C financial test incorporates three ratios, they involve different measures than suggested by the commenter. Moreover, EPA has proposed changes to the Subtitle C test (56 FR 30201) involving the same ratios, and the same number of ratios, used in this test for corporate owners and operators of MSWLFs. Consistency with the current Subtitle C financial test is not a sufficient reason to include another test when the test being promulgated here has shown that it does a very good job of distinguishing between firms that will remain viable and those that could go bankrupt. Furthermore, while the commenter noted that EPA's proposed local government financial test incorporated three ratios, the final test has two ratios (61 FR 60328).

Comment: The profitability ratio incorporates a $10 million subtraction from net cash flow in the comparison with liabilities. One commenter recommended that the numerator instead subtract the lesser of $10 million or a percentage of the costs being assured.

Response: In light of public comments on its proposal, EPA has examined several alternative specifications of the financial tests. The results of these examinations appear in the report entitled ''Analysis of Subtitle D Financial Tests in Response to Public Comments'' that is included in the public docket of this rulemaking. The alternative specifications included fractional specifications (e.g. 0.66 times the financial assurance amount and identified as Test 94–10) of the amount of the liabilities compared with cash flow, a lower decrement from cash flow (e.g. Cash flow—$5 million and

identified as Test 544–10), no decrement from cash flow (Test 76–10) and different ratio requirements (e.g. 0.05 rather than 0.1 and identified as Test 127–10). None of these alternative specifications were as good overall at minimizing both the public and private costs as the tests that EPA had included in its proposed rule. Therefore, EPA is promulgating the same cash flow requirement in this rule as that proposed.

D. Domestic Assets

Comment: Several commenters supported the proposed domestic asset requirement, but others recommended alternatives such as a six times multiple, or assets in the United States equal to the minimum size requirement, or domestic assets equal to 50% to 90% of total assets.

Response: EPA has decided to promulgate the domestic asset requirement as proposed. While commenters offered alternative approaches for a domestic asset requirement, many of these were based upon the use of a number from, for instance, EPA's current Subtitle C financial test (e.g. the six times multiple which EPA proposed to change in the October 12, 1994 notice for this rulemaking, see 59 FR 51527), or a separate component of the proposal (e.g. the minimum tangible net worth) with little basis for adoption as part of the domestic asset requirement. These approaches would have the effect of potentially reducing the availability of the financial test, and thereby increasing private costs, without a demonstration of how they would make the test less available to firms which would enter bankruptcy, and thereby decrease the public costs. The information that the commenters provided did not demonstrate that requiring more domestic assets would lead to a reduced risk of bankruptcy, which is already a small probability. Both firms that only have domestic assets and firms that also have foreign assets must meet the same ratios or bond ratings to qualify for the test. The effect of a more stringent domestic asset requirement would have limited the amount of obligations that a firm qualifying for the financial test can cover. This would potentially have increased the private cost of the test, but not have made the test a better predictor of bankruptcy. Only in the unlikely event of a bankruptcy would this more stringent requirement have had an impact by having reduced the amount of costs covered. EPA believes that requiring domestic assets equal to the amount assured represents a balanced approach.

Comment: One commenter noted that none of the domestic assets had to be liquid and recommended that EPA should require that some or all of the domestic assets should be liquid and readily accessible.

Response: While liquid assets are more readily accessible than fixed assets, EPA is not establishing a requirement that a certain amount of domestic assets be liquid. During the normal course of business, firms can be expected to maintain a portion of assets in liquid form. However, liquidity can be a misleading predictor of bankruptcy. This arises because firms that are under financial distress tend to liquidate assets and thus appear more liquid as they move to bankruptcy. Further, if the underlying concern is that a foreign firm would withdraw from the US market and declare bankruptcy, a requirement for liquid assets, which can be readily transferred, would prove to be an ineffectual deterrent.

E. Recordkeeping and Reporting Requirements

Comment: One State noted that its program does not follow the self-implementing requirement of the test which allows the owner or operator to maintain the documentation as part of the operating record, but instead requires the submission of the original financial assurance documents.

Response: In developing its regulations for MSWLFs, EPA has adopted a self-implementing approach. However, EPA recognizes that some States may have different programs. This rule does not preclude a State from having more stringent requirements than EPA.

1. Qualified Accountant's Opinions

Comment: Some commenters suggested that the final rule disallow the use of the financial test automatically if there was a qualification to the accountant's opinion. These comments were based upon a concern that allowing the use of a qualified opinion without specifying the basis for that allowance could lead to inconsistent application by states or that states would have insufficient resources to consider these opinions. Others recommended that the rule provide narrower definitions of what would constitute something other than a clean opinion.

Response: The proposal and final rule provide that to be eligible to use the financial test, the owner or operator's financial statements must generally receive an unqualified opinion. However, the rule also allows the State Director the discretion of allowing a firm on a case-by-case basis to use the financial test if it has received a qualified opinion. The final rule provides that an adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance. See § 258.74(e)(2)(i)(B). However, this provision of the rule further provides that the Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director determines that the matters which form the basis for the qualification are insufficient to warrant a disallowance of the test. Part III of this preamble also explains that an unqualified opinion (i.e. a ''clean opinion'') from the accountant demonstrates that the firm has prepared its financial statements in accordance with generally accepted accounting principles. The Agency believes that, consistent with these standards, this is an appropriate area for a State Director to exercise judgment and does not see a need at this time to provide further national guidance on how to consider submissions which do not have unqualified opinions. A state that determines that reviewing financial statements that have received a qualified opinion would constitute an unreasonable resource burden would not have to adopt that provision of the rule. However, EPA will consider providing additional guidance if state implementation issues or other circumstances so warrant.

2. Special Report From the Independent Certified Public Accountant

Comment: The American Institute of Certified Public Accountants (AICPA) recommended that the regulations provide for a CPA to perform an agreed-upon procedures engagement in accordance with standards issued by AICPA to report his or her findings. This would replace the review level or examination level procedure called for in the proposal.

Response: Under the regulations the owner or operator does not need to provide a report from the CPA if the Chief Financial Officer uses financial test figures directly from the annual financial statements or any other audited financial statements or data provided to the Securities and Exchange Commission. In these cases, EPA does not see a need for a special report from the CPA.

Under EPA's proposed regulations, if the owner or operator used financial test data that were different from the audited financial statements or not taken directly from SEC filings, then the owner or operator had to provide a special report from the independent

certified public accountant stating that ''In connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted.'' 59 FR 51535. EPA agrees with the comment from AICPA that the special report required by the proposed rule was an inappropriate type of engagement.

In performing audits and other types of work, CPAs must follow certain professional standards. The AICPA's *Statement on Auditing Standards* no longer permits independent auditors to express negative assurance (i.e. ''No matter came to his attention which caused him to believe that the specified data should be adjusted.''). The current AICPA standards require the auditor to present the results of procedures performed in the form of findings, and explicitly disallow issuing ''negative assurance.'' Thus, the proposed regulatory language would have precluded an owner or operator who wanted to use adjusted data in the financial test from having that option.

If the owner or operator uses financial test figures that are not taken directly from the audited financial statements or SEC filings, then the owner or operator should include a report from the independent certified public accountant that is based upon an agreed-upon procedures engagement performed in accordance with AICPA standards. In an agreed-upon procedures engagement an accountant is engaged by a client to issue a report of findings based upon specific procedures performed on specific items of a financial statement. The final regulations require the report to describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences. See 258.74(e)(2)(i)(C).

F. Annual Updates

Comment: Commenters suggested allowing a minimum of 120 days for privately held firms (as opposed to publicly traded firms) to update their financial information because they are not considered major accounts and so frequently have their audits performed after publicly held firms.

Response: To address this comment, in the final rule, EPA has given State Directors the discretion to allow firms that can demonstrate that they cannot meet the annual requirement to acquire audited financial statements within 90 days of the close of the fiscal year up to an additional 45 days to demonstrate that they qualify. EPA believes that this can be particularly valuable to smaller firms that are not publicly traded and so may not have their audited financial statements prepared as quickly as larger firms.

G. Current Financial Test Documentation

Comment: Some commenters objected to the provision in 258.74(e)(2)(vi) that allows the State Director to request current financial test documentation when there is a reasonable belief that the owner or operator no longer meets the requirement of 258.74(e)(2).

Response: The Agency continues to believe that to promote and verify compliance it is important that State Directors may request additional information based upon a reasonable belief that the owner or operator may no longer meet the requirements of the financial test. As noted above and in the preamble to the proposed rule, the State Director may wish to request additional information in the event of a large liability judgment. Another example could be the reported downgrading of a firm's bonds so that the firm could no longer qualify by virtue of the bond rating alternative. While both of these occurrences can be appropriate circumstances for such a request, EPA does not consider this an exhaustive list. The final rule continues to use the criteria of ''reasonable belief.''

Comment: One commenter asserts that this requirement should be deleted as it is not in the Subtitle C rules, and Subtitle D facilities present less of a threat to human health and the environment.

Response: In fact, this requirement appears in the Subtitle C financial test regulations promulgated April 7, 1982 (47 FR 15032) (See, for example, existing 40 CFR 264.143(f)(7)). It is important in both the financial tests for the hazardous and the municipal waste programs that the State Director have the ability to ensure that firms qualifying for the financial test continue to demonstrate financial viability.

Comment: One comment suggested that EPA allow the use of internal financial statements based upon the most recently unaudited quarterly financial statements to respond to a request by the State Director for additional information.

Response: Section 258.74(e)(2)(vi) of the proposed rule would have required the owner operator ''to provide current financial test documentation as specified in paragraph (e)(2) of this section.'' This may have been interpreted as merely the transmission to the State Director of the types of documentation required to be maintained in the facility's operating record. EPA agrees with the commenter that the types of documentation may differ depending upon the nature of the State Director's concern. The final rule modifies this requirement to clarify that the State Director may require the documentation in paragraph (e)(2) or additional information. This is consistent with the general purpose of the requirement, to ensure the State Director can obtain the information necessary to verify whether the firm still meets the financial test. 59 FR 51526. This leaves to the State Director the discretion to require the appropriate level of information, as warranted by the circumstances.

H. Corporate Guarantee

Comment: Some commenters agreed with allowing the use of a corporate guarantee, while others objected to its inclusion as a mechanism because of concerns about the ability of States to implement such a regulation.

Response: The Agency continues to believe that a corporate guarantee, like other third party mechanisms such as letters of credit or surety bonds, can ensure that a third party is obligated to cover the costs of closure, post-closure care, or corrective action in the event that the owner or operator goes bankrupt or fails to conduct the required activities. States concerned with implementation of a corporate guarantee could decline to adopt this mechanism. Conversely, if a state chooses to revise its permit program in response to today's rule, the state should work with the respective EPA regional office as it proceeds to make these changes.

Comment: One State recommended not allowing the use of a corporate guarantee based upon a substantial business relationship because it would require a decision by the State's Attorney General on its ability to enforce against a guarantor.

Response: While the final rule allows the use of a guarantee by a firm with a substantial business relationship, States do not have to adopt this provision if, for example, a state believes it creates undesirable administrative or enforcement burdens. EPA notes that its regulations in the hazardous waste program already allow the use of a corporate guarantee by a firm with ''a substantial business relationship'' in demonstrating financial assurance in, for example, 40 CFR 264.143(f)(10) or 40 CFR 265.147(g). (See also 40 CFR 264.141(h) for a definition of ''substantial business relationship.'') EPA expects that the number of owners

or operators who would qualify to use this provision in the MSWLF criteria will be substantially smaller than for coverage in the Subtitle C program if for no other reason than the number of firms that could need a guarantee is less than the number of Subtitle C firms.

Comment: Another commenter suggested that limiting the use to firms with a substantial business relationship was too restrictive.

Response: Broadening the availability of the corporate guarantee to firms which do not have a substantial business relationship could affect the validity and enforceability of the guarantee. The scope of the corporate guarantee is the same as in the Subtitle C regulations that allow it for closure and post closure care liabilities (57 FR 42832). This rule was an extension to closure and post closure care liabilities of an earlier rulemaking allowing the guarantee for liability coverage by firms with a substantial business interest (53 FR 33938). In the preamble to the regulation establishing this mechanism for Subtitle C liability (53 FR 33942), EPA addressed whether a broader availability would be appropriate. The Agency determined that a substantial business relationship was necessary to ensure that the guarantee would be a valid and enforceable contract. ''EPA sought to ensure that a valid and enforceable contract was created. To this end, the Agency is requiring these firms to demonstrate a substantial business relationship with the owner or operator to ensure that the guarantee is a valid contract.'' As EPA noted in the preamble, ''A guarantee contract, by itself would be inadequate to demonstrate a substantial business relationship between two parties. However, an existing contract to supply goods or services, separate from the guarantee contract, could supply evidence of such a relationship. An example of such a relationship might be a contract for hazardous waste disposal between a generator and a disposal facility.'' The commenter provided no information on how to ensure that a guarantee between firms that do not have a substantial business relationship would be valid and enforceable, and therefore the Agency has insufficient basis for expanding the types of firms which can offer guarantees. To ensure the enforceability of the guarantee, EPA has retained the requirement that the guarantor have a substantial business relationship with the owner or operator.

Comment: One commenter suggested that the rule require a guarantor to provide alternate financial assurance 30 days after the guarantor discovers that it no longer meets the terms of the financial test. This would limit the exposure to only 30 days versus possibly a year or longer under the current proposed requirement.

Response: Under the commenter's suggestion, a guarantor would have thirty days once it discovers that it no longer meets the financial test to provide an alternative mechanism. Under the proposed regulation, the owner or operator must provide financial assurance within 90 days of the close of the guarantor's fiscal year if the guarantor no longer passes the financial test. If a guarantor no longer met the requirements of the financial test by, for example, losing an investment grade bond rating, the language in the proposal could have delayed when the owner or operator, or the guarantor, would have had to provide an alternative mechanism. In the rulemaking for the financial test for local governments who own or operate MSWLFs (61 FR 60328), the Agency faced similar issues. Today's rule adopts language consistent with the guarantee provision in the local government rule to reduce this potential delay. EPA has made this adjustment by essentially removing the words ''following the close of the guarantor's fiscal year'' in the proposal language. This clarifies that if a guarantor no longer meets the criteria of the financial test in the middle of a fiscal year, it would only have a total of 120 days to correct the problem. In the case of a guarantor whose year-end financial statement shows that the firm no longer meets the criteria of the financial test, the owner or operator would have 90 days from the close of the guarantor's fiscal year to obtain an alternative mechanism, and if the owner or operator does not obtain an alternative, then the guarantor must provide an alternative mechanism within the next 30 days.

However, while the commenter suggested a 30 day deadline for the guarantor to secure an alternative instrument, EPA believes that this is an overly aggressive deadline to establish as a general rule. Thus, EPA has retained the requirement that the owner or operator secure an instrument within 90 days, and if the owner or operator fails to do so, then the guarantor must secure an alternative instrument within 120 days. The 90 day deadline is consistent with the reporting deadlines of the rule for firms using the financial test mechanism, and the overall 120 day deadline for the guarantor is consistent with the 120 day deadline for an owner or operator who has failed the financial test to obtain an alternative mechanism.

I. Impacts on Third Party Financial Assurance Providers

Comment: Several commenters felt that by allowing the financial test, EPA would create a situation where the best risks would use the financial test and the highest risk owners or operators would be left to third party instruments. Sureties and insurance companies would be uninterested in making a market for the highest risks.

Response: The financial test will allow firms with the least chance of bankruptcy to utilize the test rather than purchase third party mechanisms. However, with this flexibility EPA expects that there will still be a demand for third party instruments such as can be provided by insurers and sureties. Further, in addition to the financial test and guarantee, and sureties and insurance, the financial assurance regulations allow firms to demonstrate financial responsibility with trust funds, letters of credit, and other state-approved mechanisms meeting the performance criteria. Thus, even if sureties or insurers were no longer to provide a mechanism, firms that could not qualify for the financial test would still have mechanisms available to provide financial assurance.

With the exception of the state-approved mechanisms, the RCRA Subtitle D mechanisms are substantially the same as those that are available for owners and operators of RCRA Subtitle C treatment, storage and disposal facilities. In Subtitle C, a financial test has been available since 1982, and firms demonstrate financial assurance with the full range of mechanisms including surety bonds and insurance. EPA believes that sureties and insurers will evaluate the market for their products and, as demand warrants, will continue to provide mechanisms, as they have in Subtitle C.

J. General Support of and Opposition to the Financial Test

Comments: States and others expressed both general support of and opposition to the financial test. One State noted that a financial test does not provide a State or EPA access to funds to complete closure, post-closure, or corrective action should the financially responsible corporation refuse to take the needed action. The recourse for the State or EPA would be a lengthy and costly lawsuit.

Response: While the commenter notes a circumstance in the financial responsibility test where the owner or operator has the financial wherewithal to comply but does not, this circumstance does not distinguish itself

from others where EPA or a State must undertake enforcement to obtain compliance. The likelihood of a financially sound firm nevertheless being reluctant to fulfill its obligations is not affected by today's final rule.

Third party mechanisms do, however, provide easier access to funds to fulfill financial obligations. A State may, therefore, decide that it has facilities with poor compliance histories that do not make them a good candidate for the financial test in order to eliminate potential delays in obtaining closure, post-closure or corrective action. Similarly, States may decide to forego altogether adoption of the financial tests.

K. First Party Trust

Comment: As an alternative to a financial test and guarantee, one commenter suggested allowing facility owners to establish funds under their administration and management which would be regulated by a State agency which would establish rules for deposits as a trust fund. Once closure was complete, the funds would revert to the owner.

Response: The current financial responsibility standards allow owners and operators to establish financial responsibility through a trust fund managed by a third party. Under the commenter's plan, the facility would maintain control over the funds so the protections inherent in having a third party manage the funds would be lost. This plan would also require States to regulate these funds and ensure their safety. Since the funds remain under the control of the owner or operator, there could be concern for their safety unless the firm was in excellent financial condition. The mechanism to ensure this excellent financial condition could look substantially like a financial test so it is unclear what has been gained over EPA's approach of directly allowing a financial test. EPA does not consider this approach superior to its current system of allowing trust funds and a financial test and corporate guarantee.

L. Comments on the Notice of Data Availability

EPA received two comments on the September 27, 1996 Notice of Data Availability (61 FR 50787) providing additional opportunity to comment on EPA's analysis of the Meridian Corporation's alternate financial test: one from a private operator of MSWLFs, and one from a State regulatory agency.

Comment: The private operator who commented on EPA's analysis of the Meridian Report did not believe that each state should determine which mechanism(s) and the terms of the mechanism that an owner or operator should be able to use, but that the owner or operator should be allowed to use one or any combination of the following historically approved mechanisms: standby trust agreement, surety bond, letter of credit, insurance, or the financial test and corporate guarantees for closure, post closure, and/or corrective action.

Response: The Subtitle D program is intended to be a state implemented program. The Agency has therefore left it to the states to determine what financial mechanism they will allow and specific details regarding those mechanisms. Indeed, a Congressional objective of RCRA is to establish a joint state and Federal partnership in administering the law. RCRA 6902(a)(7). Further, § 3009 of RCRA explicitly allows a State to establish requirements more stringent than the federal requirements. Accordingly, EPA believes it would be inappropriate for policy and legal reasons to preempt disparate state requirements for MSWLFs. At the same time, EPA has developed sound national regulations that it encourages states to adopt that help to promote national uniformity.

Comment: The State regulatory agency was not in support of the Meridian Test and generally supported the evaluation performed by ICF Incorporated for EPA. The commenter also expressed concerns about the following aspects of the Meridian Test. The commenter did not agree with capping the period for which financial assurance would be provided, assuming a three percent real interest rate when preparing cost estimates because closure estimates are usually underfunded, amending the requirements for financial assurance requirements for contingent events to allow combined coverage within and across programs, and amending the requirements for closure and post-closure care by allowing owners or operators of multiple facilities to demonstrate financial assurance for less than the total costs of all facilities.

Response: EPA's regulations do not allow for capping the period for which financial assurance would be provided for MSWLFs. EPA's MSWLF regulations at 40 CFR 258.71(a)(1) require that closure cost estimate must equal the cost of closing the largest area of all MSWLF units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive. 40 CFR 258.72(a) requires that post-closure cost estimates include annual and periodic costs over the entire post-closure care period, and 40 CFR 258.73(a) requires that the corrective action cost estimate account for the total cost of the corrective action activities for the entire corrective action period.

EPA agrees that estimates of environmental obligations can be underestimated and that discounting could exacerbate the attendant problems of insufficient funds being available. In the previously issued regulations allowing discounting, EPA requires that the State Director determine that cost estimates are complete and accurate and the owner or operator must submit a statement from a Registered Professional Engineer so stating. 61 FR 60339 (codified at 40 CFR 258.75(a). This requirement is designed to ensure that the cost estimates are not underestimated.

EPA agrees with the commenter that amending the requirements for contingent events is an irrelevant issue here because EPA has deferred any requirement for liability coverage as part of the MSWLF criteria.

Today's regulation requires that an owner or operator using the financial test to demonstrate financial assurance must have a tangible net worth that is greater than the sum of current closure, post-closure care, corrective action cost estimates, and any other environmental obligations covered by a financial test plus $10 million. The rules do, however, provide that if an owner or operator has already recognized the value of these obligations as liabilities on its financial statements, then the State Director may allow the firm to use the financial test if it meets the other criteria and has at least $10 million in net worth plus the amount of any guarantees extended by the firm that have not been recognized as liabilities on the financial statements. Thus, EPA's final rule requires that a firm must account for the value of all obligations covered by a financial test or guarantee.

VII. Miscellaneous

The discussion below addresses Executive Order 12866 (interagency regulatory review), the Unfunded Mandates Reform Act, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Paperwork Reduction Act, and Executive Order 12898 (Environmental Justice).

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review

and other requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Even though this rule provides owners and operators of MSWLFs with regulatory relief in meeting the existing requirements for financial assurance, EPA has submitted this rule to OMB for review because it raises important policy issues. The text of the draft final rule submitted to OMB, accompanying documents, and changes made in response to OMB suggestions or recommendations are in the public docket listed at the beginning of this notice.

EPA has evaluated the economic impact of the final rule. The Agency estimates that today's rule will save approximately $65.8 million annually. This figure is higher than the estimate for the proposed rule because it reflects additional analysis EPA performed in response to public comments, using updated financial and cost information. As explained above in the discussion of public comments, EPA's analysis for this final rule includes the costs for firms with less than $10 million in net worth. The underlying analysis, which followed the same methodology as the analysis supporting the proposed rule, can be found in the public docket for today's rule.

More specifically, EPA relied on updated (1995) financial information from Dun and Bradstreet on the firms in the MSWLF industry, bond rating information from Standard & Poor's, and Moody's, and augmented information on the financial characteristics of firms that entered bankruptcy. The economic impact analysis for this final rule estimated the availability of the financial test to firms in the MSWLF industry. If a firm was unable to cover any portion of its obligations, the analysis estimated the cost of the third party instruments that would be necessary. This inability to use the financial test could arise if, for example, the firm did not meet the ratio or bond rating requirements, or if its obligations were more than allowable under the tangible net worth requirement. The cost of the third party instruments was labeled the private cost of the test. It is the existing financial assurance requirements for owners and operators of MSWLFs under 40 CFR part 258 subpart G that imposes such costs, not the financial test being promulgated today.

As examined earlier in the notice, no financial test can perfectly discriminate between firms that should be allowed to use the financial test and therefore not have to pay the cost of a third party mechanism, and firms that will go bankrupt and so should have to use a third party instrument. Since a test will not be perfect at screening out firms that will enter bankruptcy, such costs are borne by the public. These public costs are the costs to the public sector of paying for financial assurance obligations, such a closure or post-closure costs, for firms that pass the test but later go bankrupt without funding their obligations. EPA analyzed the public costs associated with today's rulemaking. EPA's analysis assessed the misprediction of the various tests and the attendant public costs. As noted earlier in the notice, another relevant factor in designing a reasonable financial test is who should bear the costs, or how they should be reasonably allocated. In other words, there are public policy issues in deciding whether financial assurance costs should be borne by the owners or operators of MSWLFs (and their customers), or the public generally.

To calculate the cost savings of today's rule, EPA first estimated the cost for private owners or operators of MSWLFs of obtaining third party mechanisms (e.g., letters of credit) to assure their MSWLF obligations which the Agency estimates total approximately $7 billion for closure and post-closure obligations. EPA estimates that the cost of such financial assurance instruments under the existing financial assurance requirements would total $123.0 million annually. (See ''Analysis of Subtitle D Financial Tests in Response to Public Comments'' in the docket to this rule.)

There are a few potential adjustments to those costs. To the extent that owners or operators are able to use alternative mechanisms such as captive insurance that could be less expensive, this estimate of the cost of financial responsibility in the absence of this rule would be somewhat overstated. Also, on November 27, 1996 (61 FR 60328) EPA promulgated 40 CFR 258.75 that provided State Directors with the authority to allow the discounting of closure, post-closure and corrective action costs. EPA did not estimate the potential cost savings from that provision at that time, and does not have information regarding the extent to which State Directors have provided this allowance. However, to the extent that State Directors have provided that allowance to privately owned or operated MSWLFs, this allowance could lead to a relatively small overstatement of the savings associated with this rule. For more information on the changes in costs potentially associated with discounting, please see ''Analysis of Subtitle D Financial Tests in Response to Public Comments'' in the docket.

As described earlier, in the analysis for this rule EPA has evaluated the private and public costs and savings associated with a number of regulatory alternatives. The regulatory alternative adopted in today's final rule is estimated to result in an annual savings of approximately $65.8 million or more, which puts it at the forefront in cost savings among the regulatory alternatives. Under the alternative adopted in today's final rule, an owner or operator could assure obligations so long as the firm's tangible net worth is at least $10 million larger than the obligation. This test had a private cost of $45.6 million annually and a public cost of $11.7 million annually for a total annual cost of $57.3 million. Subtracting the total cost from the cost of the existing requirement without a test ($123.0 million) gives a savings of $65.8 million annually.

Further, as noted earlier, EPA was concerned that this alternative could discriminate against firms which had already recognized all of their environmental obligations as liabilities on their audited financial statements. Therefore, EPA has given to State Directors the ability to allow firms that have their environmental obligations fully reflected in their liabilities on their audited financial statements to cover these obligations so long as they have a net worth of at least $10 million plus the amount of any guarantees that do not appear on their financial statements. The maximum annual savings from this rule as a result of this allowance are estimated to total $ 73.1 million, or $7.3 million more than $65.8 million.

The document entitled ''Analysis of Subtitle D Financial Tests in Response to Public Comments,'' contains additional information on the estimated cost savings of this rule, and is available in the public docket for this rulemaking.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a final rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Section 204 of UMRA requires each agency to develop ''an effective process to permit elected officers of state, local, and tribal governments . . . to provide meaningful and timely input'' in the development of regulatory proposals containing a significant Federal intergovernmental mandate.

Today's rule is not subject to the requirements of sections 202, 203, 204, and 205 of the UMRA. 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. On the contrary, as described above, the Agency estimates that today's rule will save $65.8 million annually by allowing the use of a financial test or a corporate guarantee to demonstrate financial responsibility for environmental obligations without incurring the costs of obtaining a third-party mechanism. Further, as discussed previously in the notice, neither State nor local governments are subject to the requirements under this rule, but state governments have considerable flexibility in deciding how to implement the regulatory relief provided in this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, provides that, whenever an agency is required to publish a general notice of rulemaking for a proposal, the agency must prepare an initial regulatory flexibility analysis for the proposal unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (section 605(b)). The EPA certified that the October 12, 1994 proposal for today's rule would not have a significant economic impact on a substantial number of small entities. 59 FR 51534. Accordingly, the Agency did not prepare an initial regulatory flexibility analysis for the proposed rule.

EPA has not received any adverse public comments on its decision under the RFA to certify the proposed rule and declining to prepare an initial regulatory flexibility analysis for the proposed rule. As discussed above, EPA did receive public comments that the tangible net worth requirement under the financial test is unnecessary and has an anticompetitive effect on small firms in the MSWLF industry, but these comments did not raise questions regarding the RFA certification. In the discussion of public comments, above, and in the ''Response to Public Comments'' document accompanying this rulemaking, EPA addresses the concerns about the proposed minimum net worth requirement. The discussion of public comments in section VI.A. above regarding the minimum tangible net worth requirement and other aspects of the preamble help explain EPA's decision here to also certify that the final rule will not have a significant adverse impact on a substantial number of small entities.

For the following reasons, EPA concludes that certification is still proper. As noted above, the RFA requires a regulatory flexibility analysis unless the rule ''will not have, if promulgated, a significant economic impact on a substantial number of small entities.'' RFA section 605(b). For purposes of the RFA, the ''impact'' of concern is the impact the rule at issue will have on the small entities that will have to comply with the rule. The stated purpose of the RFA, its requirements for regulatory flexibility analyses, its legislative history, the amendments made by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121), and case law all make clear that an agency must assess the impact of a rule on small entities to the extent that small entities will be subject to the requirements of the rule. Thus, the RFA is appropriately interpreted to require a regulatory flexibility analysis only for rules imposing requirements on small entities. See RFA Secs. 603 (b) & (c), and 604(a); *Mid-Tex Electric Co-op., Inc.* v. *FERC*, 773 F.2d 327, 340–43 (D.C. Cir. 1985) (holding the RFA does not require agencies to examine the economic impact on small entities that are not directly regulated by the rule or subject to the regulatory requirements of the rule); *United Distribution Companies* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied, Associated Gas Distributors* v. *FERC*, 117 S.Ct. 1723 (1997) (same).

As discussed in greater detail in section VI.A. above and other sections of this preamble, today's rule does not impose new regulatory requirements on any firms, including small entities. Rather, the rule provides additional flexibility for owners or operators of MSWLF units in meeting the existing financial assurance requirements established under 40 CFR part 258, subpart G.

The comments discussed in section VI.A. do not relate to compliance burdens imposed on firms subject to the rule, but rather to secondary competitive effects that the commenters believe may result from a minimum net worth requirement. These are not the kinds of effects that a regulatory flexibility analysis is intended to address. Therefore, after considering public comments and other relevant information, EPA continues to believe that this deregulatory final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and EPA has not prepared a final regulatory flexibility analysis for this rule.

D. Submission to Congress and the 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).

E. Paperwork Reduction Act

OMB approved the information collection requirements of the MSWLF criteria, including financial assurance criteria, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and assigned OMB control number 2050–0122. The burden estimate for the financial assurance provisions included the burden associated with obtaining and maintaining any one of the allowable financial assurance instruments, including a financial test.

F. Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. This regulation provides additional mechanisms by which firms can demonstrate financial assurance for their MSWLF closure, post-closure, and if necessary, corrective action obligations. It is not expected to have any impact on minorities or low-income populations.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (''NTTAA''), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practice, etc.) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. EPA identified no potentially applicable voluntary consensus standards for today's final rule.

List of Subjects in 40 CFR Part 258

Environmental protection, Closure, Corrective action, Financial assurance, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: April 3, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 is revised to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

2. Section 258.74 is amended by revising paragraphs (e), (g), and (k) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(e) *Corporate financial test.* An owner or operator that satisfies the requirements of this paragraph (e) may demonstrate financial assurance up to the amount specified in this paragraph (e):

(1) *Financial component.* (i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than: (A) The sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus $10 million except as provided in paragraph (e)(1)(ii)(B) of this section.

(B) $10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the State Director.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test as described in paragraph (e)(3) of this section.

(2) *Recordkeeping and reporting requirements.* (i) The owner or operator must place the following items into the facility's operating record:

(A) A letter signed by the owner's or operator's chief financial officer that:

(*1*) Lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under this part 258, cost estimates required for UIC facilities under 40 CFR part 144, if applicable, cost estimates required for petroleum underground storage tank facilities under 40 CFR part 280, if applicable, cost estimates required for PCB storage facilities under 40 CFR part 761, if applicable, and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, if applicable; and

(*2*) Provides evidence demonstrating that the firm meets the conditions of either paragraph (e)(1)(i)(A) or (e)(1)(i)(B) or (e)(1)(i)(C) of this section and paragraphs (e)(1)(ii) and (e)(1)(iii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Director of an approved State may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Director of an approved State does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that owner or operator satisfies

paragraph (e)(1)(i)(B) or (e)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (e)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (e)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least $10 million plus the amount of any guarantees provided.

(ii) An owner or operator must place the items specified in paragraph (e)(2)(i) of this section in the operating record and notify the State Director that these items have been placed in the operating record before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997 or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later in the case of closure, and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

(iii) After the initial placement of items specified in paragraph (e)(2)(i) of this section in the operating record, the owner or operator must annually update the information and place updated information in the operating record within 90 days following the close of the owner or operator's fiscal year. The Director of a State may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (e)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (e)(2) or comply with the requirements of this paragraph (e) when:

(A) He substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) He is released from the requirements of this section in accordance with § 258.71(b), § 258.72(b), or § 258.73(b).

(v) If the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must, within 120 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the State Director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(vi) The Director of an approved State may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (e)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (e)(2) of this section. If the Director of an approved State finds that the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(3) *Calculation of costs to be assured.* When calculating the current cost estimates for closure, post-closure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in this paragraph (e), the owner or operator must include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test: obligations associated with UIC facilities under 40 CFR part 144, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265.

* * * * *

(g) *Corporate Guarantee.* (1) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a ''substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph (e) of this section and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions placed in the operating record before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997 or October 9, 1997 for MSWLF units meeting the conditions of § 258.1(f)(1), whichever is later, in the case of closure and post-closure care, or in the case of corrective action no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this Subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the State Director. Cancellation may not occur,

however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Director, as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the State Director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days of the cancellation notice, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director.

(4) If a corporate guarantor no longer meets the requirements of paragraph (e)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of this paragraph (g) when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with § 258.71(b), § 258.72(b), or § 258.73(b).

* * * * *

(k) *Use of multiple mechanisms.* An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by §§ 258.71, 258.72, and 258.73 by establishing more than one mechanism per facility, except that mechanisms guaranteeing performance rather than payment, may not be combined with other instruments. The mechanisms must be as specified in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms rather than a single mechanism.

* * * * *

[FR Doc. 98–9558 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7253]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified 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: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified 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.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

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 Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim 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 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 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.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida:					
Charlotte	Unincorporated Areas.	March 5, 1998, March 12, 1998, *Sarasota Herald Tribune—Charlotte AM Edition.*	Mr. Matthew D. DeBoer, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Road, Room 536, Port Charlotte, Florida 33948–1094.	Nov. 13, 1997	120061 E
Escambia	City of Pensacola	February 3, 1998, February 10, 1998, *Pensacola News Journal.*	Mr. Edmond R. Hinkle, Pensacola City Manager, P.O. Box 12910, Pensacola, Florida 32521–0052.	Jan. 22, 1998	120082 E
Illinois:					
DuPage and Cook	Village of Bensenville.	December 31, 1997, January 7, 1998, *Bensenville Press.*	Mr. John C. Geils, President, Village of Bensenville, 700 West Irving Park Road, Bensenville, Illinois 60106.	Apr. 7, 1998	170200 C
DuPage and Will	City of Naperville	February 6, 1998, February 13, 1998, *Daily Herald.*	The Honorable A. George Pradel, Mayor of the City of Naperville, 400 South Eagle Street, Naperville, Illinois 60540.	May 14, 1998	170213 C
Will	Unincorporated Areas.	January 14, 1998, January 21, 1998, *Herald-News.*	Mr. Charles R. Adelman, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432.	Apr. 21, 1998	170695 E
Massachusetts:					
Worcester	Town of Milford	January 13, 1998, January 20, 1998, *Milford Daily News.*	Mr. John Speroni, Jr., Chairman of the Board of Selectmen, Town of Milford, 52 Main Street, Milford, Massachusetts 01757.	Apr. 20, 1998	250317 B
Michigan: Oakland	City of Novi	February 12, 1998, February 19, 1998, *Novi News.*	The Honorable Kathleen McCallen, Mayor of the City of Novi, Civic Center, 45175 West Ten Mile Road, Novi, Michigan 48375–3024.	Feb. 5, 1998	260175 C
New Jersey: Middlesex.	Borough of Metuchen.	February 20, 1998, February 27, 1998, *Metuchen/Edison Review.*	The Honorable Edmund O'Brien, Mayor of the Borough of Metuchen, P.O. Box 592, Borough Hall, Metuchen, New Jersey 08840.	May 28, 1998	340266 A
Ohio:					
Cuyahoga	City of North Olmsted.	January 8, 1998, *Sun Herald.*	The Honorable Edward J. Boyle, Mayor of the City of North Olmsted, 5200 Dover Center Road, North Olmsted, Ohio 44070.	Dec. 24, 1997	390120 C
Cuyahoga	City of Solon	February 19, 1998, February 26, 1998, *Solon Times.*	The Honorable Kevin C. Patton, Mayor of the City of Solon, 34200 Bainbridge Road, Solon, Ohio 44139.	Feb. 12, 1998	390130 B
Puerto Rico: Commonwealth.	Rio Piedras Drainage Basin.	January 27, 1998, February 3, 1998, *El Nueva Dia.*	Ms. Norma E. Burgos-Andujar, Chairwoman, Puerto Rico Planning Board, Minillas Governmental Center, North Building, De Diego Avenue, Stop 22, P.O. Box 41119, San Juan, Puerto Rico 00940–1119.	Jan. 13, 1998	720000 C
Tennessee: Shelby	Town of Collierville	January 22, 1998, January 29, 1998, *The Collierville Herald.*	The Honorable Herman W. Cox, Jr., Mayor of the Town of Collierville, 101 Walnut Street, Collierville, Tennessee 38017–2671.	Apr. 29, 1998	470263 E
Virginia: Middlesex	Unincorporated Areas.	January 22, 1998, January 29, 1998, *The Southside Sentinel.*	Mr. Charles M. Culley, Jr., Middlesex County Commissioner, P.O. Box 428, Saluda, Virginia 23149.	Jan. 16, 1998	510098 B
Wisconsin:					
Manitowoc and Calumet.	City of Kiel	January 29, 1998, February 5, 1998, *Kiel Tri-County Record.*	Mr. Thomas Karls, City of Kiel Administrator, P.O. Box 98, Kiel, Wisconsin 53042.	May 6, 1998	550239 B
Ozaukee	Unincorporated Areas.	January 22, 1998, January 29, 1998, *Ozaukee Press.*	Mr. Leroy Bley, Ozaukee County Chairman of the Board of Supervisors, 121 West Main Street, P.O. Box 994, Port Washington, Wisconsin 53074–0994.	Jan. 14, 1998	550310 D

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: April 2, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–9526 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified 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: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified 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 modified 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.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

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 Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. 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 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 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.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive officer of community	Effective date of modification	Community No.
Alabama: Lauderdale (FEMA Docket No. 7245).	City of Florence	October 8, 1997, October 15, 1997, *Times Daily*.	The Honorable Eddie Frost, Mayor of the City of Florence, P.O. Box 98, Florence, Alabama 35631.	Jan. 13, 1998	010140 C
Connecticut:.					
Fairfield (FEMA Docket No. 7225).	Town of Darien	May 15, 1997, May 22, 1997, *Darien News Review*.	Mr. Henry Sanders, First Selectman, Darien Board of Selectmen, Darien Town Hall, 2 Renshaw Road, Darien, Connecticut 06820..	May 5, 1997	090005 D
Litchfield (FEMA Docket No. 7245).	Town of Watertown	September 9, 1997, September 16, 1997, *Waterbury Republican-American*.	Mr. Charles Frigon, Town of Watertown Interim Manager, Town Hall Annex, 424 Main Street, Watertown, Connecticut 06795.	Dec. 15, 1997	090058 B
Georgia: DeKalb (FEMA Docket No. 7221).	Unincorporated Areas.	March 20, 1997 March 27, 1997, *Decatur-DeKalb News/Era*.	Ms. Liane Levetan, DeKalb County Chief Executive Officer, 1300 Commerce Drive, Decatur, Georgia 30030.	June 25, 1997	130065 F
Illinois:					
DuPage (FEMA Docket No. 7233).	City of Darien	August 21, 1997, August 28, 1997, *Darien Progress*.	The Honorable Carmen D. Soldato, Mayor of the City of Darien, 1702 Plainfield Road, Darien, Illinois 60561.	Nov. 26, 1997	170750 A
Lake (FEMA Docket No. 7245).	Village of Mundelein	September 11, 1997, September 18, 1997, *Mundelein Review*.	The Honorable Marilyn Sindels, Mayor of the Village of Mundelein, Village Hall, 440 East Hawley Street, Mundelein, Illinois 60060.	Dec. 17, 1997	170382 F
Lake (FEMA Docket No. 7245).	Unincorporated Areas.	September 11, 1997, September 18, 1997, *News-Sun*.	Mr. Robert L. Grever, Chairman of the Lake County Board, 18 North County Street, Room 901, Waukegan, Illinois 60085.	Dec. 17, 1997	170357 F

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive officer of community	Effective date of modification	Community No.
Will and DuPage (FEMA Docket No. 7233).	City of Naperville	September 10, 1997, September 17, 1997, *Naperville Sun*.	The Honorable A. George Pradel, Mayor of the City of Naperville, 400 South Eagle Street, Naperville, Illinois 60566.	Dec. 16, 1997	170213 C
Indiana: Marion (FEMA Docket No. 7221).	City of Indianapolis	March 21, 1997, March 28, 1997, *The Indianapolis Star and News*.	The Honorable Stephen Goldsmith, Mayor of the City of Indianapolis, 200 East Washington Street, Indianapolis, Indiana 46204–3357.	Mar. 13, 1997	180159 D
Maryland:					
Prince George's (FEMA Docket No. 7245).	City of Laurel	August 21, 1997, August 28, 1997, *Laurel Leader*.	The Honorable Frank P. Casula, Mayor of the City of Laurel, 8103 Sandy Spring Road, Laurel, Maryland 20707.	Nov. 26, 1997	240053 D
Prince George's (FEMA Docket No. 7245).	Unincorporated Areas.	August 21, 1997, August 28, 1997, *The Prince George's Journal*.	Mr. Wayne K. Curry, Prince George's County Executive Officer, 14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772.	Nov. 26, 1997	245208 C
Michigan:					
Macomb County (FEMA Docket No. 7245).	Township of Chesterfield.	September 15, 1997, September 22, 1997, *The Chesterfield Review*.	Mr. Elbert J. Tharp, Chesterfield Township Supervisor, 47275 Sugarbush, Chesterfield, Michigan 48047.	Dec. 21, 1997	260120 B
Wayne (FEMA Docket No. 7233).	Township of Canton	August 14, 1997, August 21, 1997, *Canton Observer*.	Mr. Thomas Yack, Canton Township Supervisor, 1150 South Canton Center Road, Canton, Michigan 48188.	Nov. 19, 1997	260219 B
Mississippi:					
Madison County (FEMA Docket No. 7233).	City of Ridgeland	July 24, 1997, July 31, 1997, *Madison County Journal*.	The Honorable Gene McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	Oct. 29, 1997	280110 D
New Hampshire: Hillsborough (FEMA Docket No. 7221).	Town of Amherst	March 20, 1997, March 27, 1997, *The Telegraph*.	Mr. Robert Jackson, Chairman of the Selectmen, of the Town of Amherst, P.O. Box 960, Amherst, New Hampshire 03031.	June 25, 1997	330081 B
New Jersey: Ocean (FEMA Docket No. 7233).	Borough of Island Heights.	July 16, 1997, July 23, 1997, *Ocean County Observer*.	The Honorable David Siddons, Mayor of the Borough of Island Heights, P.O. Box AH, Island Heights, New Jersey 08732.	Jan. 7, 1998	340374 C
New York: Monroe (FEMA Docket No. 7225).	Town of Greece	May 8, 1997, May 15, 1997, *Greece Post*.	Mr. Roger W. Boily, Supervisor for the Town of Greece, 2505 West Ridge Road, Rochester, New York 14626.	Aug. 13, 1997	360417 E
North Carolina: Dare (FEMA Docket No. 7233).	Unincorporated Areas.	August 28, 1997, September 4, 1997, *Coastland Times*.	Mr. Robert Z. Owens, Jr., Chairman of the Dare County, Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	Aug. 21, 1997	375348 D
Ohio:					
Cuyahoga (FEMA Docket No. 7233).	City of Beachwood ..	June 30, 1997, July 7, 1997, *The Plain Dealer*.	The Honorable Merle S. Gorden, Mayor of the City of Beachwood, 2700 Richmond Road, Beachwood, Ohio 44122.	Dec. 19, 1997	390094 A
Cuyahoga (FEMA Docket No. 7233).	City of North Olmsted.	August 28, 1997, September 4, 1997, *Sun Herald*.	The Honorable Edward J. Boyle, Mayor of the City of North Olmsted, 5200 Dover Center Road, North Olmsted, Ohio 44070.	Dec. 3, 1997	390120 C
Franklin & Fairfield (FEMA Docket No. 7233).	City of Columbus	August 12, 1997, August 19, 1997, *The Columbus Dispatch*.	The Honorable Gregory Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	Aug. 5, 1997	390170 G
Pennsylvania: Bucks (FEMA Docket No. 7233).	Borough of Chalfont	August 19, 1997, August 26, 1997, *Intelligencer/Record*.	The Honorable Marilyn J. Becker, Mayor of the Borough of Chalfont, P.O. Box 80, Chalfont, Pennsylvania 18914.	Nov. 24, 1997	420184 B
Virginia:					
Loudoun (FEMA Docket No. 7201).	Town of Leesburg ...	November 13, 1996, November 20, 1996, *Loudoun Times-Mirror*.	The Honorable James E. Clem, Mayor of the Town of Leesburg, P.O. Box 88, Leesburg, Virginia 20178.	Feb. 18, 1997	510091
Orange (FEMA Docket No. 7221).	Unincorporated Areas.	March 13, 1997, March 20, 1997, *Orange County Review*.	Ms. Brenda Bailey, Orange County Administrator, P.O. Box 111, Orange, Virginia 22960.	Sept. 3, 1997	510203 B
Wisconsin:					
LaCrosse (FEMA Docket No. 7245).	City of Onalaska	October 9, 1997, October 16, 1997, *Onalaska Community Life*.	The Honorable Clarence Stellner, Mayor of the City of Onalaska, 415 Main Street, Onalaska, Wisconsin 54650.	Jan. 14, 1998	550221 B
Washington (FEMA Docket No. 7221).	Village of Germantown.	March 21, 1997, March 28, 1997, *Daily News*.	Mr. Paul Brandenburg, Village of Germantown Administrator, P.O. Box 337, Germantown, Wisconsin 53022–0337.	Mar. 14, 1997	550472 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: April 2, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–9525 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–03–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 DATES: 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 maps are available for inspection as indicated on 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: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or 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.

The Agency 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 Flood Insurance Rate Map 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 Associate Director, Mitigation Directorate, 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 National Flood Insurance Program. 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.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is 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.

§ 67.11 [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)
Georgia	
Tift County (Unincorporated Areas) (FEMA Docket No. 7243)	
Channel A–1:	
At confluence with New River	*316
Approximately 275 feet upstream of Tift Avenue	*357
Channel A–2:	
Approximately 1,100 feet downstream of 40th Avenue	*341
Approximately 3,000 feet upstream of 40th Street	*353
Channel B:	
Approximately 2,000 feet upstream of confluence with Little River	*261
Approximately 750 feet upstream of Hunt Road	*305
New River:	
Approximately 10 feet upstream of upstream side of Seaboard Coastline Railroad	*310
Ferry Lake Road	*324
Maps available for inspection at the Tift County Zoning Department, 225 North Tift Avenue, Tifton, Georgia.	
Tifton (City), Tift County (FEMA Docket No. 7243)	
Channel A–1:	
Approximately 50 feet downstream of Bill Bowen Road	*319
Approximately 275 feet upstream side of Tift Avenue	*357
Channel A–2:	
At confluence with Channel A	*338
Approximately 450 feet upstream of 40th Street	*351
New River:	
Ferry Lake Road	*324
Approximately 1,200 feet upstream of 20th Street bridge	*362
Channel E:	
Approximately 100 feet upstream of 16th Street bridge	*340
Approximately 1,100 feet upstream of 28th Street bridge	*371
Channel E–1:	
Confluence with Channel E	*355
Approximately 1,850 feet upstream of 28th Street	*366
Channel B:	
Approximately 900 feet upstream of McCormick Drive	*294
Approximately 350 feet upstream of Victory Drive bridge	*333
Channel G:	
Just upstream of Ferry Lake Road bridge	*324
Approximately 50 feet upstream of Goff Avenue	*329
Maps available for inspection at the City of Tifton Zoning Department, 130 East First Street, Tifton, Georgia.	
Maine	
Union (Town), Knox County (FEMA Docket No. 7235)	
Medomak River:	
At downstream county boundary	*137
At upstream corporate limits	*200
Crawford River:	
At the confluence with Seven Tree Pond	*45
At the confluence with Crawford Pond	*113
St. George River:	
At the confluence with Round Pond	*45
At Sennebec Pond Dam	*85
Mill Stream:	
At downstream corporate limits	*113
At Lermond Pond Dam	*269
Sennebec Pond: Entire shoreline within community	*92
Round Pond: Entire shoreline within community	*45
Seven Tree Pond: Entire shoreline within community	*45
Crawford Pond: Entire shoreline within community	*113
Lermond Pond: Entire shoreline within community	*270
Maps available for inspection at the Union Town Office, 568 Common Road, Union, Maine.	
Michigan	
Clinton (Township), Macomb County (FEMA Docket No. 7235)	
Clinton River Middle Branch:	
Approximately 800 feet downstream of Hall Road	*595

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At Hall Road	*595
Maps available for inspection at the Clinton Township Office, Planning Department, 40700 Romeo Plank Road, Clinton Township, Michigan.	
New York	
Canton (Town), St. Lawrence County (FEMA Docket No. 7231)	
Grass River:	
Approximately 1.02 miles downstream of State Route 68	*323
Approximately 200 feet downstream of upstream Town of Canton corporate limit	*497
Maps available for inspection at the Town of Canton Code Enforcement Office, Canton Municipal Building, 60 Main Street, Canton, New York.	
North Carolina	
Emerald Isle (Town), Carteret County (FEMA Docket No. 7231)	
Atlantic Ocean:	
At intersection of Bogue Court and Inlet Drive	*15
500 feet south of intersection of Ocean Drive and Sea Dunes Drive	*19
Bogue Sound:	
200 feet north of intersection of Burlington Street and Emerald Drive	*8
1,000 feet north of the intersection of Bogue Court and Inlet Drive	*15
Maps available for inspection at the Emerald Isle Town Hall, 7500 Emerald Drive, Emerald Isle, North Carolina.	
Haywood County (Unincorporated Areas) (FEMA Docket No. 7231)	
West Fork Pigeon River:	
Approximately 200 feet upstream of confluence with East Fork Pigeon River	*2,653
At confluence with Lake Logan	*2,865
Maps available for inspection at the Haywood County Planning Director's Office, 2143 Asheville Road, Waynesville, North Carolina.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: April 2, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–9524 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–253; RM–8962]

Radio Broadcasting Services; Bainbridge, GA.

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration of the *Report and Order*, 62 FR 47762 (September 11, 1997), in this proceeding that added Channel 270A to Bainbridge, Georgia, as that community's second FM service.

The proposal to add the requested channel was preferred over an FM application by an existing licensee for authority to use the licensee's existing transmitter site to implement a channel upgrade already approved for a different site.

EFFECTIVE DATE: April 10, 1998.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 96–253, adopted March 18, 1998 and released March 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–9498 Filed 4–9–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970429101-7101-01; I.D.032798B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustments, Cape Falcon, OR, to Point Mugu, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments; request for comments.

SUMMARY: NMFS announces the April 15, 1998, opening of commercial seasons for all salmon except coho in the area from Cape Falcon, OR (45°46'00'' N. lat.), to the Oregon-California border (42°00'00'' N. lat.) anda recreational season for all salmon except coho in the area from Cape Falcon to Humbug Mountain, OR (42°40'30'' N. lat.). The commercial fishery between Point Lopez (36°01'15'' N. lat.) and Point Mugu, CA (34°05'12'' N. lat.), scheduled to open April 15, 1998, will not open. These adjustments are in accordance with the 1997 annual management measures.

DATES: Season openings effective 0001 hours local time, April 15, 1998, through 2359 hours local time, April 30, 1998, in the area from Cape Falcon to the Oregon-California border for the commercial fishery and in the area from Cape Falcon, OR, to Humbug Mountain, OR, for the recreational fishery. Closure effective 0001 hours local time, April 15, 1998, in the area from Point Lopez to Point Mugu, CA, for the commercial fishery. Comments will be accepted through April 24, 1998.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE.,Bldg. 1, Seattle, WA 98115-0070; or William T. Hogarth, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213. Information relevant to this document is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526- 6140 or Daniel Viele, 562-980-4039.

SUPPLEMENTARY INFORMATION: In the 1997 annual management measures for ocean salmon fisheries (62 FR 24355, May 5, 1997), inseason management guidance was provided to NMFS such that the Pacific Fishery Management Council (Council) would consider at the March 1998 meeting a recommendation to open commercial and recreational seasons for all salmon except coho on April 15 in areas off Oregon. Due to the timing of the March and April Council meetings in which the major 98 salmon seasons are developed, such action would be necessary to implement the opening of these seasons prior to May 1, 1998.

At its March 10 to 13, 1998, meeting, the Council recommended the April 15 opening of commercial seasons in the area from Cape Falcon, OR, to the Oregon-California border, and a recreational season in the area from Cape Falcon to Humbug Mountain, OR. The following season descriptions were

recommended by the Council. Minimum size limits, special requirements, restrictions, and exceptions are as stated in Tables 1 and 2 of the 1997 annual management measures.

Commercial season, Cape Falcon to Cape Arago, OR (43°18'20'' N. lat.)

April 15 through April 30. All salmon except coho. No more than four spreads per line.

Commercial season, Cape Arago, OR, to Oregon-California Border

April 15 through (the earlier of either) April 30 or the reaching of a 4,400 chinook quota. All salmon except coho. No more than four spreads per line.

Recreational season, Cape Falcon to Humbug Mountain

April 15 through April 30. All salmon except coho. Two fish per day. No more than six fish in 7 consecutive days. At its March 10 to 13, 1998, meeting, the Council also recommended elimination of the April commercial fishery between Point Lopez and Point Mugu, CA. This test fishery, part of the 1997 annual management measures approved by NMFS, was scheduled to open April 15, 1998, and to continue through (the earlier of either) April 28 or attainment of a 10,000 chinook quota. The recommendation was based on concern for the apparent high concentration of endangered Sacramento River winter chinook salmon observed in the April 1997 commercial test fishery in the same area.

The Regional Administrator consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding these adjustments. The states of Oregon and California will manage commercial and recreational fisheries in state waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice to fishermen of this action was given prior to 0001 hours local time, April 15, 1998, 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, NMFS has determined that good cause exists for this document to be issued without affording a prior opportunity for public comment. This document 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: April 6, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–9564 Filed 4–9–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 033098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Offshore Component Pacific Cod in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to fully utilize the 1998 total allowable catch (TAC) of Pacific cod allocated to vessels catching Pacific cod for processing by the offshore component in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 6, 1998, until 2400 hrs. A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1998 TAC of Pacific cod allocated to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area was established as 3,337 mt by the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998). See § 679.20(c)(3)(iii).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 2,000 mt, and set aside the remaining 1,337 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on March 11, 1998 (63 FR 12697, March 16, 1998).

NMFS has determined that as of March 14, 1998, 2,000 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing a portion of the Pacific cod TAC for vessels catching Pacific cod for processing by the offshore component. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 6, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–9562 Filed 4–7–98; 3:07 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 69
Friday, April 10, 1998

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

Form 552, RUS General Specification for Digital, Stored Program Controlled Central Office Equipment

AGENCY: Rural Utilities Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction to change RUS General Specification for Digital, Stored Program Controlled Central Office Equipment, RUS Form 522, Part I through Part VI. This will enable RUS to incorporate technological advances, remove requirements that are no longer necessary, and generally update the specification to reflect current technology.

DATES: Written comments must be received by RUS, or bear a postmark or equivalent, no later than June 9, 1998.

ADDRESSES: Comments should be mailed to John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Ave., SW, Washington, DC, 20250–1598. RUS requests an original and three copies of all comments (7 CFR part 1700). All comments received will be available for public inspection at Room 2838 South Building (address as above) during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Ave., SW, Washington, DC, 20250–1598, telephone number (202) 720–0671. E-Mail: jschell@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

RUS Form 522 provides a performance specification for digital switching equipment and gives RUS borrowers assistance in ordering digital switches. Significant changes have been made in the telecommunications industry over the last several years. Notable advances in central office switching equipment and technology have made many new services available.

Because the existing Form 522 does not address many of these changes, RUS is requesting comments on all parts of Form 522. Technological advances have caused many of the Form 522 requirements to be outdated and many new requirements have not been addressed. To address new technology as well as remove outdated or irrelevant requirements, RUS feels that it is important to have input from many borrowers, consultants, and manufacturers, to make the Form 522 as technologically up-to-date as possible.

Dated: March 31, 1998.

Wally Beyer,

Administrator, RUS.

[FR Doc. 98–9199 Filed 4–9–98; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–04–AD]

Airworthiness Directives; Lucas Air Equipment Electric Hoists

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new AD that is applicable to Lucas Air Equipment electric hoists (hoists) installed on, but not limited to, all models of Eurocopter France SA–360 and SA–365 helicopters. This proposal would require visually inspecting the cable for damage before the next hoist operation, blanking (plugging) the electronic control box upper vent, and performing an end-of-travel procedure during each hoist event. This proposal is prompted by several incidents of cable failures caused by dynamic overload on the winding-up limit due to uncontrolled excessive speed of the cable, which is normally regulated by the automatic speed-reducing mechanism or the operator. The actions specified by the proposed AD are intended to prevent breaking of the cable, which could become entangled with a main rotor or tail rotor blade, and result in damage or separation of a rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–04–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, phone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–04–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–04–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA–360, SA–365, and SA 565 helicopters equipped with Lucas Air Equipment Electric hoists. Eurocopter France Model SA 565 is not type certificated for operation in the United States. The DGAC advises that several incidents caused by dynamic overload on the winding up limit due to uncontrolled excessive speed of the cable, which is normally regulated by the automatic speed-reducing mechanism or the operator, have been recorded in operation.

Lucas Air Equipment has issued Lucas Air Equipment Service Telex 61148–25–CW–01, Revision 1, dated April 26, 1994, which specifies visually inspecting the cable for damage before the next hoist operation, blanking (plugging) the electronic control box upper vent, and during each hoist event, performing an end-of-travel procedure. The DGAC classified this service bulletin as mandatory and issued AD 94–116(AB)R1, dated May 21, 1997, in order to assure the continued airworthiness of these hoists installed on helicopters in France.

This hoist is installed on helicopter models manufactured in France and type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France SA–360 (all models) and SA–365 (all models) helicopters equipped with electric hoists of the same design, the proposed AD would require visually inspecting the hoist cable for damage before the next hoist operation, blanking (plugging) the electronic control box upper vent, and performing an end-of-travel procedure during each hoist event. The end-of-travel procedure may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with the applicable sections of this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

The FAA estimates that 1 helicopter of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $775. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $895 to replace the hoist and electronic control box.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lucas Air Equipment: Docket No. 98–SW–04–AD.

Applicability: Electric hoists, part numbers (P/N) 76375–030, 76375–130, 76378, and 76378–100, equipped with electronic control boxes, P/N 61148–001, 002, and 006, installed on, but not limited to all models of Eurocopter France SA–360 and SA–365 helicopters, certificated in any category.

Note 1: This AD applies to each electric hoist (hoist) equipped with an electronic control box (control box) 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 hoists that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any hoist or control box from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent breaking of the cable, which could become entangled with a main rotor or tail rotor blade, and result in damage or separation of a rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the next hoist operation, visually inspect the cable for damage in accordance with the applicable maintenance manual, and blank (plug) the electronic control box upper vent with a potting compound. If the control box has only one vent, install it with the vent hole in the lowest position.

(b) Apply red paint to the hoist cable starting at 0.8 meter (m) and extending to the 3m point (31.5 inches to 118 inches) from the upper plate of the hook assembly.

Note 2: Lucas Air Equipment Service Telex 61148–25–CW–01, Revision 01, dated April 26, 1994, pertains to the subject of this AD.

(c) Thereafter, before each hoist operation, perform the end-of-travel procedure as follows:

(1) With approximately 3m of cable remaining before the hook assembly reaches the up-limit switch operating lever (upper end of red-painted cable), reduce the cable speed to approximately one-third of the normal speed with the control knob. Release the control knob to the neutral position to stop the hook at a distance approximately 0.8m from the hoist up-limit switch operating lever (lower end of red-painted cable). Continue controlling the cable speed by exclusive use of the control on the pendant, making short and repetitive inputs until the hook reaches a position with 5 to 10 centimeters (2 to 4 inches) between the upper plate of the hook assembly and the up-limit switch operating lever. After stopping the cable at that point, place the hook against the up-limit switch operating lever. The procedure required by this paragraph may be accomplished by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this paragraph in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

(2) If the hook comes fully home at an uncontrolled speed, or the hoist exhibits uncontrolled speed variation or absence of automatic speed reduction, remove the hoist assembly (hoist and control box) and replace it with an airworthy hoist assembly before any further hoist operation.

(d) Installation of an electronic control box, P/N 61148–016 or P/N 61148–012, as applicable, with installation of a hoist, P/N 76375–060, 76375–160, 76378–060, or 76378–160, is a terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

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

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 94–116(AB)R1, dated May 21, 1997.

Issued in Fort Worth, Texas, on April 3, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–9462 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–2]

Proposed Amendment to Class D and Proposed Removal of Class E Airspace; Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D and remove Class E airspace at Atlanta, GA, for the Fulton County Airport-Brown Field. The control tower at Fulton County Airport-Brown Field is now open 24 hours a day. Therefore, the Class D airspace would be amended from part time to continuous. Additionally, the current Class E surface airspace that is effective when the control tower closes is no longer necessary and can be removed.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–2, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ASO–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D and remove Class E airspace at Atlanta, GA, for the Fulton County Airport-Brown Field. The control tower at Fulton County Airport-Brown Field is now open 24 hours a day. Therefore, the Class D airspace would be amended from part time to continuous. Additionally, the current Class E surface airspace that is effective when the control tower closes is no longer necessary and can be removed. Class D airspace designations and Class E airspace areas designated as a surface area for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 16, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—DESGINATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRPSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace

* * * * *

ASO GA D Atlanta, GA [Revised]

Atlanta, Fulton County Airport-Brown Field, GA
(Lat. 33°46′45″ N, long. 84°31′17″ W)
Dobbins ARB
(Lat. 33°54′54″ N, long. 84°31′00″ W)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4-mile radius Fulton County Airport-Brown Field; excluding the portion north of a line connecting the 2 points of intersection with a 5.5-mile radius circle centered on Dobbins ARB.

* * * * *

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

* * * * *

ASO GA E2 Atlanta, GA [Removed]

* * * * *

Issued in College Park, Georgia, on March 5, 1998.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–9514 Filed 4–9–98; 8:45 a.m.]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–4]

Proposed Amendment to Class D Airspace; MacDill AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D airspace at MacDill AFB, FL. The control tower at MacDill AFB is now open 24 hours a day. Therefore, the Class D airspace would be amended from part time to continuous.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–4, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ASO–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at MacDill AFB, FL. The control tower at MacDill AFB is now open 24 hours a day. Therefore, the Class D airspace would be amended from part time to continuous. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant

rule'' under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace

* * * * *

ASO FIL D MacDill AFB, FL [Revised]

Tampa, MacDill AFB, FL
(Lat. 27°50′57″ N, long. 82°31′17″ W)
Albert Whitted Airport
(Lat. 27°45′54″ N, long, 82°37′38″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius MacDill AFB; excluding the portion within the Tampa International Airport, FL, Class B airspace area; excluding that portion southwest of a line connecting the 2 points of intersection with a 4-mile radius circle centered on the Albert Whitted Airport.

* * * * *

Issued in College Park, Georgia, on March 5, 1998.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–9512 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–1]

Proposed Establishment of Class E Airspace; Hohenwald, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Hohenwald, TN. A Non-Directional Beacon (NDB) Runway (RWY) 2 Standard Instrument Approach Procedure (SIAP) has been developed for John A. Baker Field. As a result controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at John A. Baker Field. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–1, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ASO–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Hohenwald, TN. A NDB RWY 2 SIAP has been developed for John A. Baker Field. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at John A. Baker Field. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 fee or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E dated September 10,1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—DESIGNATION CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ASO TN E5 Hohenwald, TN [New]

John A. Baker Field, TN
(Lat. 35°32′46″ N, long. 87°35′58″ W)
That airspace extending upward from 700 feet or more above the surface within a 6.4-mile radius of John A. Baker Field.

* * * * *

Issued in College Park, Georgia, on March 6, 1998.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–9515 Filed 4–9–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–5]

Proposed Revision of Class E Airspace; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Kotzebue, AK. The establishment of Global Positioning System (GPS) instrument approaches to runway (RWY) 8 and RWY 26 at Kotzebue, AK, has made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Kotzebue, AK.

DATES: Comments must be received on or before May 26, 1998

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 98–AAL–5, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AAL–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising the Class E airspace at Kotzebue, AK, due to the establishment of GPS instrument approaches to RWY 8 and RWY 26. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Kotzebue, AK.

The coordinates for this airspace docket are based on North American

Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491; October 8, 1997). The Class E airspace designation listed in this document would be revised and published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is to be amended as follows:

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

* * * * *

AAL AK E5 Kotzebue, AK

Kotzebue, Ralph Wien Memorial Airport, AK
(Lat. 66°53′05″ N, long. 162°35′55″ W)
Kotzebue VOR/DME
(Lat. 66°53′08″ N, long. 162°32′24″ W)
Hotham NDB
(Lat. 66°54′05″ N, long. 162°33′52″ W)

That airspace extending upward from 700 feet above the surface within a 6.8 mile radius of the Ralph Wien Memorial Airport and within 14 miles of the Kotzebue VOR/DME extending clockwise from the 206° radial to the 130° radial and within 4 miles southeast and 8 miles northwest of the Hotham NDB 039° bearing extending from the NDB to 16 miles northeast of the NDB and within 4 miles north and 8 miles south of the Kotzebue VOR/DME 278° radial extending from the VOR/DME to 20 miles west of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within 18 miles of the Kotzebue VOR/DME clockwise from the 020° radial to the 130° radial and within 38 miles of the Kotzebue VOR/DME clockwise from the 130° radial to the 314° radial and within 4.3 miles each side of the Kotzebue VOR/DME 103° radial extending from the VOR/DME to 34 miles east of the VOR/DME; and that airspace extending upward from 5,500 feet MSL within 4.3 miles each side of the Kotzebue VOR/DME 103° radial extending from 34 miles east of the VOR/DME to 51.3 miles east of the VOR/DME; and that airspace extending upward from 7,500 feet MSL within 4.3 miles each side of the Kotzebue VOR/DME 103° radial at 51.3 miles east of the Kotzebue VOR/DME widening to 7.4 miles each side of the 103° radial at 96 miles east of the Kotzebue VOR/DME.

* * * * *

Issued in Anchorage, AK, on April 3, 1998.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–9510 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 26

[Docket No. 95N–0185]

RIN 0910–ZA11

Mutual Recognition of the Food and Drug Administration and European Community Member State Conformity Assessment Procedures; Pharmaceutical GMP Inspection Reports, Medical Device Quality System Evaluation Reports, and Certain Medical Device Premarket Evaluation Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations pursuant to an international agreement that is expected to be concluded between the United States and the European Community (EC) (Ref. 1). Under the terms of that agreement, FDA may normally endorse good manufacturing practice (GMP) inspection reports for pharmaceuticals provided by equivalent EC Member State regulatory authorities and medical device quality system evaluation reports and certain medical device premarket evaluation reports provided by equivalent conformity assessment bodies. FDA is taking this action to enhance its ability to ensure the safety and efficacy of pharmaceuticals and medical devices through more efficient and effective utilization of its regulatory resources. The agency is requesting comments on the proposed rule.

DATES: Comments by May 11, 1998. Comments must be received by the Dockets Management Branch (address below) by 4:30 p.m. Eastern Standard Time on May 11, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, fax 301–594–3215.

FOR FURTHER INFORMATION CONTACT: Merton V. Smith, Office of International Affairs (HFG–1), Office of External Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0910, or E-mail: ''MSmith@bangate.fda.gov''.

SUPPLEMENTARY INFORMATION:

I. Background and History

On June 20, 1997, the United States and the EC concluded negotiations of an agreement entitled ''Agreement on Mutual Recognition between the United States of America and the European Community'' (also called ''the MRA''). The MRA includes two sectoral annexes covering products regulated by FDA. The medical device sectoral annex covers medical device quality system-related inspection reports and premarket evaluation reports. The pharmaceutical GMP sectoral annex covers pharmaceutical GMP inspection reports. The MRA also includes sectoral annexes covering products regulated by other U.S. regulatory agencies, including telecommunication equipment, electromagnetic compatibility, electrical safety, and recreational craft. Finally, the MRA includes an ''umbrella'' agreement that contains general provisions applicable

to the operation of all of the sectoral annexes.

At the conclusion of negotiations, the United States and the EC agreed to submit the text of the MRA to their respective authorities to complete the necessary procedures for approval and implementation (Ref. 2). For FDA, the procedures include publishing this proposed rule for public comment.

In this document, FDA has published relevant provisions of the two FDA sectoral annexes and the umbrella agreement, some of which create binding obligations. FDA will review all comments and will consider those comments addressing its binding obligations under the agreement.

II. Statutory Authority

FDA has the authority to enter into and execute the MRA under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*) and the Public Health Service Act (the PHS Act) (42 U.S.C. 201 *et seq.*). For drugs and medical devices, section 510(i)(3) of the act (21 U.S.C. 360(i)(3)) provides authority for FDA to enter into the MRA. Section 510(i)(3) of the act provides that:

> The Secretary [FDA by delegation] is authorized to enter into cooperative arrangements with officials of foreign countries to ensure that adequate and effective means are available for purposes of determining, from time to time, whether drugs or devices manufactured, prepared, propagated, compounded, or processed by an establishment * * * [described in this section], if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

(Ref. 3).

The MRA and the pharmaceutical and medical device annexes represent cooperative arrangements with officials from foreign countries. The purpose of these arrangements is, among other things, to ensure FDA has adequate and effective means to determine whether drugs or devices offered for import are adulterated, misbranded, or in violation of section 505 of the act (21 U.S.C. 355) (Ref. 4). FDA's authority to make these determinations is found at section 801(a) of the act (21 U.S.C. 381(a)).

Section 803(b) of the act (21 U.S.C. 383(b)) provides FDA with authority to enter into the medical device sectoral annex. That section authorizes FDA to enter into agreements with foreign countries to facilitate commerce in medical devices, consistent with the provisions of the act. Such agreements are to encourage the mutual recognition of GMP regulations relating to devices, as well as other regulations and testing protocols determined by the Secretary (FDA by delegation) to be appropriate.

Additional support for FDA authority to enter into this MRA is found in the PHS Act. Under section 307 of the PHS Act (42 U.S.C. 242l), the Secretary of Health and Human Services (FDA by delegation) has authority ''to participate with other countries in cooperative endeavors'' in biomedical research and health care technology. In addition, the Secretary of Health and Human Services (FDA by delegation) has authority under section 301 of the PHS Act (42 U.S.C. 241) to ''cooperate with, and render assistance to other appropriate public authorities * * * in the conduct of * * * investigations * * * relating to the * * * prevention of physical and mental diseases and impairments of man * * * .'' The cooperative activities between FDA and the EC set forth in the MRA and this proposed regulation, fall within FDA's delegated authority under these sections of the PHS Act.

Finally, a provision of the recently enacted FDAMA provides authority for FDA to participate in MRA activities. Section 410 of FDAMA authorizes FDA to ''support the Office of the United States Trade Representative, in consultation with the Secretary of Commerce, in efforts to move toward the acceptance of mutual recognition agreements relating to the regulation of drugs, biological products, [and] devices * * * and the regulation of good manufacturing practices, between the European Union and the United States'' (Ref. 5). During negotiation of this MRA, officials from FDA, the Office of the United States Trade Representative, and the Department of Commerce participated in activities in an effort to move toward acceptance of a mutual recognition agreement.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (Pub. L. 96–354, as amended by Pub. L. 104–121), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any one year.

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order and in these two statutes. Through this regulation, the agency is proposing to set out requirements through which it may normally endorse certain conformity assessment procedure reports. Such reports would be provided by equivalent EC Member State regulatory authorities for manufacturing site inspections to ascertain conformity with pharmaceutical GMP's and by equivalent conformity assessment bodies for quality system audits and certain medical device premarket evaluations. Obtaining conformity assessment information in the manner described in the proposed rule is inherently more efficient and cost-effective than the existing approach, where additional inspection efforts by FDA in foreign countries are necessary because foreign regulatory systems have not been found equivalent. The primary benefit of the proposed rule is to provide credible assurance that the rapidly increasing volume of EC Member States' imports into the United States meet pharmaceutical GMP requirements, and medical device quality system evaluation and certain premarket evaluation requirements, as specified in U.S. statutes and regulations. In the future, this credible assurance must be achievable without resource expenditures by FDA that are directly proportional to the volume of trade.

In recent years, the credibility of the current approach has been strained as FDA's essentially constant foreign inspection capacity has been stretched over an expanding volume of imports from the EC. In the 3-year interval between 1994 and 1997, the value of EC pharmaceutical and medical device imports into the United States has nearly doubled from $5.5 billion to more than $10.7 billion. Growth has been greatest in pharmaceuticals, where

annual EC exports have increased by more than $2 billion in each of the last 2 years. In 1997, FDA conducted one inspection in the EC for every $60 million in pharmaceutical exports to the United States, which is less than half the coverage intensity of 1994. In addition, the majority of these inspections have been preapproval in nature. Continuation of the current trend will further decrease FDA's coverage intensity to less than one inspection per $100 million in EC pharmaceutical exports by the year 2000. Equivalence with EC Member State regulatory systems has the potential for leveraging FDA's regulatory resources so that necessary conformity assessments can be ensured for higher volumes of future trade.

In addition to coping with higher trade volumes, mutual recognition or equivalence-based agreements with exporting nations may permit FDA to redirect some of its inspectional resources to risk priorities not covered by such agreements. This flexibility would provide a more responsive level of U.S. consumer protection in the face of a changing global marketplace with inherently variable risk management priorities.

Another important benefit of the proposed rule would be the cost savings realized by the regulated industry, largely as a result of sharing inspection reports among equivalent regulatory authorities. This exchange, in turn, will eliminate the need for duplicative inspections and permit individual firms to undergo fewer inspections of manufacturing sites. FDA does not have data on the average administrative cost incurred by pharmaceutical (including biological) or medical device manufacturers as they participate in regulatory inspections, but it is reasonable to assume that the avoidance of redundant inspections would generate cost savings. The proposed rule also may shorten product review times for regulated products as a result of the increased efficiency of premarket approval inspection activities and the third-party evaluation of certain medical devices. Quantification of this savings will be highly dependent on the specific countries that achieve equivalence and the number of medical device audits and evaluations performed by conformity assessment bodies.

The costs of this regulation appear to impact more directly on governmental regulatory agencies than on the regulated industry. These governmental costs involve both startup and operational components. FDA has not received additional government funding earmarked for achieving mutual recognition agreements. FDA, therefore, must proceed to implement these agreements as a concurrent function within normal day-to-day regulatory activities. The 3-year transition period reflects the necessity to absorb these startup costs within existing regulatory budgets. Some activities such as joint inspections may be reasonably easy to absorb as concurrent functions that do not require additional funding, while others such as developing and maintaining systems for routine information exchange may involve new activities. These absorbed governmental costs will fall heavily on FDA, as it must assess equivalence of multiple EC Member States and notified bodies.

For FDA, the absorption of these startup costs will be easier with respect to those EC Member States with a large volume of trade, where FDA already conducts enough inspections to gather a general understanding of the requirements and regulatory practices of the exporting country. From this perspective, the pace and priorities for mutual recognition agreements during the transition period may be dictated by FDA's ability to conduct these processes as concurrent functions within current activities.

In the longer run, an operational system of mutual recognition agreements could pose additional costs on regulatory authorities of exporting countries if equivalence requires a frequency, focus or content of inspections not presently included in regulatory requirements of the exporting nation. For example, Country A may not be able to provide the frequency of medical device inspections desired by Country B without conducting inspections beyond those required for Country A's domestic inspection strategy. Conversely, Country B may not be able to provide to Country A adequate details of the quality of pharmaceutical source materials, because Country B does not have inspectional authority over pharmaceutical starting materials. To the extent such costs are insignificant or offset by other savings, they will not likely be obstacles to reaching agreement on equivalence.

This proposal is not expected to involve any new incremental costs to the affected industry. Although joint inspections during the transition period may create the appearance of more regulatory effort, they should not impose additional costs on the firms inspected. FDA does not anticipate an increase in the total number of inspections, and in fact, the coverage intensity of FDA inspections in the EC would continue to fall during the transition period, as it has been for the past several years. Other activities related to equivalence determinations, such as the procedures for exchanging information and reports, focus on the interface and coordination between regulatory agencies and, as such, do not affect industry in a cost context.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant impact on a substantial number of small entities. As the proposed regulation is not expected to impose costs on the regulated industry, the agency certifies that the proposed rule would not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Act of 1995 requires that agencies prepare an assessment of the anticipated costs and benefits before issuing any final rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. This proposed rule does not impose any mandates on State, local or tribal governments, or the private sector that would result in an annual expenditure of $100,000,000 or more. Therefore, no further analysis is appropriate for this requirement.

V. Paperwork Reduction Act of 1995

This proposed rule does not contain any information collection provisions that would be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

VI. Request for Comments

Interested persons may, on or before May 11, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposed regulation. Comments must be received by the Dockets Management Branch by 4:30 p.m. Eastern Standard Time May 11, 1998. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments, a copy of the MRA, and a summary explanation of the MRA's provisions, to aid in commenting, may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. In addition, an electronic copy of the MRA and the summary

explanation is available on FDA's web site at ''http://www.fda.gov'' under the ''international'' heading menu item.

The comment period in this document is shorter than the 60 days FDA customarily provides for proposed rules (21 CFR 10.40(b)(2)). FDA believes it is unnecessary to provide 60 days for comment, given the opportunities for public comment the agency already has provided. During the course of the negotiations of the MRA, FDA provided a number of opportunities for public discussion. For example, on May 9, 1996 (61 FR 21194), FDA established a public docket for information concerning the MRA (Ref. 6). In addition, on October 18, 1996, FDA made available for public comment copies of a document entitled, ''FDA Proposal for an Agreement With the European Union Concerning the Mutual Recognition of Inspections to Determine Adherence to Manufacturing Practices for Pharmaceuticals Including Biologicals.'' FDA formally sought public comment on this proposal through a **Federal Register** notice (61 FR 54448, October 18, 1996). To provide opportunity for public input into the pharmaceutical GMP discussions with the European Commission, FDA hosted public exchange meetings in Washington, DC, and Rockville, MD, on March 31, 1995 (see 60 FR 15934, March 28, 1995), and October 30, 1996 (see 61 FR 54448, October 18, 1996). On November 8 and 9, 1996, a transatlantic business dialogue (TABD) meeting included an extensive discussion of the unresolved issues for the pharmaceutical and medical device annexes to the MRA (Ref. 7), and on March 14, 1997, FDA participated in a meeting of U.S. agencies and nongovernmental organizations, which included several consumer, industry, and environmental groups. Finally, FDA provided information and solicited comment on the MRA at a September 23, 1997, National Consumer Forum held in Washington, DC. The purpose of the forum was to facilitate dialogue on the MRA between FDA and consumers.

In light of the extensive opportunities for public participation, FDA believes there is good cause to provide 30 days for comment on this proposed rule. The agency also believes it is in the public interest to proceed expeditiously to implement the MRA, so that it can proceed toward the anticipated resource efficiencies and enhancement of product safety, effectiveness, and quality that the MRA can provide. The 30-day comment period provides sufficient opportunity to receive and consider comments before the anticipated signing of the MRA in late spring or early summer.

The agency also notes that the comment period is less than that required by Executive Order 12889 (58 FR 69681, December 30, 1993). Section 4 of Executive Order 12889 states that any agency subject to the Administrative Procedure Act shall provide a 75-day comment period for any proposed technical regulation. Because this proposed rule creates no new technical obligations or mandatory requirements on the public, FDA believes that it is not a technical regulation subject to Section 4 of Executive Order 12889. As a result, a 75-day comment period is not required for this proposed rule.

VII. References

1. The European Community consists of the following member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, and the United Kingdom. These countries have vested in the European Commission the authority to conduct certain international negotiations, on their behalf, with other countries such as the United States.

2. On June 20, 1997, U.S. Trade Representative Charlene Barshefsky and European Commission Vice President Leon Brittan signed ''Agreed Minutes on the Agreement on Mutual Recognition between the United States of America and the European Community,'' which states that the MRA ''represents the text we commit to submit to our respective authorities with a view to completing the necessary procedures for approval and implementation.'' The complete text of the MRA is available on the Internet at FDA's web site, ''http://www.fda.gov'', under the ''international'' menu item or on the European Community web site, ''http://europa.eu.int/en/comm/dg01/mra03.htm''.

3. Food and Drug Administration Modernization Act of 1997 (FDAMA), section 417, Pub. L. 105–115, 111 Stat. 2296 (1997) (to be codified at 21 U.S.C. 360(i)(3)).

4. Provisions in the act that govern FDA regulation of pharmaceuticals and medical devices include sections 501, 502, 505, 512, 513, 520, and 522 (21 U.S.C. 351, 352, 355, 360b, 360c, 360j, and 360l).

5. FDAMA section 410 (to be codified at 21 U.S.C. 383(c)(2)).

6. Information in the docket includes summaries of minutes of the meetings described in this document with written comments received from interested parties, summaries of the various negotiation sessions between FDA and the European Commission and EC Member State representatives, and copies of draft agreements covering pharmaceutical GMP's and medical devices that were exchanged between the EC and FDA in December 1996 and January 1997.

7. The TABD is an industry-driven initiative that aims to facilitate closer economic relations between the EC and the United States.

VIII. Comparison Table

The following table shows the relationship of the MRA Articles and the sections of the Code of Federal Regulations (CFR) as proposed under this rule:

TABLE 1.—RELATIONSHIP OF THE MRA ARTICLES TO SECTIONS IN THE CFR

MRA Article	CFR Section
Sectoral Annex for Pharmaceutical GMP's	Subpart A
Article 1	26.1
Article 2	26.2
Article 3	26.3
Article 4	26.4
Article 5	26.5
Article 6	26.6
Article 7	26.7
Article 8	26.8
Article 9	26.9
Article 10	26.10
Article 11	26.11
Article 12	26.12
Article 13	26.13
Article 14	26.14
Article 15	26.15
Article 16	26.16
Article 17	26.17
Article 18	26.18
Article 19	26.19
Article 20	26.20
Article 21	26.21
Appendix 1	Appendix A
Appendix 2	Appendix B
Appendix 3	Appendix C
Appendix 4	Appendix D
Appendix 5	Appendix E

MRA Article	CFR Section
Sectoral Annex on Medical Devices	Subpart B
Article 1	26.31
Article 2	26.32
Article 3	26.33
Article 4	26.34
Article 5	26.35
Article 6	26.36
Article 7	26.37
Article 8	26.38
Article 9	26.39
Article 10	26.40
Article 11	26.41
Article 12	26.42
Article 13	26.43
Article 14	26.44
Article 15	26.45
Article 16	26.46
Article 17	26.47
Article 18	26.48
Article 19	26.49
Article 20	26.50
Appendix 1	Appendix A

MRA Article	CFR Section
Sectoral Annex on Medical Devices	Subpart B
Appendix 2 and Tables 1–3.	Appendix B and Tables 1–3
Appendix 3 [Reserved].	Appendix C [Reserved]
Appendix 4 [Reserved].	Appendix D [Reserved]
Appendix 5 [Reserved].	Appendix E [Reserved]
Appendix 6 [Reserved].	Appendix F [Reserved]

MRA Article	CFR Section
Umbrella Agreement	Subpart C
Article 1	26.60
Article 2	26.61
Article 3	26.62
Article 4	26.63
Article 5	26.64
Article 6	26.65
Article 7	26.66
Article 8	26.67
Article 9	26.68
Article 10	26.69
Article 11	26.70
Article 12	26.71
Article 13	26.72
Article 14	26.73
Article 15	26.74
Article 16	26.75
Article 17	26.76
Article 18	26.77
Article 19	26.78
Article 20	26.79
Article 21	26.80
Article 22	26.81

List of Subjects in 21 CFR Part 26

Animal and human drugs, Biologicals, Devices, Exports, Imports, Incorporation by reference, and Inspections.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR chapter I be amended by adding part 26 to read as follows:

PART 26—MUTUAL RECOGNITION OF PHARMACEUTICAL GOOD MANUFACTURING PRACTICE REPORTS, MEDICAL DEVICE QUALITY SYSTEM AUDIT REPORTS, AND CERTAIN MEDICAL DEVICE PREMARKET EVALUATION REPORTS PROVIDED BY EUROPEAN COMMUNITY MEMBER STATE REGULATORY AUTHORITIES AND EUROPEAN COMMUNITY CONFORMITY ASSESSMENT BODIES

Sec.

26.0 General.

Subpart A—Specific Sector Provisions for Pharmaceutical Good Manufacturing Practices

26.1 Definitions.
26.2 Purpose.
26.3 Scope.
26.4 Product coverage.
26.5 Length of transition period.
26.6 Equivalence assessment.
26.7 Participation in the equivalence assessment and determination.
26.8 Other transition activities.
26.9 Equivalence determination.
26.10 Regulatory authorities not listed as currently equivalent.
26.11 Start of operational period.
26.12 Nature of recognition of inspection reports.
26.13 Transmission of postapproval inspection reports.
26.14 Transmission of preapproval inspection reports.
26.15 Monitoring continued equivalence.
26.16 Suspension.
26.17 Role and composition of the Joint Sectoral Committee.
26.18 Regulatory collaboration.
26.19 Information relating to quality aspects.
26.20 Alert system.
26.21 Safeguard clause.
Appendix A of Subpart A—List of Applicable Laws, Regulations, and Administrative provisions.
Appendix B of Subpart A—List of Authorities.
Appendix C of Subpart A—Indicative List of Products Covered by Subpart A.
Appendix D of Subpart A—Criteria for Assessing Equivalence for Post- and Preapproval.
Appendix E of Subpart A—Elements to be Considered in Developing a Two-way Alert System.

Subpart B—Specific Sector Provisions for Medical Devices

26.31 Purpose.
26.32 Scope.
26.33 Product coverage.
26.34 Regulatory authorities.
26.35 Length and purpose of transition period.
26.36 Listing of CAB's.
26.37 Confidence building activities.
26.38 Other transition period activities.
26.39 Equivalence assessment.
26.40 Start of the operational period.
26.41 Exchange and endorsement of quality system evaluation reports.
26.42 Exchange and endorsement of product evaluation reports.
26.43 Transmission of quality system evaluation reports.
26.44 Transmission of product evaluation reports.
26.45 Monitoring continued equivalence.
26.46 Listing of additional CAB's.
26.47 Role and composition of the Joint Sectoral Committee.
26.48 Harmonization.
26.49 Regulatory cooperation.
26.50 Alert system and exchange of postmarket vigilance reports.
Appendix A of Subpart B—Relevant Legislation, Regulations and Procedures
Appendix B of Subpart B—Scope of Product Coverage
Appendix C of Subpart B [Reserved]
Appendix D of Subpart B [Reserved]
Appendix E of Subpart B [Reserved]
Appendix F of Subpart B [Reserved]

Subpart C—Framework or ''Umbrella'' Provisions

26.60 Definitions.
26.61 Purpose of this part.
26.62 General obligations.
26.63 General coverage of this part.
26.64 Transitional arrangements.
26.65 Designating authorities.
26.66 Designation and listing procedures.
26.67 Suspension of listed conformity assessment bodies.
26.68 Withdrawal of listed conformity assessment bodies.
26.69 Monitoring of conformity assessment bodies.
26.70 Conformity assessment bodies.
26.71 Exchange of information.
26.72 Sectoral contact points.
26.73 Joint Committee.
26.74 Preservation of regulatory authority.
26.75 Suspension of recognition obligations.
26.76 Confidentiality.
26.77 Fees.
26.78 Agreements with other countries.
26.79 Territorial application.
26.80 Entry into force, amendment and termination.
26.81 Final provisions.

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 343, 351, 352, 355, 360, 360b, 360c, 360d, 360e, 360f, 360g, 360h, 360i, 360j, 360l, 371, 374, 381, 382, 383, 393; 42 U.S.C. 216, 241, 242l, 262, 264, 265.

§ 26.0 General.

This part substantially reflects relevant provisions of the proposed international agreement entitled, ''Agreement on Mutual Recognition Between the United States of America and the European Community'' (the MRA), including the ''umbrella'' text and its sectoral annexes on pharmaceutical good manufacturing practices (GMP's) and medical devices. Whereas the parties to the MRA would be the United States and the European Community (EC), this part is relevant only to the Food and Drug Administration's (FDA's) implementation of the MRA and the

sectoral annexes cited in this section. For codification purposes, certain provisions of the MRA have been modified for use in this part. This modification is done for purposes of clarity only and shall not affect the text of the MRA to be concluded between the United States and the EC, or the rights and obligations of the United States or EC under that agreement. References to the terms ''party'' or ''parties'' reflect FDA's proposed implementation of the MRA and its sectoral annexes. It is understood that the EC will also be a party to the MRA and that it will implement the MRA in accordance with its internal procedures. If the parties to the MRA subsequently amend or terminate the MRA, FDA will modify this part accordingly, using appropriate administrative procedures.

Subpart A—Specific Sector Provisions for Pharmaceutical Good Manufacturing Practices

§ 26.1 Definitions.

(a) *Enforcement* means action taken by an authority to protect the public from products of suspect quality, safety, and efficacy or to assure that products are manufactured in compliance with appropriate laws, regulations, standards, and commitments made as part of the approval to market a product.

(b) *Equivalence* of the regulatory systems means that the systems are sufficiently comparable to assure that the process of inspection and the ensuing inspection reports will provide adequate information to determine whether respective statutory and regulatory requirements of the authorities have been fulfilled. *Equivalence* does not require that the respective regulatory systems have identical procedures.

(c) *Good Manufacturing Practices (GMP's)*: [These GMP conceptual definitions are to be merged by the parties at a future date.]

(1) GMP's mean the requirements found in the respective legislations, regulations, and administrative provisions for methods to be used in, and the facilities or controls to be used for, the manufacturing, processing, packing, and/or holding of a drug to assure that such drug meets the requirements as to safety, and has the identity and strength, and meets the quality and purity characteristics that it purports or is represented to possess.

(2) GMP's are that part of quality assurance which ensures that products are consistently produced and controlled to quality standards. For the purpose of this subpart, GMP's include, therefore, the system whereby the manufacturer receives the specifications of the product and/or process from the marketing authorization/product authorization or license holder or applicant and ensures the product is made in compliance with its specifications (qualified person certification in the European Community (EC)).

(d) *Inspection* means an onsite evaluation of a manufacturing facility to determine whether such manufacturing facility is operating in compliance with GMP's and/or commitments made as part of the approval to market a product.

(e) *Inspection Report* means the written observations and GMP's compliance assessment completed by an authority listed in Appendix B of this subpart.

(f) *Regulatory System* means the body of legal requirements for GMP's, inspections, and enforcements that ensure public health protection and legal authority to assure adherence to these requirements.

§ 26.2 Purpose.

The provisions of this subpart govern the exchange between the parties and normal endorsement by the receiving regulatory authority of official good manufacturing practice (GMP) inspection reports after a transitional period aimed at determination of the equivalence of the regulatory systems of the parties, which is the cornerstone of this subpart.

§ 26.3 Scope.

(a) The provisions of this subpart shall apply to pharmaceutical inspections carried out in the United States and Member States of the European Community (EC) before products are marketed (hereafter referred to as ''preapproval inspections'') as well as during their marketing (hereafter referred to as ''postapproval inspections'').

(b) Appendix A of this subpart names the laws, regulations, and administrative provisions governing these inspections and the good manufacturing practice (GMP) requirements.

(c) Appendix B of this subpart lists the authorities participating in activities under this subpart.

(d) Sections 26.65, 26.66, 26.67, 26.68, 26.69, and 26.70 of subpart C of this part do not apply to this subpart.

§ 26.4 Product coverage.

(a) These provisions will apply to medicinal products for human or animal use, intermediates and starting materials (as referred to in the European Community (EC)) and to drugs for human or animal use, biological products for human use, and active pharmaceutical ingredients (as referred to in the United States), only to the extent they are regulated by the authorities of both parties as listed in Appendix B of this subpart.

(b) Human blood, human plasma, human tissues and organs, and veterinary immunologicals (under 9 CFR 101.2, ''veterinary immunologicals'' are referred to as ''veterinary biologicals'') are excluded from the scope of this subpart. Human plasma derivatives (such as immunoglobulins and albumin), investigational medicinal products/new drugs, human radiopharmaceuticals, and medicinal gases are also excluded during the transition phase, their situation will be reconsidered at the end of the transition period. Products regulated by FDA's Center for Biologics Evaluation and Research as devices are not covered under this subpart.

(c) Appendix C of this subpart contains an indicative list of products covered by this subpart.

§ 26.5 Length of transition period.

A 3-year transition period will start immediately after the effective date described in § 26.80(a).

§ 26.6 Equivalence assessment.

(a) The criteria to be used by the parties to assess equivalence are listed in Appendix D of this subpart. Information pertaining to the criteria under European Community (EC) competence will be provided by the EC.

(b) The authorities of the parties will establish and communicate to each other their draft programs for assessing the equivalence of the respective regulatory systems in terms of quality assurance of the products and consumer protection. These programs will be carried out, as deemed necessary by the regulatory authorities, for post- and preapproval inspections and for various product classes or processes.

(c) The equivalence assessment shall include information exchanges (including inspection reports), joint training, and joint inspections for the purpose of assessing regulatory systems and the authorities' capabilities. In conducting the equivalence assessment, the parties will ensure that efforts are made to save resources.

(d) Equivalence assessment for authorities added to Appendix B of this subpart after the effective date of this part as described in § 26.80(a) will be conducted as described in this subpart, as soon as practicable.

§ 26.7 Participation in the equivalence assessment and determination.

The authorities listed in Appendix B of this subpart will actively participate in these programs to build a sufficient body of evidence for their equivalence determination. Both parties will exercise good faith efforts to complete equivalence assessment as expeditiously as possible to the extent the resources of the authorities allow.

§ 26.8 Other transition activities.

As soon as possible, the authorities will jointly determine the essential information which must be present in inspection reports and will cooperate to develop mutually agreed inspection report format(s).

§ 26.9 Equivalence determination.

(a) Equivalence is established by having in place regulatory systems covering the criteria referred to in Appendix D of this subpart, and a demonstrated pattern of consistent performance in accordance with these criteria. A list of authorities determined as equivalent shall be agreed to by the Joint Sectoral Committee at the end of the transition period, with reference to any limitation in terms of inspection type (e.g., postapproval or preapproval) or product classes or processes.

(b) The parties will document insufficient evidence of equivalence, lack of opportunity to assess equivalence or a determination of nonequivalence, in sufficient detail to allow the authority being assessed to know how to attain equivalence.

§ 26.10 Regulatory authorities not listed as currently equivalent.

Authorities not currently listed as equivalent, or not equivalent for certain types of inspections, product classes or processes may apply for reconsideration of their status once the necessary corrective measures have been taken or additional experience is gained.

§ 26.11 Start of operational period.

(a) The operational period shall start at the end of the transition period and its provisions apply to inspection reports generated by authorities listed as equivalent for the inspections performed in their territory.

(b) In addition, when an authority is not listed as equivalent based on adequate experience gained during the transition period, FDA will accept for normal endorsement (as provided in § 26.12) inspection reports generated as a result of inspections conducted jointly by that authority on its territory and another authority listed as equivalent, provided that the authority of the Member State in which the inspection is performed can guarantee enforcement of the findings of the inspection report and require that corrective measures be taken when necessary. FDA has the option to participate in these inspections, and based on experience gained during the transition period, the parties will agree on procedures for exercising this option.

(c) In the European Community (EC), the qualified person will be relieved of responsibility for carrying the controls laid down in Article 22 paragraph 1(b) of Council Directive 75/319/EEC (see Appendix A of this subpart) provided that these controls have been carried out in the United States and that each batch/lot is accompanied by a batch certificate (in accordance with the World Health Organization Certification Scheme on the Quality of Medicinal Products) issued by the manufacturer certifying that the product complies with requirements of the marketing authorization and signed by the person responsible for releasing the batch/lot.

§ 26.12 Nature of recognition of inspection reports.

(a) Inspection reports (containing information as established under § 26.8), including a good manufacturing practice (GMP) compliance assessment, prepared by authorities listed as equivalent, will be provided to the authority of the importing party. Based on the determination of equivalence in light of the experience gained, these inspection reports will normally be endorsed by the authority of the importing party, except under specific and delineated circumstances. Examples of such circumstances include indications of material inconsistencies or inadequacies in an inspection report, quality defects identified in the postmarket surveillance or other specific evidence of serious concern in relation to product quality or consumer safety. In such cases, the authority of the importing party may request clarification from the authority of the exporting party which may lead to a request for reinspection. The authorities will endeavor to respond to requests for clarification in a timely manner.

(b) Where divergence is not clarified in this process, an authority of the importing country may carry out an inspection of the production facility.

§ 26.13 Transmission of postapproval inspection reports.

Postapproval good manufacturing practice (GMP) inspection reports concerning products covered by this subpart will be transmitted to the authority of the importing country within 60 calendar days of the request. Should a new inspection be needed, the inspection report will be transmitted within 90 calendar days of the request.

§ 26.14 Transmission of preapproval inspection reports.

(a) A preliminary notification that an inspection may have to take place will be made as soon as possible.

(b) Within 15 calendar days, the relevant authority will acknowledge receipt of the request and confirm its ability to carry out the inspection. In the European Community (EC), requests will be sent directly to the relevant authority, with a copy to the European Agency for the Evaluation of Medicinal Products (EMEA). If the authority receiving the request cannot carry out the inspection as requested, the requesting authority shall have the right to conduct the inspection.

(c) Reports of preapproval inspections will be sent within 45 calendar days of the request that transmitted the appropriate information and detailed the precise issues to be addressed during the inspection. A shorter time may be necessary in exceptional cases and these will be described in the request.

§ 26.15 Monitoring continued equivalence.

Monitoring activities for the purpose of maintaining equivalence shall include review of the exchange of inspection reports and their quality and timeliness; performance of a limited number of joint inspections; and the conduct of common training sessions.

§ 26.16 Suspension.

(a) Each party has the right to contest the equivalence of a regulatory authority. This right will be exercised in an objective and reasoned manner in writing to the other party.

(b) The issue shall be discussed in the Joint Sectoral Committee promptly upon such notification. Where the Joint Sectoral Committee determines that verification of equivalence is required, it may be carried out jointly by the parties in a timely manner, under § 26.6.

(c) Efforts will be made by the Joint Sectoral Committee to reach unanimous consent on the appropriate action. If agreement to suspend is reached in the Joint Sectoral Committee, an authority may be suspended immediately thereafter. If no agreement is reached in the Joint Sectoral Committee, the matter is referred to the Joint Committee as described in § 26.73. If no unanimous consent is reached within 30 days after such notification, the contested authority will be suspended.

(d) Upon the suspension of authority previously listed as equivalent, a party

is no longer obligated to normally endorse the inspection reports of the suspended authority. A party shall continue to normally endorse the inspection reports of that authority prior to suspension, unless the authority of the receiving party decides otherwise based on health or safety considerations. The suspension will remain in effect until unanimous consent has been reached by the parties on the future status of that authority.

§ 26.17 Role and composition of the Joint Sectoral Committee.

(a) A Joint Sectoral Committee is set up to monitor the activities under both the transitional and operational phases of this subpart.

(b) The Joint Sectoral Committee will be cochaired by a representative of FDA for the United States and a representative of the European Community (EC) who each will have one vote. Decisions will be taken by unanimous consent.

(c) The Joint Sectoral Committee's functions will include:

(1) Making a joint assessment, which must be agreed by both parties, of the equivalence of the respective authorities;

(2) Developing and maintaining the list of equivalent authorities, including any limitation in terms of inspecting type or products, and communicating the list to all authorities and the Joint Committee;

(3) Providing a forum to discuss issues relating to this subpart, including concerns that an authority may be no longer equivalent and opportunity to review product coverage; and

(4) Consideration of the issue of suspension.

(d) The Joint Sectoral Committee shall meet at the request of either party and, unless the cochairs otherwise agree, at least once each year. The Joint Committee will be kept informed of the agenda and conclusions of meetings of the Joint Sectoral Committee.

§ 26.18 Regulatory collaboration.

(a) The parties and authorities shall inform and consult one another, as permitted by law, on proposals to introduce new controls or to change existing technical regulations or inspection procedures and to provide the opportunity to comment on such proposals.

(b) The parties shall notify each other in writing of any changes to Appendix B of this subpart.

§ 26.19 Information relating to quality aspects.

The authorities will establish an appropriate means of exchanging information on any confirmed problem reports, corrective actions, recalls, rejected import consignments and other regulatory and enforcement problems for products subject to this subpart.

§ 26.20 Alert system.

(a) The details of an alert system will be developed during the transitional period. The system will be maintained in place at all times. Elements to be considered in developing such a system are described in Appendix E of this subpart.

(b) Contact points will be agreed between both parties to permit authorities to be made aware with the appropriate speed in case of quality defect, recalls, counterfeiting, and other problems concerning quality, which could necessitate additional controls or suspension of the distribution of the product.

§ 26.21 Safeguard clause.

Each party recognizes that the importing country has a right to fulfill its legal responsibilities by taking actions necessary to ensure the protection of human and animal health at the level of protection it deems appropriate. This includes the suspension of the distribution, product detention at the border of the importing country, withdrawal of the batches and any request for additional information or inspection as provided in § 26.12.

Appendix A of Subpart A—List of Applicable Laws, Regulations, and Administrative Provisions

1. For the European Community:

[Copies of EC documents may be obtained from the European Document Research, 1100 17th St. NW., suite 301, Washington, DC 20036. EC documents may be viewed on the European Commission Pharmaceuticals Units web site at ''http://dg3.eudra.org.'']

Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation, or administrative action relating to proprietary medicinal products as extended, widened, and amended.

Council Directive 75/319/EEC of 20 May 1975 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products as extended, widened and amended.

Council Directive 81/851/EEC of 6 November 1981 on the approximation of the laws of the Member States relating to veterinary medicinal products as widened and amended.

Commission Directive 91/356/EEC of 13 June 1991 laying down the principles and guidelines of good manufacturing practice for medicinal products for human use.

Commission Directive 91/412/EEC of 23 July 1991 laying down the principles and guidelines of good manufacturing practice for veterinary medicinal products.

Council Regulation No (EEC) 2309/93 of 23 July 1993 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products.

Council Directive 92/25/EEC of 31 March 1992 on the wholesale distribution of medicinal products for human use & Guide to Good Distribution Practice.

Current version of the Guide to Good Manufacturing Practice, Rules Governing Medicinal Products in the European Community, Volume IV.

2. For the United States :

[Copies of FDA documents may be obtained from the Government Printing Office, 1510 H St. NW., Washington, DC 20005. FDA documents, except the FDA Compliance Program Guidance Manual, may be viewed on FDA's Internet web site at ''http://www.FDA.gov''.]

Relevant sections of the United States Federal Food, Drug, and Cosmetic Act and the United States Public Health Service Act.

Relevant sections of Title 21, United States Code of Federal Regulations (CFR) Parts 1–99, Parts 200–299, Parts 500–599, and Parts 600–799.

Relevant sections of the FDA Investigations Operations Manual, the FDA Regulatory Procedures Manual, the FDA Compliance Policy Guidance Manual, the FDA Compliance Program Guidance Manual, and other FDA guidances.

Appendix B of Subpart A—List of Authorities

1. For the United States:

In the United States, the regulatory authority is the Food and Drug Administration.

2. For the European Community:

In the European Community, the regulatory authorities are the following :

Austria: Bundesministerium Fur Arbeit, Gesundheit, und Soziales, Wien.

Belgium: Ministèrie van Sociale Zakem, Volksgezondheid en Leefmilieu /Ministere des Affaires Sociales, Sante Publique et Environment/ Algemeine Farmaceutische Inspectie, Inspection Generale de la Pharmacie, Bruxelles, Brussel.

Denmark: Laegemiddelstryelsen, (Danish Medicines Agency), Bronshoj.

Finland: Laakelaittos/Lakemedelsverket (National Agency for Medicines), Helsinki.

France: Agence du Médicament, Direction de l'inspection et des établissements, Saint Denis. (Human). Agence Nationale du Médicament Vétérinaire, Fougères (Veterinary).

Germany: Bundesgesundheitsministerium, Bonn. Paul-Ehrlich Institut, Langen (biologicals only). Zustandige Behorden der 16 Bundeslander: Bayern, Berlin Brandenberg, Bremen, Hamburg, Hessen, Niedersachsen, Nordrhein-Westfalen, Rheinland-Pfalz, Mecklenberg-Vorpommern, Saarland, Sachsen, Sachsenanhalt, Schleswog-Holstein, Thuringen.

Greece: Ministry of Health and Welfare, National Drug Organisation (E.O.F.), Athens.

Ireland: Irish Medicines Board, Dublin.

Italy: Ministero della Sanità, Dipartimento Farmaci e Farmacovigilanza, Roma. (Human). Ministero della Sanità, Dipartimento alimenti e nutrizione e sanità pubblica veterinaria - Div. IX, Roma (Veterinary).
Luxembourg: Direction de la Santé, Division de la Pharmacie et des Médicaments, Luxembourg.
The Netherlands: Staatstoezicht op de Volksgezondheid, Inspectie voor de Gezondheidszorg, Rijswijk.
Portugal: Instituto da Farmácia e do Medicamento (INFARMED), Lisboa.
Spain: Ministerio Sanidad y Consumo, Subdirección. General de Control Farmacéutico, Madrid. (Human) Ministerio de Agricultura Pesca y Alimentación, Madrid, (Veterinary).
Sweden: Läkemedelsverket (Medical Products Agency), Uppsala.
United Kingdom: Medicines Control Agency, London. Veterinary Medicines Directorate, Addlestone.
European Union: European Commission, Brussels. European Agency for the Evaluation of Medicinal Products (EMEA), London.

Appendix C of Subpart A—Indicative List of Products Covered by Subpart A

Recognizing that precise definition of medicinal products and drugs are to be found in the legislations referred to above, an indicative list of products covered by this arrangement is given below:

- human medicinal products including prescription and nonprescription drugs;
- human biologicals including vaccines, and immunologicals;
- veterinary pharmaceuticals, including prescription and nonprescription drugs, with the exclusion of veterinary immunologicals (Under 9 CFR 101.2 ''veterinary immunologicals'' are referred to as ''veterinary biologicals.'');
- premixes for the preparation of veterinary medicated feeds (EC), Type A medicated articles for the preparation of veterinary medicated feeds (United States);
- intermediate products and active pharmaceutical ingredients or bulk pharmaceuticals (United States)/starting materials (EC).

Appendix D of Subpart A—Criteria for Assessing Equivalence for Post- and Preapproval

I. Legal/Regulatory authority and structures and procedures providing for post- and preapproval:

A. Appropriate statutory mandate and jurisdiction.
B. Ability to issue and update binding requirements on GMP's and guidance documents.
C. Authority to make inspections, review and copy documents, and to take samples and collect other evidence.
D. Ability to enforce requirements and to remove products found in violation of such requirements from the market.
E. Substantive current good manufacturing requirements.
F. Accountability of the regulatory authority.
G. Inventory of current products and manufacturers.
H. System for maintaining or accessing inspection reports, samples and other analytical data, and other firm/product information relating to matters covered by subpart A of this part.

II. Mechanisms in place to assure appropriate professional standards and avoidance of conflicts of interest.

III. Administration of the regulatory authority:

A. Standards of education/qualification and training.
B. Effective quality assurance systems measures to ensure adequate job performance.
C. Appropriate staffing and resources to enforce laws and regulations.

IV. Conduct of inspections:

A. Adequate preinspection preparation, including appropriate expertise of investigator/team, review of firm/product and databases, and availability of appropriate inspection equipment.
B. Adequate conduct of inspection, including statutory access to facilities, effective response to refusals, depth and competence of evaluation of operations, systems, and documentation; collection of evidence; appropriate duration of inspection and completeness of written report of observations to firm management.
C. Adequate postinspection activities, including completeness of inspectors' report, inspection report review where appropriate, and conduct of followup inspections and other activities where appropriate, assurance of preservation and retrieval of records.

V. Execution of regulatory enforcement actions to achieve corrections, designed to prevent future violations, and to remove products found in violation of requirements from the market.

VI. Effective use of surveillance systems:

A. Sampling and analysis.
B. Recall monitoring.
C. Product defect reporting system.
D. Routine surveillance inspections.
E. Verification of approved manufacturing process changes to marketing authorizations/approved applications.

VII. Additional specific criteria for preapproval inspections:

A. Satisfactory demonstration through a jointly developed and administered training program and joint inspections to assess the regulatory authorities' capabilities.
B. Preinspection preparation includes the review of appropriate records, including site plans and drug master file or similar documentation to enable adequate inspections.
C. Ability to verify chemistry, manufacturing, and control data supporting an application is authentic and complete.
D. Ability to assess and evaluate research and development data as scientifically sound, especially transfer technology of pilot, scale up and full scale production batches.
E. Ability to verify conformity of the onsite processes and procedures with those described in the application.
F. Review and evaluate equipment installation, operational and performance qualification data, and evaluate test method validation.

Appendix E of Subpart A—Elements to be Considered in Developing a Two-way Alert System

1. Documentation

- Definition of a crisis/emergency and under what circumstances an alert is required
- Standard Operating Procedures (SOP's)
- Mechanism of health hazards evaluation and classification
- Language of communication and transmission of information

2. Crisis Management System

- Crisis analysis and communication mechanisms
- Establishment of contact points
- Reporting mechanisms

3. Enforcement Procedures

- Followup mechanisms
- Corrective action procedures

4. Quality Assurance System

- Pharmacovigilance programme
- Surveillance/monitoring of implementation of corrective action

5. Contact Points

For the purpose of subpart A of this part, the contact points for the alert system will be:

A. For the European Community:

the Executive Director of the European Agency for the Evaluation of Medicinal Products, 7, Westferry Circus, Canary Wharf, UK - London E14 4HB, England. Telephone 44–171–418 8400, Fax 418 8416.

B. For the United States :

Division of Emergency and Investigational Operations (DEIO), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Telephone 301–443–1240, Fax 301–443–3757.

Subpart B—Specific Sector Provisions for Medical Devices

§ 26.31 Purpose.

(a) The purpose of this subpart is to specify the conditions under which a party will accept the results of quality system-related evaluations and inspections and premarket evaluations of the other party with regard to medical devices as conducted by listed conformity assessment bodies (CAB's) and to provide for other related cooperative activities.

(b) This subpart is intended to evolve as programs and policies of the parties evolve. The parties will review this subpart periodically, in order to assess progress and identify potential enhancements to this subpart as FDA and European Community (EC) policies evolve over time.

§ 26.32 Scope.

(a) The provisions of this subpart shall apply to the exchange and, where appropriate, endorsement of the following types of reports from conformity assessment bodies (CAB's) assessed to be equivalent:

(1) Under the U.S. system, surveillance/postmarket and initial/preapproval inspection reports;

(2) Under the U.S. system, premarket (510(k)) product evaluation reports;

(3) Under the European Community (EC) system, quality system evaluation reports; and

(4) Under the EC system, EC type examination and verification reports.

(b) Appendix A of this subpart names the legislation, regulations, and related procedures under which:

(1) Products are regulated as medical devices by each party;

(2) CAB's are designated and confirmed; and

(3) These reports are prepared.

(c) For purposes of this subpart, equivalence means that: CAB's in the EC are capable of conducting product and quality systems evaluations against U.S. regulatory requirements in a manner equivalent to those conducted by FDA; and CAB's in the United States are capable of conducting product and quality systems evaluations against EC regulatory requirements in a manner equivalent to those conducted by EC CAB's.

§ 26.33 Product coverage.

(a) There are three components to this subpart each covering a discrete range of products:

(1) *Quality System Evaluations*. U.S.-type surveillance/postmarket and initial/preapproval inspection reports and European Community (EC)-type quality system evaluation reports will be exchanged with regard to all products regulated under both U.S. and EC law as medical devices.

(2) *Product Evaluation*. U.S.-type premarket (510(k)) product evaluation reports and EC-type-testing reports will be exchanged only with regard to those products classified under the U.S. system as Class I/Class II-Tier 2 medical devices which are listed in Appendix B of this subpart.

(3) *Postmarket Vigilance Reports*. Postmarket vigilance reports will be exchanged with regard to all products regulated under both U.S. and EC law as medical devices.

(b) Additional products and procedures may be made subject to this subpart by agreement of the parties.

§ 26.34 Regulatory authorities.

The regulatory authorities shall have the responsibility of implementing the provisions of this subpart, including the designation and monitoring of conformity assessment bodies (CAB's). Regulatory authorities will be specified in Appendix C of this subpart.. Each party will promptly notify the other party in writing of any change in the regulatory authority for a country.

§ 26.35 Length and purpose of transition period.

There will be a 3-year transition period immediately following the date described in § 26.80(a). During the transition period, the parties will engage in confidence-building activities for the purpose of obtaining sufficient evidence to make determinations concerning the equivalence of conformity assessment bodies (CAB's) of the other party with respect to the ability to perform quality system and product evaluations or other reviews resulting in reports to be exchanged under this subpart.

§ 26.36 Listing of CAB's.

Each party shall designate conformity assessment bodies (CAB's) to participate in confidence-building activities by transmitting to the other party a list of CAB's which meet the criteria for technical competence and independence, as identified in Appendix A of this subpart. The list shall be accompanied by supporting evidence. Designated CAB's will be listed in Appendix D of this subpart for participation in the confidence building activities once confirmed by the importing party. Nonconfirmation would have to be justified based on documented evidence.

§ 26.37 Confidence building activities.

(a) At the beginning of the transitional period, the Joint Sectoral Group will establish a joint confidence building program calculated to provide sufficient evidence of the capabilities of the designated conformity assessment bodies (CAB's) to perform quality system or product evaluations to the specifications of the parties.

(b) The joint confidence building program should include the following actions and activities:

(1) Seminars designed to inform the parties and CAB's about each party's regulatory system, procedures, and requirements;

(2) Workshops designed to provide the parties with information regarding requirements and procedures for the designation and surveillance of CAB's;

(3) Exchange of information about reports prepared during the transition period;

(4) Joint training exercises; and

(5) Observed inspections.

(c) During the transition period, any significant problem that is identified with a CAB may be the subject of cooperative activities, as resources allow and as agreed to by the regulatory authorities, aimed at resolving the problem.

(d) Both parties will exercise good faith efforts to complete the confidence building activities as expeditiously as possible to the extent that the resources of the parties allow.

(e) Both the parties will each prepare annual progress reports which will describe the confidence building activities undertaken during each year of the transition period. The form and content of the reports will be determined by the parties through the Joint Sectoral Committee.

§ 26.38 Other transition period activities.

(a) During the transition period, the parties will jointly determine the necessary information which must be present in quality system and product evaluation reports.

(b) The parties will jointly develop a notification and alert system to be used in case of defects, recalls, and other problems concerning product quality that could necessitate additional actions (e.g., inspections by the parties of the importing country) or suspension of the distribution of the product.

§ 26.39 Equivalence assessment.

(a) In the final 6 months of the transition period, the parties shall proceed to a joint assessment of the equivalence of the conformity assessment bodies (CAB's) that participated in the confidence building activities. CAB's will be determined to be equivalent provided they have demonstrated proficiency through the submission of a sufficient number of adequate reports. CAB's may be determined to be equivalent with regard to the ability to perform any type of quality system or product evaluation covered by this subpart and with regard to any type of product covered by this subpart. The parties shall develop a list contained in Appendix E of this subpart of CAB's determined to be equivalent which shall contain a full explanation of the scope of the equivalency determination, including any appropriate limitations, with regard to performing any type of quality system or product evaluation.

(b) The parties shall allow CAB's not listed for participation in this subpart, or listed for participation only as to certain types of evaluations, to apply for participation in this subpart once the necessary measures have been taken or sufficient experience has been gained, in accordance with § 26.46.

(c) Decisions concerning the equivalence of CAB's must be agreed to by both parties.

§ 26.40 Start of the operational period.

(a) The operational period will start at the end of the transition period after the parties have developed the list of conformity assessment bodies (CAB's) found to be equivalent. The provisions of §§ 26.40, 26.41, 26.42, 26.43, 26.44, 26.45, and 26.46 will apply only with regard to listed CAB's and only to the extent of any specifications and limitations contained on the list with regard to a CAB.

(b) The operational period will apply to quality system evaluation reports and product evaluation reports generated by CAB's listed in accordance with this subpart for the evaluations performed in the respective territories of the parties, except if the parties agree otherwise.

§ 26.41 Exchange and endorsement of quality system evaluation reports.

(a) Listed European Community (EC) conformity assessment bodies (CAB's) will provide FDA with reports of quality system evaluations, as follows:

(1) For preapproval quality system evaluations, EC CAB's will provide full reports; and

(2) For surveillance quality system evaluations, EC CAB's will provide abbreviated reports.

(b) Listed U.S. CAB's will provide to the EC Notified Body of the manufacturer's choice:

(1) Full reports of initial quality system evaluations;

(2) Abbreviated reports of quality systems surveillance audits.

(c) If the abbreviated reports do not provide sufficient information, the importing party may request additional clarification from the CAB.

(d) Based on the determination of equivalence in light of the experience gained, the quality system evaluation reports prepared by the CAB's listed as equivalent will normally be endorsed by the importing party, except under specific and delineated circumstances. Examples of such circumstances include indications of material inconsistencies or inadequacies in a report, quality defects identified in postmarket surveillance or other specific evidence of serious concern in relation to product quality or consumer safety. In such cases, the importing party may request clarification from the exporting party which may lead to a request for reinspection. The parties will endeavor to respond to requests for clarification in a timely manner. Where divergence is not clarified in this process, the importing party may carry out the quality system evaluation.

§ 26.42 Exchange and endorsement of product evaluation reports.

(a) European Community (EC) conformity assessment bodies (CAB's) listed for this purpose will, subject to the specifications and limitations on the list, provide to FDA 510(k) premarket notification assessment reports prepared to U.S. medical device requirements.

(b) U.S. CAB's will, subject to the specifications and limitations on the list, provide to the EC Notified Body of the manufacturer's choice, type examination, and verification reports prepared to EC medical device requirements.

(c) Based on the determination of equivalence in light of the experience gained, the product evaluation reports prepared by the CAB's listed as equivalent will normally be endorsed by the importing party, except under specific and delineated circumstances. Examples of such circumstances include indications of material inconsistencies, inadequacies, or incompleteness in a product evaluation report, or other specific evidence of serious concern in relation to product safety, performance, or quality. In such cases, the importing party may request clarification from the exporting party which may lead to a request for a reevaluation. The parties will endeavor to respond to requests for clarification in a timely manner. Endorsement remains the responsibility of the importing party.

§ 26.43 Transmission of quality system evaluation reports.

Quality system evaluation reports covered by § 26.41 concerning products covered by this subpart shall be transmitted to the importing party within 60 calendar days of a request by the importing party. Should a new inspection be requested, the time period shall be extended by an additional 30 calendar days. A party may request a new inspection, for cause, identified to the other party. If the exporting party cannot perform an inspection within a specified period of time, the importing party may perform an inspection on its own.

§ 26.44 Transmission of product evaluation reports.

Transmission of product evaluation reports will take place according to the importing party's specified procedures.

§ 26.45 Monitoring continued equivalence.

Monitoring activities will be carried out in accordance with § 26.69.

§ 26.46 Listing of additional CAB's.

(a) During the operational phase, additional conformity assessment bodies (CAB's) will be considered for equivalence using the procedures and criteria described in §§ 26.36, 26.37, and 26.39, taking into account the level of confidence gained in the overall regulatory system of the other party.

(b) Once a designating authority considers that such CAB's, having undergone the procedures of §§ 26.36, 26.37, and 26.39, may be determined to be equivalent, it will then designate those bodies on an annual basis. Such procedures satisfy the procedures of § 26.66(a) and (b).

(c) Following such annual designations, the procedures for confirmation of CAB's under § 26.66(c) and (d) shall apply.

§ 26.47 Role and composition of the Joint Sectoral Committee.

(a) The Joint Sectoral Committee for this subpart is set up to monitor the activities under both the transitional and operational phases of this subpart.

(b) The Joint Sectoral Committee will be cochaired by a representative of the Food and Drug Administration (FDA) for the United States and a representative of the European Community (EC) who will each have one vote. Decisions will be taken by unanimous consent.

(c) The Joint Sectoral Committee's functions will include:

(1) Making a joint assessment of the equivalence of conformity assessment bodies (CAB's);

(2) Developing and maintaining the list of equivalent CAB's, including any limitation in terms of their scope of activities and communicating the list to all authorities and the Joint Committee described in subpart C of this part;

(3) Providing a forum to discuss issues relating to this subpart, including concerns that a CAB may no longer be equivalent and opportunity to review product coverage; and

(4) Consideration of the issue of suspension.

§ 26.48 Harmonization.

During both the transitional and operational phases of this subpart, both parties intend to continue to participate in the activities of the Global Harmonization Task Force and utilize the results of those activities to the extent possible. Such participation involves developing and reviewing documents developed by the Global Harmonization Task Force and jointly determining whether they are applicable to the implementation of this subpart.

§ 26.49 Regulatory cooperation.

(a) The parties and authorities shall inform and consult with one another, as permitted by law, of proposals to

introduce new controls or to change existing technical regulations or inspection procedures and to provide the opportunity to comment on such proposals.

(b) The parties shall notify each other in writing of any changes to Appendix A of this subpart.

§ 26.50 Alert system and exchange of postmarket vigilance reports.

(a) An alert system will be set up during the transition period and maintained thereafter by which the parties will notify each other when there is an immediate danger to public health. Elements of such a system will be described in an Appendix F of this subpart. As part of that system, each party shall notify the other party of any confirmed problem reports, corrective actions, or recalls. These reports are regarded as part of ongoing investigations.

(b) Contact points will be agreed between both parties to permit authorities to be made aware with the appropriate speed in case of quality defect, batch recalls, counterfeiting and other problems concerning quality, which could necessitate additional controls or suspension of the distribution of the product.

Appendix A of Subpart B—Relevant Legislation, Regulations and Procedures

1. For the European Community (EC) the following legislation applies to § 26.42(a) of this subpart:

[Copies of EC documents may be obtained from the European Document Research, 1100 17th St. NW., suite 301, Washington, DC 20036.]

a. Council Directive 90/385/EEC of 20 June 1990 on active implantable medical devices
OJ No. L 189, 20.7. 1990, p. 17. Conformity assessment procedures.
Annex 2 (with the exception of section 4)
Annex 4
Annex 5

b. Council Directive 93/42/EEC of 14 June 1993 on Medical Devices OJ No. L 169,12.7.1993, p.1. Conformity assessment procedures.
Annex 2 (with the exception of section 4)
Annex 3
Annex 4
Annex 5
Annex 6

2. For the United States, the following legislation applies to § 26.32(a):

[Copies of FDA documents may be obtained from the Government Printing Office, 1510 H St. NW., Washington, DC 20005. FDA documents may be viewed on FDA's Internet web site at ''http://www.fda.gov''.]

a. The Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321 *et seq.*

b. The Public Health Service Act, 42 U.S.C. 201 *et seq.*

c. Regulations of the United States Food and Drug Administration found at 21 CFR, in particular, Parts 800 to 1299.

d. Medical Devices; Third Party Review of Selected Premarket Notifications; Pilot Program, 61 FR 14789-14796 (April 3, 1996).

Appendix B of Subpart B—Scope of Product Coverage

1. Initial Coverage of the Transition Period

Upon entry into force of this subpart as described in § 26.80 (it is understood that the date of entry into force will not occur prior to June 1, 1998, unless the parties decide otherwise), products qualifying for the transitional arrangements under this subpart include:

a. All Class I products requiring premarket evaluations in the United States—see Table 1.

b. Those Class II products listed in Table 2.

2. During the Transition Period

The parties will jointly identify additional product groups, including their related accessories, in line with their respective priorities as follows:

a. Those for which review may be based primarily on written guidance which the parties will use their best efforts to prepare expeditiously; and

b. Those for which review may be based primarily on international standards, in order for the parties to gain the requisite experience.

The corresponding additional product lists will be phased in on an annual basis. The parties may consult with industry and other interested parties in determining which products will be added.

3. Commencement of the Operational Period

a. At the commencement of the operational period, product coverage shall extend to all Class I/II products covered during the transition period.

b. FDA will expand the program to categories of Class II devices as is consistent with the results of the pilot, and with FDA's ability to write guidance documents if the device pilot for the third party review of medical devices is successful. The MRA will cover to the maximum extent feasible all Class II devices listed in Table 3 for which FDA-accredited third party review is available in the United States.

4. Unless explicitly included by joint decision of the parties, this part does not cover any U.S. Class II-tier 3 or any Class III product under either system.

[FDA is codifying the lists of medical devices contained in the following tables as they appear in the medical device annex of the ''Agreement on Mutual Recognition Between the United States of America and the European Community.'' As a result of the Food and Drug Administration Modernization Act of 1997, however, the medical devices included in these tables will change.]

TABLE 1.—CLASS I PRODUCTS REQUIRING PREMARKET EVALUATIONS IN THE UNITED STATES, INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD[1]

21 CFR Section No.	Regulation Name Product Code—Device Name
Anesthesiology Panel (21 CFR Part 868)	
868.1910	Esophageal Stethoscope BZW—Stethoscope, Esophageal
868.5620	Breathing Mouthpiece BYP—Mouthpiece, Breathing
868.5640	Medicinal Nonventilatory Nebulizer (Atomizer) CCQ—Nebulizer, Medicinal, Nonventilatory (Atomizer)
868.5675	Rebreathing Device BYW—Device, Rebreathing
868.5700	Nonpowered Oxygen Tent FOG—Hood, Oxygen, Infant BYL—Tent, Oxygen
868.6810	Tracheobronchial Suction Catheter BSY—Catheters, Suction, Tracheobronchial

TABLE 1.—CLASS I PRODUCTS REQUIRING PREMARKET EVALUATIONS IN THE UNITED STATES, INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD[1]—Continued

21 CFR Section No.	Regulation Name Product Code—Device Name
Cardiovascular Panel	
(None)	
Dental Panel (21 CFR Part 872)	
872.3400	Karaya and Sodium Borate With or Without Acacia Denture Adhesive
	KOM—Adhesive, Denture, Acacia and Karaya With Sodium Borate
872.3700	Dental Mercury (U.S.P.)
	ELY—Mercury
872.4200	Dental Handpiece and Accessories
	EBW—Controller, Food, Handpiece and Cord
	EFB—Handpiece, Air-Powered, Dental
	EFA—Handpiece, Belt and/or Gear Driven, Dental
	EGS—Handpiece, Contra- and Right-Angle Attachment, Dental
	EKX—Handpiece, Direct Drive, AC-Powered
	EKY—Handpiece, Water-Powered
872.6640	Dental Operative Unit and Accessories
	EIA—Unit, Operative Dental
Ear, Nose, and Throat Panel (21 CFR Part 874)	
874.1070	Short Increment Sensitivity Index (SISI) Adapter
	ETR—Adapter, Short Increment Sensitivity Index (SISI)
874.1500	Gustometer
	ETM—Gustometer
874.1800	Air or Water Caloric Stimulator
	KHH—Stimulator, Caloric-Air
	ETP—Stimulator, Caloric-Water
874.1925	Toynbee Diagnostic Tube
	ETK—Tube, Toynbee Diagnostic
874.3300	Hearing Aid
	LRB—Face Plate Hearing-Aid
	ESD—Hearing-aid, Air-Conduction
874.4100	Epistaxis Balloon
	EMX—Balloon, Epistaxis
874.5300	ENT Examination and Treatment Unit
	ETF—Unit, Examining/Treatment, ENT
874.5550	Powered Nasal Irrigator
	KMA—Irrigator, Powered Nasal
874.5840	Antistammering Device
	KTH—Device, Anti-Stammering
Gastroenterology—Urology Panel (21 CFR Part 876)	
876.5160	Urological Clamp for Males
	FHA—Clamp, Penile
876.5210	Enema Kit
	FCE—Kit, Enema, (for Cleaning Purpose)
876.5250	Urine Collector and Accessories
	FAQ—Bag, Urine Collection, Leg, for External Use
General Hospital Panel (21 CFR Part 880)	
880.5270	Neonatal Eye Pad
	FOK—Pad, Neonatal Eye
880.5420	Pressure Infusor for an I.V. Bag
	KZD—Infusor, Pressure, for I.V. Bags
880.5680	Pediatric Position Holder
	FRP—Holder, Infant Position
880.6250	Patient Examination Glove
	LZB—Finger Cot
	FMC—Glove, Patient Examination
	LYY—Glove, Patient Examination, Latex
	LZA—Glove, Patient Examination, Poly
	LZC—Glove, Patient Examination, Speciality
	LYZ—Glove, Patient Examination, Vinyl
880.6375	Patient Lubricant
	KMJ—Lubricant, Patient
880.6760	Protective Restraint
	BRT—Restraint, Patient, Conductive
	FMQ—Restraint, Protective
Neurology Panel (21 CFR Part 882)	
882.1030	Ataxiagraph
	GWW—Ataxiagraph
882.1420	Electroencephalogram (EEG) Signal Spectrum Analyzer
	GWS—Analyzer, Spectrum, Electroencephalogram Signal

TABLE 1.—CLASS I PRODUCTS REQUIRING PREMARKET EVALUATIONS IN THE UNITED STATES, INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD[1]—Continued

21 CFR Section No.	Regulation Name Product Code—Device Name
882.4060	Ventricular Cannula HCD—Cannula, Ventricular
882.4545	Shunt System Implantation Instrument GYK—Instrument, Shunt System Implantation
882.4650	Neurosurgical Suture Needle HAS—Needle, Neurosurgical Suture
882.4750	Skull Punch GXJ—Punch, Skull
Obstetrics and Gynecology Panel	
(None)	
Ophthalmology Panel (21 CFR Part 886)	
886.1780	Retinoscope HKM—Retinoscope, Battery-Powered
886.1940	Tonometer Sterilizer HKZ—Sterilizer, Tonometer
886.4070	Powered Corneal Burr HQS—Burr, Corneal, AC-Powered HOG—Burr, Corneal, Battery-Powered HRG—Engine, Trephine, Accessories, AC-Powered HFR—Engine, Trephine, Accessories, Battery-Powered HLD—Engine, Trephine, Accessories, Gas-Powered
886.4370	Keratome HNO—Keratome, AC-Powered HMY—Keratome, Battery-Powered
886.5850	Sunglasses (Nonprescription) HQY—Sunglasses (Nonprescription Including Photosensitive)
Orthopedic Panel (21 CFR Part 888)	
888.1500	Goniometer KQX—Goniometer, AC-Powered
888.4150	Calipers for Clinical Use KTZ—Caliper
Physical Medicine Panel (21 CFR Part 890)	
890.3850	Mechanical Wheelchair LBE—Stroller, Adaptive IOR—Wheelchair, Mechanical
890.5180	Manual Patient Rotation Bed INY—Bed, Patient Rotation, Manual
890.5710	Hot or Cold Disposable Pack IMD—Pack, Hot or Cold, Disposable
Radiology Panel (21 CFR Part 892)	
892.1100	Scintillation (Gamma) Camera IYX—Camera, Scintillation (Gamma)
892.1110	Positron Camera IZC—Camera, Positron
892.1300	Nuclear Rectilinear Scanner IYW—Scanner, Rectilinear, Nuclear
892.1320	Nuclear Uptake Probe IZD—Probe, Uptake, Nuclear
892.1330	Nuclear Whole Body Scanner JAM—Scanner, Whole Body, Nuclear
892.1410	Nuclear Electrocardiograph Synchronizer IVY—Synchronizer, Electrocardiograph, Nuclear
892.1890	Radiographic Film Illuminator IXC—Illuminator, Radiographic-Film JAG—Illuminator, Radiographic-Film, Explosion-Proof
892.1910	Radiographic Grid IXJ—Grid, Radiographic
892.1960	Radiographic Intensifying Screen WAM—Screen, Intensifying, Radiographic
892.1970	Radiographic ECG/Respirator Synchronizer IXO—Synchronizer, ECG/Respirator, Radiographic
892.5650	Manual Radionuclide Applicator System IWG—System, Applicator, Radionuclide, Manual
General and Plastic Surgery Panel (21 CFR Part 878)	
878.4200	Introduction/Drainage Catheter and Accessories KGZ—Accessories, Catheter GCE—Adaptor, Catheter FGY—Cannula, Injection GBA—Catheter, Balloon Type

TABLE 1.—CLASS I PRODUCTS REQUIRING PREMARKET EVALUATIONS IN THE UNITED STATES, INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD[1]—Continued

21 CFR Section No.	Regulation Name
	Product Code—Device Name
	GBZ—Catheter, Cholangiography
	GBQ—Catheter, Continuous Irrigation
	GBY—Catheter, Eustachian, General & Plastic Surgery
	JCY—Catheter, Infusion
	GBX—Catheter, Irrigation
	GBP—Catheter, Multiple Lumen
	GBO—Catheter, Nephrostomy, General & Plastic Surgery
	GBN—Catheter, Pediatric, General & Plastic Surgery
	GBW—Catheter, Peritoneal
	GBS—Catheter, Ventricular, General & Plastic Surgery
	GCD—Connector, Catheter
	GCC—Dilator, Catheter
	GCB—Needle, Catheter
878.4320	Removable Skin Clip
	FZQ—Clip, Removable (Skin)
878.4460	Surgeon's Gloves
	KGO—Surgeon's Gloves
878.4680	Nonpowered, Single Patient, Portable Suction Apparatus
	GCY—Apparatus, Suction, Single Patient Use, Portable, Nonpowered
878.4760	Removable Skin Staple
	GDT—Staple, Removable (Skin)
878.4820	AC–Powered, Battery-Powered, and Pneumatically Powered Surgical Instrument Motors and Accessories/Attachments
	GFG—Bit, Surgical
	GFA—Blade, Saw, General & Plastic Surgery
	DWH—Blade, Saw, Surgical, Cardiovascular
	BRZ—Board, Arm (With Cover)
	GFE—Brush, Dermabrasion
	GFF—Bur, Surgical, General & Plastic Surgery
	KDG—Chisel (Osteotome)
	GFD—Dermatome
	GFC—Driver, Surgical, Pin
	GFB—Head, Surgical, Hammer
	GEY—Motor, Surgical Instrument, AC-Powered
	GET—Motor, Surgical Instrument, Pneumatic Powered
	DWI—Saw, Electrically Powered
	KFK—Saw, Pneumatically Powered
	HAB—Saw, Powered, and Accessories
878.4960	Air or AC-Powered Operating Table and Air or AC-Powered Operating Chair & Accessories
	GBB—Chair, Surgical, AC-Powered
	FQO—Table, Operating-Room, AC-Powered
	GDC—Table, Operating-Room, Electrical
	FWW—Table, Operating-Room, Pneumatic
	JEA—Table, Surgical with Orthopedic Accessories, AC-Powered
880.5090	Liquid Bandage
	KMF—Bandage, Liquid

[1]Descriptive information on product codes, panel codes, and other medical device identifiers may be viewed on FDA's Internet Web Site at ''http://www.fda.gov/cdrh/prodcode.html''.

TABLE 2.—CLASS II MEDICAL DEVICES INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD (UNITED STATES TO DEVELOP GUIDANCE DOCUMENTS IDENTIFYING U.S. REQUIREMENTS AND EUROPEAN COMMUNITY (EC) TO IDENTIFY STANDARDS NEEDED TO MEET EC REQUIREMENTS)[1]

Panel	21 CFR Section No.	Regulation Name
		Product Code—Device Name
RA	892.1000	Magnetic Resonance Diagnostic Device
		MOS—COIL, Magnetic Resonance, Specialty
		LNH—System, Nuclear Magnetic Resonance Imaging
		LNI—System, Nuclear Magnetic Resonance Spectroscopic
Diagnostic Ultrasound:		
RA	892.1540	Nonfetal Ultrasonic Monitor
		JAF—Monitor, Ultrasonic, Nonfetal
RA	892.1550	Ultrasonic Pulsed Doppler Imaging System
		IYN—System, Imaging, Pulsed Doppler, Ultrasonic

TABLE 2.—CLASS II MEDICAL DEVICES INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD (UNITED STATES TO DEVELOP GUIDANCE DOCUMENTS IDENTIFYING U.S. REQUIREMENTS AND EUROPEAN COMMUNITY (EC) TO IDENTIFY STANDARDS NEEDED TO MEET EC REQUIREMENTS)[1]—Continued

Panel	21 CFR Section No.	Regulation Name
		Product Code—Device Name
RA	892.1560	Ultrasonic Pulsed Echo Imaging System IYO—System, Imaging, Pulsed Echo, Ultrasonic
RA	892.1570	Diagnostic Ultrasonic Transducer ITX—Transducer, Ultrasonic, Diagnostic
Diagnostic X-Ray Imaging Devices (except mammographic x-ray systems):		
RA	892.1600	Angiographic X-Ray System IZI—System, X-Ray, Angiographic
RA	892.1650	Image-Intensified Fluoroscopic X-Ray System MQB—Solid State X-Ray Imager (Flat Panel/Digital Imager) JAA—System, X-Ray, Fluoroscopic, Image-Intensified
RA	892.1680	Stationary X-Ray System KPR—System, X-Ray, Stationary
RA	892.1720	Mobile X-Ray System IZL—System, X-Ray, Mobile
RA	892.1740	Tomographic X-Ray System IZF—System, X-Ray, Tomographic
RA	892.1750	Computed Tomography X-Ray System JAK—System, X-Ray, Tomography, Computed
ECG-Related Devices:		
CV	870.2340	Electrocardiograph DPS—Electrocardiograph MLC—Monitor, ST Segment
CV	870.2350	Electrocardiograph Lead Switching Adaptor DRW—Adaptor, Lead Switching, Electrocardiograph
CV	870.2360	Electrocardiograph Electrode DRX—Electrode, Electrocardiograph
CV	870.2370	Electrocardiograph Surface Electrode Tester KRC—Tester, Electrode, Surface, Electrocardiographic
NE	882.1400	Electroencephalograph GWQ—Electroencephalograph
HO	880.5725	Infusion Pump (external only) MRZ—Accessories, Pump, Infusion FRN—Pump, Infusion LZF—Pump, Infusion, Analytical Sampling MEB—Pump, Infusion, Elastomeric LZH—Pump, Infusion, Enteral MHD—Pump, Infusion, Gallstone Dissolution LZG—Pump, Infusion, Insulin MEA—Pump, Infusion, PCA
Ophthalmic Instruments:		
OP	886.1570	Ophthalmoscope HLI—Ophthalmoscope, AC-Powered HLJ—Ophthalmoscope, Battery-Powered
OP	886.1780	Retinoscope HKL—Retinoscope, AC-Powered
OP	886.1850	AC-Powered Slit-Lamp Biomicroscope HJO—Biomicroscope, Slit-Lamp, AC-Powered
OP	886.4150	Vitreous Aspiration and Cutting Instrument MMC—Dilator, Expansive Iris (Accessory) HQE—Instrument, Vitreous Aspiration and Cutting, AC-Powered HKP—Instrument, Vitreous Aspiration and Cutting, Battery-Powered MLZ—Vitrectomy, Instrument Cutter
OP	886.4670	Phacofragmentation System HQC—Unit, Phacofragmentation
SU	878.4580	Surgical Lamp HBI—Illuminator, Fiberoptic, Surgical Field FTF—Illuminator, Nonremote FTG—Illuminator, Remote HJE—Lamp, Fluorescein, AC-Powered FQP—Lamp, Operating-Room FTD—Lamp, Surgical GBC—Lamp, Surgical, Incandescent FTA—Light, Surgical, Accessories FSZ—Light, Surgical, Carrier FSY—Light, Surgical, Ceiling Mounted

TABLE 2.—CLASS II MEDICAL DEVICES INCLUDED IN SCOPE OF PRODUCT COVERAGE AT BEGINNING OF TRANSITION PERIOD (UNITED STATES TO DEVELOP GUIDANCE DOCUMENTS IDENTIFYING U.S. REQUIREMENTS AND EUROPEAN COMMUNITY (EC) TO IDENTIFY STANDARDS NEEDED TO MEET EC REQUIREMENTS)[1]—Continued

Panel	21 CFR Section No.	Regulation Name
		Product Code—Device Name
		FSX—Light, Surgical, Connector
		FSW—Light, Surgical, Endoscopic
		FST—Light, Surgical, Fiberoptic
		FSS—Light, Surgical, Floor Standing
		FSQ—Light, Surgical, Instrument
NE	882.5890	Transcutaneous Electrical Nerve Stimulator for Pain Relief
		GZJ—Stimulator, Nerve, Transcutaneous, For Pain Relief
		Noninvasive Blood Pressure Measurement Devices:
CV	870.1120	Blood Pressure Cuff
		DXQ—Cuff, Blood-Pressure
CV	870.1130	Noninvasive Blood Pressure Measurement System (except nonoscillometric)
		DXN—System, Measurement, Blood-Pressure, Noninvasive
HO	880.6880	Steam Sterilizer (greater than 2 cubic feet)
		FLE—Sterilizer, Steam
Clinical Thermometers:		
HO	880.2910	Clinical Electronic Thermometer (except tympanic or pacifier)
		FLL—Thermometer, Electronic, Clinical
AN	868.5630	Nebulizer
		CAF—Nebulizer (Direct Patient Interface)
AN	868.5925	Powered Emergency Ventilator
Hypodermic Needles and Syringes (except antistick and self-destruct):		
HO	880.5570	Hypodermic Single Lumen Needle
		MMK—Container, Sharpes
		FMI—Needle, Hypodermic, Single Lumen
		MHC—Port, Intraosseous, Implanted
HO	880.5860	Piston Syringe
		FMF—Syringe, Piston
OR	888.3020	Intramedullary Fixation Rod
		HSB—ROD, Fixation, Intramedullary and Accessories
External Fixators (except devices with no external components):		
OR	888.3030	Single/Multiple Component Metallic Bone Fixation Appliances and Accessories
		KTT—Appliance, Fixation, Nail/Blade/Plate Combination, Multiple Component
OR	888.3040	Smooth or Threaded Metallic Bone Fixation Fastener
		JEC—Component, Traction, Invasive
		HTY—Pin, Fixation, Smooth
		JDW—Pin, Fixation, Threaded
Selected Dental Materials:		
DE	872.3060	Gold-Based Alloys and Precious Metal Alloys for Clinical Use
		EJT—Alloy, Gold Based, For Clinical Use
		EJS—Alloy, Precious Metal, For Clinical Use
DE	872.3200	Resin Tooth Bonding Agent
		KLE—Agent, Tooth Bonding, Resin
DE	872.3275	Dental Cement
		EMA—Cement, Dental
		EMB—Zinc Oxide Eugenol
DE	872.3660	Impression Material
		ELW—Material, Impression
DE	872.3690	Tooth Shade Resin Material
		EBF—Material, Tooth Shade, Resin
DE	872.3710	Base Metal Alloy
		EJH—Metal, Base
Latex Condoms:		
OB	884.5300	Condom
		HIS—Condom

[1]Descriptive information on product codes, panel codes, and other medical device identifiers may be viewed on FDA's Internet Web Site at ''http://www.fda.gov/cdrh/prodcode.html''.

TABLE 3.—MEDICAL DEVICES FOR POSSIBLE INCLUSION IN SCOPE OF PRODUCT COVERAGE DURING OPERATIONAL PERIOD[1]

Product Family	21 CFR Section No	Device Name	Tier
Anesthesiology Panel			
Anesthesia Devices	868.5160	Gas machine for anesthesia or analgesia	2
	868.5270	Breathing system heater	2
	868.5440	Portable oxygen generator	2
	868.5450	Respiratory gas humidifier	2
	868.5630	Nebulizer	2
	868.5710	Electrically powered oxygen tent	2
	868.5880	Anesthetic vaporizer	2
Gas Analyser	868.1040	Powered Algesimeter	2
	868.1075	Argon gas analyzer	2
	868.1400	Carbon dioxide gas analyzer	2
	868.1430	Carbon monoxide gas analyzer	2
	868.1500	Enflurane gas analyzer	2
	868.1620	Halothane gas analyzer	2
	868.1640	Helium gas analyzer	2
	868.1670	Neon gas analyzer	2
	868.1690	Nitrogen gas analyzer	2
	868.1700	Nitrous oxide gas analyzer	2
	868.1720	Oxygen gas analyzer	2
	868.1730	Oxygen uptake computer	2
Peripheral Nerve Stimulators	868.2775	Electrical peripheral nerve stimulator	2
Respiratory Monitoring	868.1750	Pressure plethysmograph	2
	868.1760	Volume plethysmograph	2
	868.1780	Inspiratory airway pressure meter	2
	868.1800	Rhinoanemometer	2
	868.1840	Diagnostic spirometer	2
	868.1850	Monitoring spirometer	2
	868.1860	Peak-flow meter for spirometry	2
	868.1880	Pulmonary-function data calculator	2
	868.1890	Predictive pulmonary-function value calculator	2
	868.1900	Diagnostic pulmonary-function interpretation calculator	2
	868.2025	Ultrasonic air embolism monitor	2
	868.2375	Breathing frequency monitor (except apnea detectors)	2
	868.2480	Cutaneous carbon dioxide ($PcCO_2$) monitor	2
	868.2500	Cutaneous oxygen monitor (for an infant not under gas anesthesia)	2
	868.2550	Pneumotachomometer	2
	868.2600	Airway pressure monitor	2
	868.5665	Powered percussor	2
	868.5690	Incentive spirometer	2
Ventilator	868.5905	Noncontinuous ventilator (IPPB)	2
	868.5925	Powered emergency ventilator	2
	868.5935	External negative pressure ventilator	2
	868.5895	Continuous ventilator	2
	868.5955	Intermittent mandatory ventilation attachment	2
	868.6250	Portable air compressor	2
Cardiovascular Panel			
Cardiovascular Diagnostic	870.1425	Programmable diagnostic computer	2
	870.1450	Densitometer	2
	870.2310	Apex cardiograph (vibrocardiograph)	2
	870.2320	Ballistocardiograph	2
	870.2340	Electrocardiograph	2
	870.2350	Electrocardiograph lead switching adaptor	1
	870.2360	Electrocardiograph electrode	2
	870.2370	Electrocardiograph surface electrode tester	2
	870.2400	Vectorcardiograph	1
	870.2450	Medical cathode-ray tube display	1

TABLE 3.—MEDICAL DEVICES FOR POSSIBLE INCLUSION IN SCOPE OF PRODUCT COVERAGE DURING OPERATIONAL PERIOD[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	870.2675	Oscillometer	2
	870.2840	Apex cardiographic transducer	2
	870.2860	Heart sound transducer	2
Cardiovascular Monitoring		Valve, pressure relief, cardiopulmonary bypass	
	870.1100	Blood pressure alarm	2
	870.1110	Blood pressure computer	2
	870.1120	Blood pressure cuff	2
	870.1130	Noninvasive blood pressure measurement system	2
	870.1140	Venous blood pressure manometer	2
	870.1220	Electrode recording catheter or electrode recording probe	2
	870.1270	Intracavitary phonocatheter system	2
	870.1875	Stethoscope (electronic)	2
	870.2050	Biopotential amplifier and signal conditioner	2
	870.2060	Transducer signal amplifier and conditioner	2
	870.2100	Cardiovascular blood flow-meter	2
	870.2120	Extravascular blood flow probe	2
	870.2300	Cardiac monitor (including cardiotachometer and rate alarm)	2
	870.2700	Oximeter	2
	870.2710	Ear oximeter	2
	870.2750	Impedance phlebograph	2
	870.2770	Impedance plethysmograph	2
	870.2780	Hydraulic, pneumatic, or photoelectric plethysmographs	2
	870.2850	Extravascular blood pressure transducer	2
	870.2870	Catheter tip pressure transducer	2
	870.2880	Ultrasonic transducer	2
	870.2890	Vessel occlusion transducer	2
	870.2900	Patient transducer and electrode cable (including connector)	2
	870.2910	Radiofrequency physiological signal transmitter and receiver	2
	870.2920	Telephone electrocardiograph transmitter and receiver	2
	870.4205	Cardiopulmonary bypass bubble detector	2
	870.4220	Cardiopulmonary bypass heart-lung machine console	2
	870.4240	Cardiovascular bypass heat exchanger	2
	870.4250	Cardiopulmonary bypass temperature controller	2
	870.4300	Cardiopulmonary bypass gas control unit	2
	870.4310	Cardiopulmonary bypass coronary pressure gauge	2
	870.4330	Cardiopulmonary bypass on-line blood gas monitor	2
	870.4340	Cardiopulmonary bypass level sensing monitor and/or control	2
	870.4370	Roller-type cardiopulmonary bypass blood pump	2
	870.4380	Cardiopulmonary bypass pump speed control	2
	870.4410	Cardiopulmonary bypass in-line blood gas sensor	2
Cardiovascular Therapeutic	870.5050	Patient care suction apparatus	2
	870.5900	Thermal regulation system	2
Defibrillator	870.5300	DC-defibrillator (including paddles)	2
	870.5325	Defibrillator tester	2

TABLE 3.—MEDICAL DEVICES FOR POSSIBLE INCLUSION IN SCOPE OF PRODUCT COVERAGE DURING OPERATIONAL PERIOD[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
Echocardiograph	870.2330	Echocardiograph	2
Pacemaker & Accessories	870.1750	External programmable pacemaker pulse generator	2
	870.3630	Pacemaker generator function analyzer	2
	870.3640	Indirect pacemaker generator function analyzer	2
	870.3720	Pacemaker electrode function tester	2
Miscellaneous	870.1800	Withdrawal-infusion pump	2
	870.2800	Medical magnetic tape recorder	2
	None	Batteries, rechargeable, class II devices	
Dental Panel			
Dental Equipment	872.1720	Pulp tester	2
	872.1740	Caries detection device	2
	872.4120	Bone cutting instrument and accessories	2
	872.4465	Gas-powered jet injector	2
	872.4475	Spring-powered jet injector	2
	872.4600	Intraoral ligature and wire lock	2
	872.4840	Rotary scaler	2
	872.4850	Ultrasonic scaler	2
	872.4920	Dental electrosurgical unit and accessories	2
	872.6070	Ultraviolet activator for polymerization	2
	872.6350	Ultraviolet detector	2
Dental Material	872.3050	Amalgam alloy	2
	872.3060	Gold-based alloys and precious metal alloys for clinical use	2
	872.3200	Resin tooth bonding agent	2
	872.3250	Calcium hydroxide cavity liner	2
	872.3260	Cavity varnish	2
	872.3275	Dental cement (other than zinc oxide-eugenol)	2
	872.3300	Hydrophilic resin coating for dentures	2
	872.3310	Coating material for resin fillings	2
	872.3590	Preformed plastic denture tooth	2
	872.3660	Impression material	2
	872.3690	Tooth shade resin material	2
	872.3710	Base metal alloy	2
	872.3750	Bracket adhesive resin and tooth conditioner	2
	872.3760	Denture relining, repairing, or rebasing resin	2
	872.3765	Pit and fissure sealant and conditioner	2
	872.3770	Temporary crown and bridge resin	2
	872.3820	Root canal filling resin (other than chloroform use)	2
	872.3920	Porcelain tooth	2
Dental X-ray	872.1800	Extraoral source x-ray system	2
	872.1810	Intraoral source x-ray system	2
Dental Implants	872.4880	Intraosseous fixation screw or wire	2
	872.3890	Endodontic stabilizing splint	2
Orthodontic	872.5470	Orthodontic plastic bracket	2
Ear/Nose/Throat Panel			
Diagnostic Equipment	874.1050	Audiometer	2
	874.1090	Auditory impedance tester	2
	874.1120	Electronic noise generator for audiometric testing	2
	874.1325	Electroglottograph	2
	874.1820	Surgical nerve stimulator/locator	2
Hearing Aids	874.3300	Hearing aid (for bone-conduction)	2
	874.3310	Hearing aid calibrator and analysis system	2
	874.3320	Group hearing aid or group auditory trainer	2

TABLE 3.—MEDICAL DEVICES FOR POSSIBLE INCLUSION IN SCOPE OF PRODUCT COVERAGE DURING OPERATIONAL PERIOD[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	874.3330	Master hearing aid	2
Surgical Equipment	874.4250	Ear, nose, and throat electric or pneumatic surgical drill	1
	874.4490	Argon laser for otology, rhinology, and laryngology	2
	874.4500	Ear, nose, and throat microsurgical carbon dioxide laser	2
Gastroenterology/Urology Panel			
Endoscope (including angioscopes, laparscopes, ophthalmic endoscopes)	876.1500	Endoscope and accessories	2
	876.4300	Endoscopic electrosurgical unit and accessories	2
Gastroenterology	876.1725	Gastrointestinal motility monitoring system	1
Hemodialysis	876.5600	Sorbent regenerated dialysate delivery system for hemodialysis	2
	876.5630	Peritoneal dialysis system and accessories	2
	876.5665	Water purification system for hemodialysis	2
	876.5820	Hemodialysis system and accessories	2
	876.5830	Hemodialyzer with disposable insert (kiil-type)	2
Lithotriptor	876.4500	Mechanical lithotriptor	2
Urology Equipment	876.1620	Urodynamics measurement system	2
	876.5320	Nonimplanted electrical continence device	2
	876.5880	Isolated kidney perfusion and transport system and accessories	2
General Hospital Panel			
Infusion Pumps and Systems	880.2420	Electronic monitor for gravity flow infusion systems	2
	880.2460	Electrically powered spinal fluid pressure monitor	2
	880.5430	Nonelectrically powered fluid injector	2
	880.5725	Infusion pump	2
Neonatal Incubators	880.5400	Neonatal incubator	2
	880.5410	Neonatal transport incubator	2
	880.5700	Neonatal phototherapy unit	2
Piston Syringes	880.5570	Hypodermic single lumen needle	1
	880.5860	Piston syringe (except antistick)	1
	880.6920	Syringe needle introducer	2
Miscellaneous	880.2910	Clinical electronic thermometer	2
	880.2920	Clinical mercury thermometer	2
	880.5100	AC-powered adjustable hospital bed	1
	880.5500	AC-powered patient lift	2
	880.6880	Steam sterilizer (greater than 2 cubic feet)	2
Neurology Panel			
	882.1020	Rigidity analyzer	2
	882.1610	Alpha monitor	2
Neuro-Diagnostic	882.1320	Cutaneous electrode	2
	882.1340	Nasopharyngeal electrode	2
	882.1350	Needle electrode	2
	882.1400	Electroencephalograph	2
	882.1460	Nystagmograph	2
	882.1480	Neurological endoscope	2
	882.1540	Galvanic skin response measurement device	2
	882.1550	Nerve conduction velocity measurement device	2
	882.1560	Skin potential measurement device	2
	882.1570	Powered direct-contact temperature measurement device	2

TABLE 3.—MEDICAL DEVICES FOR POSSIBLE INCLUSION IN SCOPE OF PRODUCT COVERAGE DURING OPERATIONAL PERIOD[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	882.1620	Intracranial pressure monitoring device	2
	882.1835	Physiological signal amplifier	2
	882.1845	Physiological signal conditioner	2
	882.1855	Electroencephalogram (EEG) telemetry system	2
	882.5050	Biofeedback device	2
Echoencephalography	882.1240	Echoencephalograph	2
RPG	882.4400	Radiofrequency lesion generator	2
Neuro Surgery	none	Electrode, spinal epidural	2
	882.4305	Powered compound cranial drills, burrs, trephines, and their accessories	2
	882.4310	Powered simple cranial drills burrs, trephines, and their accessories	2
	882.4360	Electric cranial drill motor	2
	882.4370	Pneumatic cranial drill motor	2
	882.4560	Stereotaxic instrument	2
	882.4725	Radiofrequency lesion probe	2
	882.4845	Powered rongeur	2
	882.5500	Lesion temperature monitor	2
Stimulators	882.1870	Evoked response electrical stimulator	2
	882.1880	Evoked response mechanical stimulator	2
	882.1890	Evoked response photic stimulator	2
	882.1900	Evoked response auditory stimulator	2
	882.1950	Tremor transducer	2
	882.5890	Transcutaneous electrical nerve stimulator for pain relief	2
Obstetrics/Gynecology Panel			
Fetal Monitoring	884.1660	Transcervical endoscope (amnioscope) and accessories	2
	884.1690	Hysteroscope and accessories (for performance standards)	2
	884.2225	Obstetric-gynecologic ultrasonic imager	2
	884.2600	Fetal cardiac monitor	2
	884.2640	Fetal phonocardiographic monitor and accessories	2
	884.2660	Fetal ultrasonic monitor and accessories	2
	884.2675	Fetal scalp circular (spiral) electrode and applicator	1
	884.2700	Intrauterine pressure monitor and accessories	2
	884.2720	External uterine contraction monitor and accessories	2
	884.2740	Perinatal monitoring system and accessories	2
	884.2960	Obstetric ultrasonic transducer and accessories	2
Gynecological Surgery Equipment	884.1720	Gynecologic laparoscope and accessories	2
	884.4160	Unipolar endoscopic coagulator-cutter and accessories	2
	884.4550	Gynecologic surgical laser	2
	884.4120	Gynecologic electrocautery and accessories	2
	884.5300	Condom	2
Ophthalmic Implants	886.3320	Eye sphere implant	2
Contact Lens	886.1385	Polymethylmethacrylate (PMMA) diagnostic contact lens	2
	886.5916	Rigid gas permeable contact lens (daily wear only)	2
Diagnostic Equipment	886.1120	Opthalmic camera	1
	886.1220	Corneal electrode	1
	886.1250	Euthyscope (AC-powered)	1
	886.1360	Visual field laser instrument	1

TABLE 3.—MEDICAL DEVICES FOR POSSIBLE INCLUSION IN SCOPE OF PRODUCT COVERAGE DURING OPERATIONAL PERIOD[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	886.1510	Eye movement monitor	1
	886.1570	Ophthalmoscope	1
	886.1630	AC-powered photostimulator	1
	886.1640	Ophthalmic preamplifier	1
	886.1670	Ophthalmic isotope uptake probe	2
	886.1780	Retinoscope (AC-powered device)	1
	886.1850	AC-powered slit lamp biomicroscope	1
	886.1930	Tonometer and accessories	2
	886.1945	Transilluminator (AC-powered device)	1
	886.3130	Ophthalmic conformer	2
(Diagnostic/Surgery Equipment)	886.4670	Phacofragmentation system	2
Ophthalmic Implants	886.3340	Extraocular orbital implant	2
	886.3800	Scleral shell	2
Surgical Equipment	880.5725	Infusion pump (performance standards)	2
	886.3100	Ophthalmic tantalum clip	2
	886.3300	Absorbable implant (scleral buckling method)	2
	886.4100	Radiofrequency electrosurgical cautery apparatus	2
	886.4115	Thermal cautery unit	2
	886.4150	Vitreous aspiration and cutting instrument	2
	886.4170	Cryophthalmic unit	2
	886.4250	Ophthalmic electrolysis unit (AC-powered device)	1
	886.4335	Operating headlamp (AC-powered device)	1
	886.4390	Ophthalmic laser	2
	886.4392	Nd:YAG laser for posterior capsulotomy	2
	886.4400	Electronic metal locator	1
	886.4440	AC-powered magnet	1
	886.4610	Ocular pressure applicator	2
	886.4690	Ophthalmic photocoagulator	2
	886.4790	Ophthalmic sponge	2
	886.5100	Ophthalmic beta radiation source	2
	none	Ophthalmoscopes, replacement batteries, hand-held	1
Orthopedic Panel			
Implants	888.3010	Bone fixation cerclage	2
	888.3020	Intramedullary fixation rod	2
	888.3030	Single/multiple component metallic bone fixation appliances and accessories	2
	888.3040	Smooth or threaded metallic bone fixation fastener	2
	888.3050	Spinal interlaminal fixation orthosis	2
	888.3060	Spinal intervertebral body fixation orthosis	2
Surgical Equipment	888.1240	AC-powered dynamometer	2
	888.4580	Sonic surgical instrument and accessories/attachments	2
	none	Accessories, fixation, spinal interlaminal	2
	none	Accessories, fixation, spinal intervertebral body	2
	none	Monitor, pressure, intracompartmental	1
	none	Orthosis, fixation, spinal intervertebral fusion	2
	none	Orthosis, spinal pedicle fixation	
	none	System, cement removal extraction	1

TABLE 3.—MEDICAL DEVICES FOR POSSIBLE INCLUSION IN SCOPE OF PRODUCT COVERAGE DURING OPERATIONAL PERIOD[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
Physical Medicine Panel			
Diagnostic Equipment or (Therapy) Therapeutic Equipment	890.1225	Chronaximeter	2
	890.1375	Diagnostic electromyograph	2
	890.1385	Diagnostic electromyograph needle electrode	2
	890.1450	Powered reflex hammer	2
	890.1850	Diagnostic muscle stimulator	2
or (Therapy)	890.5850	Powered muscle stimulator	2
Therapeutic Equipment	890.5100	Immersion hydrobath	2
	890.5110	Paraffin bath	2
	890.5500	Infrared lamp	2
	890.5720	Water circulating hot or cold pack	2
	890.5740	Powered heating pad	2
Radiology Panel			
MRI	892.1000	Magnetic resonance diagnostic device	2
Ultrasound Diagnostic	884.2660	Fetal ultrasonic monitor and accessories	2
	892.1540	Nonfetal ultrasonic monitor	
	892.1560	Ultrasonic pulsed echo imaging system	2
	892.1570	Diagnostic ultrasonic transducer	2
	892.1550	Ultrasonic pulsed doppler imaging system	
Angiographic	892.1600	Angiographic x-ray system	2
Diagnostic X-Ray	892.1610	Diagnostic x-ray beam-limiting device	2
	892.1620	Cine or spot fluorographic x-ray camera	2
	892.1630	Electrostatic x-ray imaging system	2
	892.1650	Image-intensified fluoroscopic x-ray system	2
	892.1670	Spot film device	2
	892.1680	Stationary x-ray system	2
	892.1710	Mammographic x-ray system	2
	892.1720	Mobile x-ray system	2
	892.1740	Tomographic x-ray system	1
	892.1820	Pneumoencephalographic chair	2
	892.1850	Radiographic film cassette	1
	892.1860	Radiographic film/cassette changer	1
	892.1870	Radiographic film/cassette changer programmer	2
	892.1900	Automatic radiographic film processor	2
	892.1980	Radiologic table	1
CT Scanner	892.1750	Computed tomography x-ray system	2
Radiation Therapy	892.5050	Medical charged-particle radiation therapy system	2
	892.5300	Medical neutron radiation therapy system	2
	892.5700	Remote controlled radionuclide applicator system	2
	892.5710	Radiation therapy beam-shaping block	2
	892.5730	Radionuclide brachytherapy source	2
	892.5750	Radionuclide radiation therapy system	2
	892.5770	Powered radiation therapy patient support assembly	2
	892.5840	Radiation therapy simulation system	2
	892.5930	Therapeutic x-ray tube housing assembly	1
Nuclear Medicine	892.1170	Bone densitometer	2
	892.1200	Emission computed tomography system	2

TABLE 3.—MEDICAL DEVICES FOR POSSIBLE INCLUSION IN SCOPE OF PRODUCT COVERAGE DURING OPERATIONAL PERIOD[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	892.1310	Nuclear tomography system	1
	892.1390	Radionuclide rebreathing system	2
General/Plastic Surgery Panel			
Surgical Lamps	878.4630	Ultraviolet lamp for dermatologic disorders	2
	890.5500	Infrared lamp	2
	878.4580	Surgical lamp	2
Electrosurgical Cutting Equipment	878.4810	Laser surgical instrument for use in general and plastic surgery and in dermatology	2
	878.4400	Electrosurgical cutting and coagulation device and accessories	2
Miscellaneous	878.4780	Powered suction pump	2

[1]Descriptive information on product codes, panel codes, and other medical device identifiers may be viewed on FDA's Internet Web Site at ''http://www.fda.gov/cdrh/prodcode.html''.

Appendix C of Subpart B [Reserved]

Appendix D of Subpart B [Reserved]

Appendix E of Subpart B [Reserved]

Appendix F of Subpart B [Reserved]

Subpart C—Framework or ''Umbrella'' Provisions

§ 26.60 Definitions.

(a) The following terms and definitions shall apply to this part only:

(1) *Designating Authority* means a body with power to designate, monitor, suspend, remove suspension of, or withdraw conformity assessment bodies as specified under this part.

(2) *Designation* means the identification by a designating authority of a conformity assessment body to perform conformity assessment procedures under this part.

(3) *Regulatory Authority* means a government agency or entity that exercises a legal right to control the use or sale of products within a party's jurisdiction and may take enforcement action to ensure that products marketed within its jurisdiction comply with legal requirements.

(b) Other terms concerning conformity assessment used in this part shall have the meaning given elsewhere in this part or in the definitions contained in Guide 2 (1996 edition) of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). In the event of an inconsistency between the ISO/IEC Guide 2 and definitions in this part, the definitions in this part shall prevail. The ISO/IEC Guide 2 is incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the International Organization for Standardization, 1, rue de Varembé, Case postale 56, CH–1211 Genève 20, Switzerland, or on the Internet at ''http://www.iso.ch'' or may be examined at the Food and Drug Administration's Medical Library, 5600 Fishers Lane, rm. 11B–40, Rockville, MD 20857, or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

§ 26.61 Purpose of this part.

This part specifies the conditions by which each party will accept or recognize results of conformity assessment procedures, produced by the other party's conformity assessment bodies (CAB's) or authorities, in assessing conformity to the importing party's requirements, as specified on a sector-specific basis in subparts A and B of this part, and to provide for other related cooperative activities. The objective of such mutual recognition is to provide effective market access throughout the territories of the parties with regard to conformity assessment for all products covered under this part. If any obstacles to such access arise, consultations will promptly be held. In the absence of a satisfactory outcome of such consultations, the party alleging its market access has been denied, may, within 90 days of such consultation, invoke its right to terminate this part in accordance with § 26.80.

§ 26.62 General obligations.

(a) The United States shall, as specified in subparts A and B of this part, accept or recognize results of specified procedures, used in assessing conformity to specified legislative, regulatory, and administrative provisions of the United States, produced by the other party's conformity assessment bodies (CAB's) and/or authorities.

(b) The European Community (EC) and its Member States shall, as specified in subparts A and B of this part, accept or recognize results of specified procedures, used in assessing conformity to specified legislative, regulatory, and administrative provisions of the EC and its Member States, produced by the other party's CAB's and/or authorities.

(c) Where sectoral transition arrangements have been specified in subparts A and B of this part, the above obligations will apply following the successful completion of those sectoral transition arrangements, with the understanding that the conformity assessment procedures utilized assure conformity to the satisfaction of the receiving party, with applicable legislative, regulatory, and administrative provisions of that party, equivalent to the assurance offered by the receiving party's own procedures.

§ 26.63 General coverage of this part.

(a) This part applies to conformity assessment procedures for products and/or processes and to other related cooperative activities as described in this part.

(b) Subparts A and B of this part may include:

(1) A description of the relevant legislative, regulatory, and administrative provisions pertaining to the conformity assessment procedures and technical regulations;

(2) A statement on the product scope and coverage;

(3) A list of designating authorities;

(4) A list of agreed conformity assessment bodies (CAB's) or authorities or a source from which to obtain a list of such bodies or authorities and a statement of the scope of the conformity assessment procedures for which each has been agreed;

(5) The procedures and criteria for designating the CAB's;

(6) A description of the mutual recognition obligations;

(7) A sectoral transition arrangement;

(8) The identity of a sectoral contact point in each party's territory; and

(9) A statement regarding the establishment of a Joint Sectoral Committee.

(c) This part shall not be construed to entail mutual acceptance of standards or technical regulations of the parties and, unless otherwise specified in subpart A or B of this part, shall not entail the mutual recognition of the equivalence of standards or technical regulations.

§ 26.64 Transitional arrangements.

The parties agree to implement the transitional commitments on confidence building as specified in subparts A and B of this part.

(a) The parties agree that each sectoral transitional arrangement shall specify a time period for completion.

(b) The parties may amend any transitional arrangement by mutual agreement.

(c) Passage from the transitional phase to the operational phase shall proceed as specified in subparts A and B of this part, unless either party documents that the conditions provided in such subpart for a successful transition are not met.

§ 26.65 Designating authorities.

The parties shall ensure that the designating authorities specified in subpart B of this part have the power and competence in their respective territories to carry out decisions under this part to designate, monitor, suspend, remove suspension of, or withdraw conformity assessment bodies (CAB's).

§ 26.66 Designation and listing procedures.

The following procedures shall apply with regard to the designation of conformity assessment bodies (CAB's) and the inclusion of such bodies in the list of CAB's in subpart B of this part:

(a) The designating authority identified in subpart B of this part shall designate CAB's in accordance with the procedures and criteria set forth in subpart B of this part;

(b) A party proposing to add a CAB to the list of such bodies in subpart B of this part shall forward its proposal of one or more designated CAB's in writing to the other party with a view to a decision by the Joint Committee;

(c) Within 60 days following receipt of the proposal, the other party shall indicate its position regarding either its confirmation or its opposition. Upon confirmation, the inclusion in subpart B of this part of the proposed CAB or CAB's shall take effect; and

(d) In the event that the other party contests on the basis of documented evidence the technical competence or compliance of a proposed CAB, or indicates in writing that it requires an additional 30 days to more fully verify such evidence, such CAB shall not be included on the list of CAB's in subpart B of this part. In this instance, the Joint Committee may decide that the body concerned be verified. After the completion of such verification, the proposal to list the CAB in subpart B may be resubmitted to the other party.

§ 26.67 Suspension of listed conformity assessment bodies.

The following procedures shall apply with regard to the suspension of a conformity assessment body (CAB) listed in subpart B of this part.

(a) A party shall notify the other party of its contestation of the technical competence or compliance of a CAB listed in subpart B of this part and the contesting party's intent to suspend such CAB. Such contestation shall be exercised when justified in an objective and reasoned manner in writing to the other party;

(b) The CAB shall be given prompt notice by the other party and an opportunity to present information in order to refute the contestation or to correct the deficiencies which form the basis of the contestation;

(c) Any such contestation shall be discussed between the parties in the Joint Sectoral Committee described in subpart B of this part. If there is no Joint Sectoral Committee, the contesting party shall refer the matter directly to the Joint Committee. If agreement to suspend is reached by the Joint Sectoral Committee or, if there is no Joint Sectoral Committee, by the Joint Committee, the CAB shall be suspended;

(d) Where the Joint Sectoral Committee or Joint Committee decides that verification of technical competence or compliance is required, it shall normally be carried out in a timely manner by the party in whose territory the body in question is located, but may be carried out jointly by the parties in justified cases;

(e) If the matter has not been resolved by the Joint Sectoral Committee within 10 days of the notice of contestation, the matter shall be referred to the Joint Committee for a decision. If there is no Joint Sectoral Committee, the matter shall be referred directly to the Joint Committee. If no decision is reached by the Joint Committee within 10 days of the referral to it, the CAB shall be suspended upon the request of the contesting party;

(f) Upon the suspension of a CAB listed in subpart B of this part, a party is no longer obligated to accept or recognize the results of conformity assessment procedures performed by that CAB subsequent to suspension. A party shall continue to accept the results of conformity assessment procedures performed by that CAB prior to suspension, unless a regulatory authority of the party decides otherwise based on health, safety or environmental considerations or failure to satisfy other requirements within the scope of subpart B of this part; and

(g) The suspension shall remain in effect until agreement has been reached by the parties upon the future status of that body.

§ 26.68 Withdrawal of listed conformity assessment bodies.

The following procedures shall apply with regard to the withdrawal from subpart B of this part of a conformity assessment body (CAB):

(a) A party proposing to withdraw a CAB listed in subpart B of this part shall forward its proposal in writing to the other party;

(b) Such CAB shall be promptly notified by the other party and shall be provided a period of at least 30 days from receipt to provide information in order to refute or to correct the deficiencies which form the basis of the proposed withdrawal;

(c) Within 60 days following receipt of the proposal, the other party shall indicate its position regarding either its confirmation or its opposition. Upon confirmation, the withdrawal from the list in subpart B of this part of the CAB shall take effect;

(d) In the event the other party opposes the proposal to withdraw by supporting the technical competence and compliance of the CAB, the CAB shall not at that time be withdrawn from the list of CAB's in subpart B of this part. In this instance, the Joint Sectoral Committee or the Joint Committee may decide to carry out a joint verification of the body concerned. After the completion of such verification, the proposal for withdrawal of the CAB may be resubmitted to the other party; and

(e) Subsequent to the withdrawal of a CAB listed in subpart B of this part, a party shall continue to accept the results of conformity assessment procedures performed by that CAB prior to withdrawal, unless a regulatory authority of the party decides otherwise based on health, safety, and environmental considerations or failure to satisfy other requirements within the scope of subpart B of this part.

§ 26.69 Monitoring of conformity assessment bodies.

The following shall apply with regard to the monitoring of conformity assessment bodies (CAB's) listed in subpart B of this part:

(a) Designating authorities shall assure that their CAB's listed in subpart B of this part are capable and remain capable of properly assessing conformity of products or processes, as applicable, and as covered in subpart B of this part. In this regard, designating authorities shall maintain, or cause to maintain, ongoing surveillance over their CAB's by means of regular audit or assessment;

(b) The parties undertake to compare methods used to verify that the CAB's listed in subpart B of this part comply with the relevant requirements of subpart B of this part. Existing systems for the evaluation of CAB's may be used as part of such comparison procedures;

(c) Designating authorities shall consult as necessary with their counterparts, to ensure the maintenance of confidence in conformity assessment procedures. With the consent of both parties, this consultation may include joint participation in audits/inspections related to conformity assessment activities or other assessments of CAB's listed in subpart B of this part; and

(d) Designating authorities shall consult, as necessary, with the relevant regulatory authorities of the other party to ensure that all technical requirements are identified and are satisfactorily addressed.

§ 26.70 Conformity assessment bodies.

Each party recognizes that the conformity assessment bodies (CAB's) listed in subpart B of this part fulfill the conditions of eligibility to assess conformity in relation to its requirements as specified in subpart B of this part. The parties shall specify the scope of the conformity assessment procedures for which such bodies are listed.

§ 26.71 Exchange of information.

(a) The parties shall exchange information concerning the implementation of the legislative, regulatory, and administrative provisions identified in subparts A and B of this part.

(b) Each party shall notify the other party of legislative, regulatory, and administrative changes related to the subject matter of this part at least 60 days before their entry into force. Where considerations of safety, health or environmental protection require more urgent action, a party shall notify the other party as soon as practicable.

(c) Each party shall promptly notify the other party of any changes to its designating authorities and/or conformity assessment bodies (CAB's).

(d) The parties shall exchange information concerning the procedures used to ensure that the listed CAB's under their responsibility comply with the legislative, regulatory, and administrative provisions outlined in subpart B of this part.

(e) Regulatory authorities identified in subparts A and B of this part shall consult as necessary with their counterparts, to ensure the maintenance of confidence in conformity assessment procedures and to ensure that all technical requirements are identified and are satisfactorily addressed.

§ 26.72 Sectoral contact points.

Each party shall appoint and confirm in writing contact points to be responsible for activities under subparts A and B of this part.

§ 26.73 Joint Committee.

(a) A Joint Committee consisting of representatives of the United States and the European Community (EC) will be established. The Joint Committee shall be responsible for the effective functioning of this part.

(b) The Joint Committee may establish Joint Sectoral Committees comprised of appropriate regulatory authorities and others deemed necessary.

(c) The United States and the EC shall have one vote in the Joint Committee. The Joint Committee shall make its decisions by unanimous consent. The Joint Committee shall determine its own rules and procedures.

(d) The Joint Committee may consider any matter relating to the effective functioning of this part. In particular it shall be responsible for:

(1) Listing, suspension, withdrawal and verification of conformity assessment bodies (CAB's) in accordance with this subpart and subpart B of this part;

(2) Amending transitional arrangements in subparts A and B of this part;

(3) Resolving any questions relating to the application of this part not otherwise resolved in the respective Joint Sectoral Committees;

(4) Providing a forum for discussion of issues that may arise concerning the implementation of this part;

(5) Considering ways to enhance the operation of this part;

(6) Coordinating the negotiation of additional subparts; and

(7) Considering whether to amend this part in accordance with § 26.80.

(e) When a party introduces new or additional conformity assessment procedures affecting subpart A or B of this part, the parties shall discuss the matter in the Joint Committee with a view to bringing such new or additional procedures within the scope of this part, where relevant.

§ 26.74 Preservation of regulatory authority.

(a) Nothing in this part shall be construed to limit the authority of a party to determine, through its legislative, regulatory, and administrative measures, the level of protection it considers appropriate for safety; for protection of human, animal, or plant life or health; for the environment; for consumers; and otherwise with regard to risks within the scope of the applicable subpart A or B of this part.

(b) Nothing in this part shall be construed to limit the authority of a regulatory authority to take all appropriate and immediate measures whenever it ascertains that a product may:

(1) Compromise the health or safety of persons in its territory;

(2) Not meet the legislative, regulatory, or administrative provisions within the scope of the applicable subpart A or B of this part; or

(3) Otherwise fail to satisfy a requirement within the scope of the applicable subpart A or B of this part. Such measures may include withdrawing the products from the market, prohibiting their placement on the market, restricting their free movement, initiating a product recall, and preventing the recurrence of such problems, including through a prohibition on imports. If the regulatory authority takes such action, it shall inform its counterpart authority and the other party within 15 days of taking such action, providing its reasons.

§ 26.75 Suspension of recognition obligations.

Either party may suspend its obligations under subpart A or B of this part, in whole or in part, if:

(a) A party suffers a loss of market access for the party's products within the scope of subpart A or B of this part as a result of the failure of the other party to fulfill its obligations under this part;

(b) The adoption of new or additional conformity assessment requirements as referenced in § 26.73(e) results in a loss of market access for the party's products within the scope of subpart B of this part because conformity assessment bodies (CAB's) designated by the party in order to meet such requirements have not been recognized by the party implementing the requirements; or

(c) The other party fails to maintain legal and regulatory authorities capable of implementing the provisions of this part.

§ 26.76 Confidentiality.

(a) Each party agrees to maintain, to the extent required under its laws, the confidentiality of information exchanged under this part.

(b) In particular, neither party shall disclose to the public, nor permit a conformity assessment body (CAB) to disclose to the public, information exchanged under this part that constitutes trade secrets, confidential commercial or financial information, or information that relates to an ongoing investigation.

(c) A party or a CAB may, upon exchanging information with the other party or with a CAB of the other party, designate the portions of the information that it considers to be exempt from disclosure.

(d) Each party shall take all precautions reasonably necessary to protect information exchanged under this part from unauthorized disclosure.

§ 26.77 Fees.

Each party shall endeavor to ensure that fees imposed for services under this part shall be commensurate with the services provided. Each party shall ensure that, for the sectors and conformity assessment procedures covered under this part, it shall charge no fees with respect to conformity assessment services provided by the other party.

§ 26.78 Agreements with other countries.

Except where there is written agreement between the parties, obligations contained in mutual recognition agreements concluded by either party with a party not a party to this part (a third party) shall have no force and effect with regard to the other party in terms of acceptance of the results of conformity assessment procedures in the third party.

§ 26.79 Territorial application.

This part shall apply, on the one hand, to the territories in which the Treaty establishing the European Community (EC) is applied, and under the conditions laid down in that Treaty and, on the other hand, to the territory of the United States.

§ 26.80 Entry into force, amendment and termination.

(a) The ''Agreement on Mutual Recognition Between the United States of America and the European Community,'' from which this part is derived, including its sectoral annexes on telecommunications equipment, electromagnetic compatibility, electrical safety, recreational craft, pharmaceutical GMP inspections, and medical devices shall enter into force on the first day of the second month following the date on which the parties have exchanged letters confirming the completion of their respective procedures for the entry into force of that agreement.

(b) That agreement including any sectoral annex may, through the Joint Committee, be amended in writing by the parties to that agreement. Those parties may add a sectoral annex upon the exchange of letters. Such annex shall enter into force 30 days following the date on which those parties have exchanged letters confirming the completion of their respective procedures for the entry into force of the sectoral annex.

(c) Either party to that agreement may terminate that agreement in its entirety or any individual sectoral annex thereof by giving the other party to that agreement 6 months notice in writing. In the case of termination of one or more sectoral annexes, the parties to that agreement will seek to achieve by consensus to amend that agreement, with a view to preserving the remaining Sectoral Annexes, in accordance with the procedures in this section. Failing such consensus, that agreement shall terminate at the end of 6 months.

(d) Following termination of that agreement in its entirety or any individual sectoral annex thereof, a party to that agreement shall continue to accept the results of conformity assessment procedures performed by conformity assessment bodies under that agreement prior to termination, unless a regulatory authority in the party decides otherwise based on health, safety and environmental considerations or failure to satisfy other requirements within the scope of the applicable sectoral annex.

§ 26.81 Final provisions.

(a) The sectoral annexes referred to in § 26.80(a), as well as any new sectoral annexes added pursuant to § 26.80(b), shall form an integral part of the ''Agreement on Mutual Recognition Between the United States of America and the European Community,'' from which this part is derived.

(b) For a given product or sector, the provisions contained in subparts A and B of this part shall apply in the first place, and the provisions of subpart C of this part in addition to those provisions. In the case of any inconsistency between the provisions of subpart A or B of this part and subpart C of this part, subpart A or B shall prevail, to the extent of that inconsistency.

(c) The agreement from which this part is derived shall not affect the rights and obligations of the parties under any other international agreement.

(d) In the case of subpart B of this part, the parties shall review the status of such subpart at the end of 3 years from entry into force of subpart B.

Dated: April 6, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–9486 Filed 4–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to incorporate into the Code of Federal Regulations, in amended and supplemented form, the regulations of the District of Columbia that govern the paroling authority that will be assumed by the U.S. Parole Commission on August 5, 1998. The paroling authority of the District of Columbia Board of Parole will be transferred to the U.S. Parole Commission under the National Capital Revitalization and Self-Government Improvement Act of 1997, which permits the Commission to amend and supplement the District's parole regulations pursuant to federal rulemaking procedures.

DATES: Comments must be received by June 9, 1998.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33) the U.S. Parole Commission is required, not later than August 5, 1998,

to assume the jurisdiction and authority of the Board of Parole of the District of Columbia to grant and deny parole, and to impose conditions upon an order of parole, in the case of any imprisoned felon who is eligible for parole or reparole under the District of Columbia Code. The Act requires the Parole Commission to exercise this authority pursuant to the parole laws and regulations of the District of Columbia, but also gives the Parole Commission exclusive authority to amend or supplement any regulation interpreting or implementing the parole laws of the District of Columbia with respect to felons, provided that the Commission adheres to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

After an extensive review of the relevant regulations of the Board of Parole of the District of Columbia, currently set forth in the District of Columbia Code of Municipal Regulations, the Commission has decided to republish them, with appropriate revisions, in the Code of Federal Regulations. The Commission has decided not to leave these regulations in the D.C. Code of Municipal Regulations because the Revitalization Act makes parole for D.C. Code felons a federal function, and rules promulgated by federal agencies pursuant to the Administrative Procedure Act are required to be published in the **Federal Register** and the Code of Federal Regulations. Notice of the proposed transfer of these rules will also be published in the District Register.

A complete set of parole regulations for District of Columbia prisoners will therefore be incorporated into the Code of Federal Regulations in addition to the existing regulations that govern all other criminal offenders who fall under the Commission's jurisdiction. The regulations that govern the remaining functions of the Board of Parole of the District of Columbia will continue to be set forth in the D.C. Code of Municipal Regulations until the Board is abolished on or before August 5, 2000. Before the transfer of that additional jurisdiction to the U.S. Parole Commission, those regulations will also be reviewed for incorporation into the Code of Federal Regulations.

The proposed revisions to the D.C. parole regulations that are being published at this time fall into three categories.

First, the Board of Parole's procedural regulations have been amended and supplemented to clarify the procedures that the Commission proposes to follow in considering District of Columbia prisoners for parole. The parole hearing and decision making process will remain essentially the same as that of the D.C. Board of Parole, but in many instances conformity with existing federal procedures will promote both increased fairness and administrative efficiency in the discharge of this new function.

Second, revisions are proposed to reflect recently-enacted District of Columbia laws, such as the Medical and Geriatric Parole Act, which have not yet been reflected in comprehensive implementing regulations.

Third, the Commission is proposing to supplement the existing parole guidelines of the Board of Parole by adopting an improved point score system to replace the scoring system that was removed from the Board's regulations by D.C. Law 10–255 (May 16, 1995). The point score system used by the D.C. Board of Parole has resulted in a high rate of upward departures from the guidelines based upon factors that should be included in the guidelines to promote a more structured exercise of discretion. These factors most often involve aspects of the prisoner's current offense or criminal history that indicate a high level of risk to the public safety. The proposal set forth below retains the basic framework of the D.C. Parole Board's guidelines, but incorporates certain offender characteristics that would otherwise be expected to result in decisions outside the guidelines pursuant to 28 DCMR 204.22.

In this regard, the Parole Commission has undertaken a research study to identify those factors related to current offense and criminal history that are most closely correlated with violent recidivism. The research will be based on a statistical sampling of the current D.C. offender population, as well as on comparative federal and State samples. The Commission is also making a careful review of the decision making patterns of the D.C. Board of Parole itself, in order to determine the extent to which the Board's guideline departures reflect the factors and correlations under study.

It is the Commission's intent that the guideline system it ultimately adopts for D.C. Code offenders will be informed by statistical research that justifies the predictions upon which parole decisions must necessarily be made. The proposed guideline table that is published for public comment at this time incorporates factors that have been traditionally relied upon by both the D.C. Board of Parole and the U.S. Parole Commission (when making parole decisions for federally-housed D.C. Code prisoners under D.C. Code 24–209) for decisions both above and below the guidelines. In light of the research results, some factors may be given more or less weight than presently proposed, and others may be dropped from the score in favor of factors that appear to have greater predictive strength. Although the ''type of risk'' factors that relate to a prisoner's potential for violent recidivism are given significantly increased weight in the proposed new scoring system, increased weight is also given to institutional performance. Positive achievement in prison programs, as well as negative institutional behavior, will continue to produce appropriate adjustments to the ''total point score'' each time a prisoner who has been denied parole appears for a reconsideration hearing.

Proposed Implementation

The Commission proposes that the regulations set forth below be made effective as interim rules on August 5, 1998, with a further period for public comment. The Commission proposes to re-evaluate the rules in the light of further public comment and operational experience before adopting final rules.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant rule within the meaning of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Proposed Amendment

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. By adding three new subparts as follows:

Subpart A—United States Code Prisoners and Parolees

3. Sections 2.1 through 2.66 (Excepting 2.62) will be designated as

Subpart A with the heading of Subpart A added as set forth above.

Subpart B—Transfer Treaty Prisoners and Parolees

4. Section 2.62 will be designated as Subpart B consisting of §§ 2.67 through 2.69 with the heading of Subpart B added as set forth above.

5. Subpart C will be added consisting of §§ 2.70 through 2.89 to read as follows:

Note: Each proposed section to be included under proposed Subpart C is followed by a comment explaining any difference from the corresponding rule of the D.C. Board of Parole.

Subpart C—District of Columbia Code Prisoners and Parolees

Sec.

2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.
2.71 Application for parole.
2.72 Hearing procedure.
2.73 Parole suitability criteria.
2.74 Decision of the Commission.
2.75 Reconsideration proceedings.
2.76 Reduction in minimum sentence.
2.77 Medical parole.
2.78 Geriatric parole.
2.79 Good time forfeiture.
2.80 Procedures for granting parole: Guidelines for D.C. Code offenders.
2.81 Efffective date of parole.
2.82 Release planning.
2.83 Release to other jurisdictions.
2.84 Conditions of release.
2.85 Release on parole.
2.86 Mandatory release.
2.87 Confidentiality of parole records.
2.88 Miscellaneous provisions.
2.89 Prior orders of the Board of Parole.

Subpart C—District of Columbia Code Prisoners and Parolees

§ 2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.

(a) The U.S. Parole Commission shall exercise authority over District of Columbia Code offenders pursuant to section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, D.C. Code § 24–209. The rules in this Subpart shall govern the operation of the U.S. Parole Commission with respect to D.C. Code offenders and are the pertinent parole rules of the District of Columbia as amended and supplemented pursuant to section 11231(a)(1) of the Act.

(b) The Commission shall have sole authority to grant parole, and to establish the conditions of release, for all District of Columbia Code prisoners serving sentences of more than 180 days for felony offenses who are not otherwise ineligible for parole by statute [D.C. Code § 24–208] and committed youth offenders [D.C. Code § 24–804(a)], including offenders who have been returned to prison upon the revocation of parole or mandatory release, wherever confined.

(c) The Commission shall have authority to recommend to the Superior Court of the District of Columbia a reduction in the minimum sentence of a District of Columbia Code prisoner, if the Commission deems such recommendation to be appropriate [D.C. Code § 24–201(c)].

(d) The Commission shall have authority to grant a parole to a prisoner who is found to be geriatric, permanently incapacitated, or terminally ill, notwithstanding the minimum term imposed by the sentencing court [D.C. Code §§ 24–263 through 267].

(e) In the case of an offender committed for observation and study under the Youth Rehabilitation Act, the Commission shall have the responsibility to report to the committing court within sixty (60) days its findings and a recommendation [D.C. Code § 24–803(e)].

(f) The Board of Parole of the District of Columbia shall continue to have sole jurisdiction over District of Columbia Code offenders who have been released to parole or mandatory release supervision, including the authority to return such offenders to prison upon an order of revocation. The jurisdiction and authority of the Board over such offenders shall be transferred to the U.S. Parole Commission by August 5, 2000.

Comment: This section sets forth the authority assigned to the Parole Commission under the D.C. Revitalization Act and carries forth the provisions of 28 DCMR § 100 with two exceptions. First, 28 DCMR § 100.10 was not retained as the statutory authority upon which it was based has been repealed. Second, 28 DCMR § 100.11 was not retained as it is redundant with subsection (b) (derived from 28 DCMR § 100.2), which sets forth the Commission's authority regarding committed youth offenders in a broader form. This proposed rule also reflects a 1993 amendment to the D.C. Code regarding geriatric and medical cases, and updates the references in 28 DCMR § 100 regarding the Youth Corrections Act to take into account the Youth Rehabilitation Act Amendment of 1985.

§ 2.71 Application for parole.

(a) A prisoner (including a committed youth offender) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each institution and shall be provided to a prisoner who is eligible for parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) To the extent practicable, the initial hearing for an eligible prisoner who has applied for parole shall be held at least 180 days prior to the prisoner's date of eligibility for parole.

(c) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. A prisoner who declines either to apply for or waive parole consideration shall be deemed to have waived parole consideration.

(d) A prisoner who waives parole consideration may later apply for parole and be heard during the next visit of the Commission to the institution at which the prisoner is confined, provided that the prisoner has applied for parole at least 60 days prior to the first day of the month in which such visit of the Commission occurs. In no event, however, shall such prisoner be heard at an earlier date than that set forth in paragraph (b) of this section.

Comment: This rule carries forth the provisions of 28 DCMR § 102 with two modifications. First, youth offenders will have to complete a standard parole application form. Second, the rule provides that initial hearings are to be scheduled, where practicable, at least 180 days before the prisoner's eligibility date. Current D.C. Parole Board practice generally provides initial hearings about 60 days prior to the prisoner's eligibility date.

§ 2.72 Hearing procedure.

(a) Each eligible prisoner who has applied for parole shall appear in person for a hearing before an examiner of the Commission. The examiner shall review with the prisoner the guidelines at § 2.80, and shall discuss with the prisoner such information as the examiner deems relevant, including the prisoner's offense behavior, criminal history, institutional record, health status, release plans, and community support.

(b) Hearings may be held in District of Columbia facilities (including District of Columbia contract facilities) and federal facilities (including federal contract facilities).

(c) A prisoner appearing for a parole hearing in a District of Columbia facility shall not be accompanied by counsel, any relative or friend, or any other person (except a staff member of that facility). A prisoner appearing for a parole hearing in a federal facility may have a representative pursuant to § 2.13(b).

(d) A victim of a crime of violence, as defined in D.C. Code § 23–103a(a)(3), or a representative from the immediate family of the victim if the victim has died, shall have the right to be present at the parole hearings of each offender who committed the crime, and to offer a statement as to whether or not parole should be granted, including information and reasons in support of such statement. Such statement may be submitted at the hearing or provided separately. A victim or representative may also request permission to appear at the offices of the Commission for a hearing conducted by an examiner (or other staff member), in lieu of appearing at a parole hearing. Whenever new and significant information is provided, the prisoner will be given the opportunity to respond. The prisoner may be excluded from the hearing room during the appearance of a victim or representative. In such case, the prisoner will be given a summary of the information presented.

(e) A tape recording shall be made of the parole hearing. The tape recording of a parole hearing shall be available to the prisoner or his attorney upon written request to the Commission. See § 2.56(e).

(f) Attorneys, family members, relatives, friends, or other interested persons desiring to submit information pertinent to any case may do so by forwarding letters or memoranda to the offices of the Commission prior to a scheduled hearing. Such persons may also request permission to appear at the offices of the Commission to speak to a Commission staff member, provided such request is received at least 30 days but no more than 90 days prior to the scheduled hearing. The purpose of this office visit will be to supplement the Commission's record with pertinent factual information concerning the prisoner, which shall be placed in the record for consideration at the hearing.

(g) An office visit at a time other than that set forth in paragraph (f) of this section may be authorized only if the Commission finds good cause based upon a written request setting forth the nature of the information to be discussed. See § 2.22. Notwithstanding the above restriction on office visits, written information concerning a prisoner may be submitted to the offices of the Commission at any time.

Comment: This rule carries forth the provisions of 28 DCMR § 103 with the following changes. First, it adds a requirement that the examiner discuss with the prisoner the basis for the prisoner's guideline calculation. This requirement to discuss the pertinent case file information with the prisoner will ensure that the prisoner is informed of the information being considered by the Commission, and given an opportunity to respond. Second, although the rule retains the D.C. prohibition of representatives at parole hearings in District of Columbia facilities, it allows a prisoner to have a representative at a parole hearing in a federal facility, consistent with the procedure for federal prisoners. Third, although 28 DCMR § 103 permits a prisoner's supporters to visit the Board to discuss a case at any time, the proposed rule requires a prisoner's supporter to request an office visit at least 30 days but no more than 90 days before the parole hearing so that their input can be included in the record that the examiner will consider at the hearing. Under the proposed rule, office visits at other times would be permitted only on a showing of good cause. Fourth, the rights of victims as set forth in a 1989 amendment to D.C. law are spelled out. Victims of violent crimes are given the right to appear at the parole hearing, or to request a ''headquarters'' hearing if they have relevant testimony to present. Fifth, the rule follows federal law at 18 U.S.C. 4208(f) in allowing the prisoner to obtain a copy of the tape recording of his parole hearing.

§ 2.73 Parole suitability criteria.

(a) In accordance with D.C. Code § 24–204(a), the Commission shall be authorized to release a prisoner on parole in its discretion after he or she has served the minimum term of the sentence imposed, or after he or she has served one-third of the term or terms for which he or she was sentenced, as the case may be, if the following criteria are met:

(1) The prisoner has substantially observed the rules of the institution;

(2) There is reasonable probability that the prisoner will live and remain at liberty without violating the law; and

(3) In the opinion of the Commission, the prisoner's release is not incompatible with the welfare of society.

(b) It is the policy of the Commission with respect to District of Columbia Code offenders that the minimum term imposed by the sentencing court satisfies the need for punishment in respect to the crime of which the prisoner has been convicted, and that the responsibility of the Commission is to account for the degree and the seriousness of the risk that the release of the prisoner would entail. This responsibility is carried out by reference to the Salient Factor Score and the Point Assignment Grid at § 2.80.

Comment: This rule carries forth the statutory criteria for parole contained in 28 DCMR § 200. In addition, it explains that the parole function for D.C. Code offenders rests on a premise different from that of the federal parole guidelines. For D.C. Code offenders, the proposed guidelines in § 2.80 of these rules treat the minimum term of imprisonment imposed by the court as the measure of basic accountability for the offense of conviction. The function of parole consideration is to determine whether the prisoner would be ''a responsible citizen if he is returned to the community'' and whether ''release on parole is consistent with the public safety.'' See *White* v. *Hyman*, 647 A.2d 1175 (D.C. App. 1994). Hence, this provision sets forth the Commission's intention to maintain the fundamental structure of the D.C. Parole Board's decision-making guidelines, while making scoring changes that carry out its purposes more effectively through an improved measure of the seriousness of the risk each parole applicant poses to the public.

§ 2.74 Decision of the Commission.

(a) Following each initial or subsequent hearing, the Commission shall render a decision granting or denying parole, and shall provide the prisoner with a Notice of Action that includes an explanation of the reasons for the decision. The decision shall ordinarily be issued within 21 days of the hearing, excluding holidays.

(b) Whenever a decision is rendered within the applicable guideline established by these rules, it will be deemed a sufficient explanation of the Commission's decision for the Notice of Action to specify how the guideline was calculated. If the decision is a departure from the guidelines, the Notice of Action shall include the reasons for such departure.

(c) Relevant issues of fact shall be resolved by the Commission in accordance with § 2.19(c).

Comment: This is a new rule. It requires the issuance of a statement of reasons for parole denial, a procedure not included in current District of Columbia Parole Board procedures. Federal practice under 18 U.S.C. 4206 is the model for this procedural reform, as well as for the 21-day time period for issuing the decision.

§ 2.75 Reconsideration proceedings.

(a) If the Commission denies parole, it may establish an appropriate reconsideration date in accordance with the provisions of § 2.80; or if the prisoner's mandatory release date will occur before the reconsideration date

deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence, less good time. Any reconsideration date shall be calculated from the date of the last hearing.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commission shall not set a reconsideration date in excess of five years from the date of the prisoner's last hearing, nor shall the Commission continue a prisoner to the expiration of his or her sentence, if more than five years remains from the date of the last hearing until the prisoner's scheduled mandatory release.

(c) The scheduling of a reconsideration date does not imply that parole will be granted at the next hearing.

(d) Prior to the parole reconsideration date, the Commission shall review the prisoner's record, including any institutional progress report. Based on its review of the record, the Commission may.

(1) Grant parole without conducting an in-person hearing, or

(2) Order an in-person hearing.

(e) Notwithstanding a previously established reconsideration date, the Commission may also reopen any case for a special reconsideration hearing, as provided in § 2.28, upon the receipt of new and significant information concerning the prisoner.

(f) Upon entering an order revoking parole, the Board of Parole of the District of Columbia shall order a reconsideration date pursuant to its regulations. However, the Commission shall have sole authority to grant or deny reparole to an offender who has been returned to prison upon an order revoking parole.

Comment: This rule carries forth the provisions of 28 DCMR § 104; except that the policy of setting continuances for cases by reference to the length of the prisoner's sentence is replaced by reference to the new time ranges for rehearings that are set forth in § 2.80. This change is intended both to reflect actual practice by the D.C. Board and to ensure that continuances are selected by reference to each prisoner's individual point score. In addition, the proposed rule prohibits the scheduling of a reconsideration hearing more than five (5) years from the date of the last hearing. At present, the D.C. Parole Board may order a reconsideration hearing exceeding this limit if it departs from its guidelines. Finally, the proposed rule authorizes special reconsideration hearings for new and significant information, and spells out the continuing authority of the D.C. Parole Board to revoke parole and set rehearing dates.

§ 2.76 Reduction in minimum sentence.

(a) A prisoner who has served three (3) or more years of the minimum term of his or her sentence may request the Commission to file an application with the sentencing court for a reduction in the minimum term pursuant to D.C. Code § 24–201c. The prisoner's request to the Commission shall be in writing and shall state the reasons that the prisoner believes such request should be granted.

(b) Approval of a prisoner's request under this section shall require the concurrence of a majority of the Commissioners.

(c) If the Commission approves a prisoner's request under this section, an application for a reduction in the prisoner's minimum term shall be forwarded to the U.S. Attorney for the District of Columbia for filing with the sentencing court. If the U.S. Attorney objects to the Commission's recommendation, the U.S. Attorney shall provide the government's objections in writing for consideration by the Commission. If after consideration of the material submitted, the Commission declines to reconsider its previous decision, the U.S. Attorney will file the application with the sentencing court.

(d) If a prisoner's request under this section is denied by the Commission, there shall be a waiting period of two (2) years before the Commission will again consider the prisoner's request, absent exceptional circumstances.

Comment: This rule carries forth the provisions of 28 DCMR § 201 regarding applications for a reduction of minimum term. In addition, it sets forth the arrangement the Commission has with the U.S. Attorney's Office regarding the presentation of applications for a reduction in a minimum term to the Superior Court.

§ 2.77 Medical parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined certifying that the prisoner is terminally ill, or is permanently and irreversibly incapacitated by a physical or medical condition that is not terminal, the Commission shall determine whether or not to release the prisoner on medical parole. Such release may be ordered by the Commission, regardless of whether the prisoner's minimum sentence has been served. The Commission shall ordinarily make its determination within fifteen days of the receipt of the report.

(b) A prisoner may be granted a medical parole on the basis of terminal illness only if:

(1) The institution medical staff has provided the Commission with a prediction that there is a high probability of death within six months due to an incurable illness or disease; and

(2) The Commission finds that:

(i) The prisoner will not be a danger to himself or others, and

(ii) Release on parole will not be incompatible with the welfare of society.

(c) A prisoner may be granted a medical parole on the basis of permanent and irreversible incapacitation only if the Commission finds that:

(1) The prisoner's condition is such as to render the prisoner incapable of committing new crimes; and

(2) The prisoner will not be a danger to himself or others; and

(3) Release on parole will not be incompatible with the welfare of society.

(d) The seriousness of the prisoner's crime shall be considered in determining whether or not a medical parole should be granted prior to completion of a prisoner's minimum sentence.

(e) The Commission's determination with respect to the grant or denial of medical parole shall be final, except that the institution may, in its discretion, request the Commission to reconsider its decision on the basis of changed circumstances.

(f) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code § 22–2903, § 22–3202, or § 22–3204(b), shall not be eligible for medical parole. (D.C. Code § 24–267); and

(2) A prisoner shall not be eligible for medical parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code § 24–262).

Comment: This is a new rule that sets forth criteria and procedures for implementing the medical parole provisions at D.C. Code §§ 24–261–64, 267.

§ 2.78 Geriatric parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined that a prisoner who is at least 65 years of age has a chronic infirmity, illness, or disease related to aging, the

Commission shall determine whether or not to release the prisoner on medical parole. Such release may be ordered by the Commission, regardless of whether the prisoner's minimum sentence has been served.

(b) A prisoner may be granted a geriatric parole only if the Commission finds that:

(1) There is a low risk that the prisoner will commit new crimes; and

(2) The prisoner's release would not be incompatible with the welfare of society.

(c) The seriousness of the prisoner's crime, and the age at which it was committed, shall be considered in determining whether or not a geriatric parole should be granted prior to completion of a prisoner's minimum sentence.

(d) A prisoner, or a prisoner's representative, may apply for a geriatric parole by submitting an application to the institution medical staff, who shall forward the application accompanied by a medical report and any recommendations within 30 days. The Commission shall render a decision within 30 days of receiving the application and report.

(e) In determining whether or not to grant a geriatric parole, the Commission shall consider the following factors:

(1) Age of the prisoner;

(2) Severity of illness, disease, or infirmities;

(3) Comprehensive health evaluation;

(4) Institutional behavior;

(5) Level of risk for violence;

(6) Criminal history; and

(7) Alternatives to maintaining geriatric long-term prisoners in traditional prison settings. (D.C. Code § 24–265(c)(1)–(7).)

(f) The Commission's determination with respect to the grant or denial of a geriatric parole shall be final, except that the institution may, in its discretion, request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code § 22–2903, § 22–3202, or § 22–3204(b);, shall not be eligible for geriatric parole. (D.C. Code § 24–267); and

(2) A prisoner shall not be eligible for geriatric parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code § 24–262).

Comment: This is a new rule that sets forth criteria and procedures for implementing the geriatric parole provisions at D.C. Code §§ 24–261, 263–64, 267.

§ 2.79 Good time forfeiture.

Although a forfeiture of good time will not bar a prisoner from receiving a parole hearing, D.C. Code § 24–204 permits the Commission to parole only those prisoners who have substantially observed the rules of the institution. Consequently, the Commission will consider a grant of parole for a prisoner with forfeited good time only after a thorough review of the circumstances underlying the disciplinary infraction(s) and if the Commission is satisfied that the parole date set has required a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct.

Comment: This rule carries forth the provisions of 28 DCMR § 205 in a somewhat modified form to conform to the procedure set forth at § 2.6 of these rules. A minor substantive change is that the Commission will consider the underlying circumstances of the misconduct in setting a date for review hearing rather than set a parole date that is contingent on the restoration of forfeited good time by institutional officials.

§ 2.80 Procedures for granting parole: Guidelines for D.C. Code Offenders

(a) In determining whether an eligible offender should be paroled, the Commission shall apply the guidelines set forth in this section. The guidelines assign numerical values to the pre- and post-incarceration factors described in paragraphs (b), (c), (d), and (e) of this section pursuant to the Point Assignment Table set forth in paragraph (f) of this section. Decisions outside the guidelines may be made, where warranted, pursuant to paragraph (m) of this section.

(b) Salient Factor Score: The offender's Salient Factor Score shall be determined by reference to the Salient Factor Scoring Manual in § 2.20. The Salient Factor Score is used to assist the Commission in assessing the probability that the offender will live and remain at liberty without violating the law.

(c) Violence and Drug Distribution Factors: The Commission shall assess the following factors as an aid in determining the risk of serious violation conduct (*i.e.*, the seriousness of the violation conduct if the offender does recidivate):

(1) Whether the current offense involved crime(s) of violence;

(2) Whether the current offense involved the death of a victim;

(3) Whether the offender was previously convicted of crime(s) of violence;

(4) Whether the current offense involved the possession of a firearm;

(5) Whether the current offense is drug distribution.

(d) The Commission shall assess whether the offender has been found guilty of committing disciplinary infractions while under confinement for the current offense.

(e) The Commission shall assess whether the offender has demonstrated sustained or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. This factor is considered in determining whether the offender will have a lower likelihood of recidivism than indicated by the other factors considered.

(f) Point Assignment Table: Add the applicable points from Categories I–III to determine the base point score. Then add or subtract the points from Categories IV and V to determine the total point score.

POINT ASSIGNMENT TABLE

Category I: Risk of recidivism	(Salient factor score)
10–8 (Very Good Risk)	+0
7–6 (Good Risk)	+1
5–4 (Fair Risk)	+2
3–0 (Poor Risk)	+3
Category II: Current or prior violence	(Type of risk)
Note: Use the greatest applicable subcategory. If no subcategory is applicable, score=0.	
A. High level violence in the current offense, and high level violence in at least one prior offense	+6
B. High level violence in multiple current offenses	+5

POINT ASSIGNMENT TABLE—Continued

Category I: Risk of recidivism	(Salient factor score)
C. High level violence in the current offense, and other violence in at least two prior offenses	+5
D. High level violence in single current offense	+4
E. Other violence in current offense, and high level violence in at least one prior offense	+2
F. Other violence in current offense, and other violence in at least two prior offenses	+2
G. Other violence in current offense	+1
Category III: Death of victim, firearm possession, or drug distribution	(Type of risk)
Note: Use the greatest applicable subcategory. If no subcategory is applicable, score =0.	
A. Current offense was high level or other violence with death of victim resulting	+2
B. Possession of firearm in current offense if current offense is not scored as high level violence	+1
C. Drug distribution in current offense if current offense is not scored as high level or other violence	+1
Base Point Score (Total of Categories I–III):	
IV. Negative Institutional Behavior	
Note: Use the greatest applicable subcategory. If no subcategory is applicable, score =0.	
A. Negative institutional behavior involving: (1) assault upon a correctional staff member, (2) possession of a deadly weapon, (3) setting a fire, or (4) introduction of drugs for purposes of distribution	+2
B. Other negative institutional behavior	+1
V. Program Achievement	
Note: Use the greatest applicable subcategory. If no subcategory is applicable, score =0.	
A. Acceptable institutional behavior with no program achievement	0
B. Acceptable institutional behavior with ordinary program achievement	−1
C. Acceptable institutional behavior with superior program achievement	−2
Total Point Score (Total of Categories I–V):	

(g) Definitions and Instructions for Application of Point Assignment Score.

(1) *Salient factor score* means the salient factor score set forth at § 2.20.

(2) *High level violence* means any of the following offenses—

(i) Murder:

(ii) Voluntary manslaughter;

(iii) Aggravated assault, mayhem, or malicious disfigurement;

(iv) Arson of a building;

(v) Forcible rape or forcible sodomy (first degree sexual abuse);

(vi) Kidnapping or hostage taking;

(vii) First degree burglary while armed (burglary of a dwelling when a victim is present and an offender is armed);

(viii) Assault with a deadly weapon upon a law enforcement officer;

(ix) Extortion or obstruction of justice through violence or threats of violence;

(x) Any offense involving sexual abuse of a person less than sixteen years of age;

(xi) Any felony resulting in ''serious bodily injury.'' (See Definition No. 3.)

(3) *Serious bodily injury* means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) *Other violence* means any of the following felony offenses that does not qualify as ''high level violence''—

(i) Robbery;

(ii) Residential burglary;

(iii) Any felony arson;

(iv) Any felony assault;

(v) Any felony offense involving a threat, or risk, of bodily harm;

(vi) Any felony offense involving sexual abuse or sexual contact.

(5) Attempts, conspiracies, and solicitations shall be scored by reference to the substantive offense that was the object of the attempt, conspiracy, or solicitation; except that Category IIIA shall apply only if death actually resulted.

(6) *Current offense* means any criminal behavior that is either:

(i) Reflected in the offense of conviction, or

(ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (*i.e.*, part of the same course of conduct as the offense of conviction).

(7) *Multiple current offenses* means two or more incidents of criminal behavior committed at different times, or the killing, serious wounding or sexual assault of more than one victim whether at the same or different times.

(8) Category IIIA applies if the death of a victim is:

(i) Caused by the offender, or

(ii) Caused by an accomplice and the killing was both foreseeable and in furtherance of a joint criminal venture.

(9) Category IIIB applies whenever a firearm is possessed during, or used to commit, any offense that is not scored under Category II A, B, C, or D. Category IIIB also applies when the current offense is felony unlawful possession of a firearm and there is no other current offense.

(10) In some cases, negative institutional behavior that involves high level violence will result in a higher score if scored as an additional current offense under Category II, than if scored under Category IVA. In such cases, treat the conduct as an additional current offense under Category II rather than as a disciplinary infraction under Category IVA. For example, the murder of another inmate will generally result in a higher score if treated as an additional current offense under Category II. If negative institutional behavior is treated as an additional current offense, points may still be assessed under Category IV A or B for other disciplinary infractions.

(11) *Superior Program Achievement* means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish, and that is deemed to have a significant impact on the offender's likelihood of recidivism. (The Commission may, in its discretion, grant more than a 2 point deduction in the most clearly exceptional cases.)

(h) Guidelines for Decisions at Initial Hearing—Adult Offenders: In considering whether to parole an adult offender at an initial hearing, the Commission shall determine the offender's total point score and then consult the following guidelines for the appropriate action:

Total points	Guideline recommendation
(1) IF POINTS=0	Parole at initial hearing with low level of supervision required.
(2) IF POINTS=1	Parole at initial hearing with high level of supervision required.
(3) IF POINTS=2	Parole at initial hearing with highest level of supervision required.
(4) IF POINTS=3+ ...	Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(i) Guidelines for Decisions at Initial Hearing—Youth Offenders. In considering whether to parole a youth offender at an initial hearing, the Commission shall determine the youth offender's total point score and then consult the following guidelines for the appropriate action:

Total points	Guideline recommendation
(1) IF POINTS=0–2 ..	Parole at initial hearing with conditions established to address treatment needs;
(2) IF POINTS=3+ ...	Deny parole at initial hearing and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(j) Guidelines for Time to Rehearing. (1) If parole is denied, the time to the subsequent hearing shall be determined by the following guidelines:

Base point score (categories I through IV)	Months to re-hearing
0–4	12–18
4	12–18
5	18–24
6	18–24
7	20–26
8	20–26
9	24–30
10	28–34
11	32–38

(2) The time to a rehearing shall in every case be determined by the prisoner's base point score, and not by the total point score at the current hearing.

(k) Guidelines for Decisions at Subsequent Hearing—Adult Offenders. In determining whether to parole an adult offender at a subsequent hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
(1) IF POINTS=0–3 ..	Parole with highest level of supervision required.
(2) IF POINTS=4+ ...	Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(l) Guideline for Decisions at Subsequent Hearing—Youth Offenders. In determining whether to parole a youth offender appearing at a subsequent hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
(1) IF POINTS=0–3 ..	Parole with highest level of supervision required.
(2) IF POINTS=4+ ...	Deny parole and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(m) Decisions Outside the Guidelines.

(1) The Commission may, in unusual circumstances, waive the Salient Factor Score and the pre- and post-incarceration factors set forth in this section to grant or deny parole to a parole candidate notwithstanding the guidelines, or to schedule a reconsideration hearing at a time different from that indicated in paragraph (j) of this section. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the Notice of Action the specific factors that it relied on in departing from the applicable guideline or guideline range.

(2) Factors that may warrant a decision above the guidelines include, but are not limited to, the following:

(i) *Poorer Parole Risk Than Indicated By Salient Factor Score:* The offender is a poorer parole risk than indicated by the salient factor score because of—

(A) Repeated failure under parole supervision;

(B) Lengthy history of criminally related substance (drug or alcohol) abuse; or

(C) Unusually extensive prior record of felony offenses.

(ii) *More Serious Parole Risk:* The offender is a more serious parole risk than indicated by the total point score because of—

(A) Extensive record of high level violence beyond that taken into account in the guidelines;

(B) Current offense aggravated by extraordinary criminal sophistication or leadership role;

(C) Unusual cruelty or extremely vulnerable victim;

(D) Unusual degree of violence attempted or committed in relation to type of current offense; or

(E) Unusual magnitude of offense in terms of money, drugs, weapons, or other commodities involved.

(3) Factors that may warrant a decision below the guideline include, but are not limited to, the following:

(i) Better Parole Risk Than Indicated by Salient Factor Score. The offender is a better parole risk than indicated by the salient factor score because of (applicable only to offenders who are not already in the very good risk category)—

(A) A prior criminal record resulting exclusively from minor offenses;

(B) A substantial crime-free period in the community for which credit is not already given on the Salient Factor Score;

(C) A change in the availability of community resources leading to a better parole prognosis;

(ii) *Other Factors:*

(A) Substantial cooperation with the government that has not been otherwise rewarded;

(B) Substantial period in custody on other sentence(s) or additional committed sentences.

(C) Poor medical prognosis.

Comment: This section carries forth the provisions of DCMR § 204 in modified form. This revision of the D.C. Board's guideline system retains its fundamental three-part structure (the salient factor score, the total point score, and the grant/denial policy). The guideline system continues to serve as a measurement of both the degree and seriousness of the risk to the public safety presented in each case. The policy of permitting parole to be granted at initial hearings for those who merit 0–2 points on the ''total point score,'' and permitting parole to be granted at rehearings for those who merit 0–3 points, is also retained. However, the relevant factors listed in the point score as indicating ''seriousness of the risk'' have been revised substantially along with the number of points assigned to each relevant factor. The purpose of the revisions is to produce a score that differentiates better as to the probability of violent or otherwise extremely serious offenses (e.g., murder, rape, assault with serious bodily injury). Thus, the revised score includes more factors which appear to indicate an increased probability that recidivism (if it occurs) will be of an extremely serious nature. At the same time, the possible points for superior program achievement in prison also are increased.

The primary intent is to capture within the guidelines the many decisions that are now outside the guidelines because of the D.C. Board's well-founded concerns about the ''seriousness of the risk.'' The Parole Commission itself has found it necessary to depart from the D.C. parole guidelines based on the same concerns. See *Duckett* v. *U.S. Parole Commission,* 795 F. Supp. 133 (M.D. Pa. 1992) (current offenses involved multiple separate crimes of violence not reflected by the point score).

The total point score thus revised permits (in the typical worst-case scenario) a violent repeat offender to receive as many as 11 points. However, point scores only go to this level if there are extraordinary aggravating factors produced by the offender's own repeated return to the most serious possible violent criminal behaviors. If the offender's past record is less serious, the total point score will be correspondingly lower and will permit parole based on good behavior over a sufficient period of time in prison. What constitutes a ''sufficient period of time in prison'' is determined by the need to incapacitate the offender according to the risk level he or she presents, as reflected in the Guidelines for Time to Rehearing at § 2.80(j).

§ 2.81 Effective date of parole.

(a) A parole release date may be granted up to nine months from the date of the hearing in order to permit placement in a halfway house or to allow for release planning. Otherwise, a grant of parole shall ordinarily be effective not more than six months from the date of the hearing.

(b) Except in the case of a medical or geriatric parole, a parole that is granted prior to the completion of the prisoner's minimum term shall not become effective until the prisoner becomes eligible for release on parole.

Comment: This rule carries forth the provisions of 28 DCMR § 202.2, but follows federal practice by permitting an effective date of parole up to 9 months in advance. The D.C. Parole Board rule does not specify any time period. The proposed rule also provides that parole dates will be set no more than 6 months in advance if placement in a halfway house is not required. This policy will leave the Commission with the flexibility to ensure adequate release planning before any prisoner is released on parole. Difficulties in determining the adequacy of release plans, and in the availability of necessary halfway house resources, are presently serious issues that can impede the releases of many D.C. Code prisoners.

§ 2.82 Release planning.

(a) All grants of parole shall be conditioned on the development of a suitable release plan and the approval of that plan by the Commission. A release certificate shall not be issued until a release plan has been approved by the Commission.

(b) After investigation by field staff, the proposed release plan shall be submitted to the Commission by the Department of Corrections or Bureau of Prisons, depending upon the institution in which the prisoner is confined.

(c) If parole has been granted, but the prisoner has not submitted a proposed release plan, the appropriate institution staff shall assist the prisoner in formulating a release plan for investigation.

(d) The Commission may retard a parole date for purposes of release planning for up to 120 days without a hearing. If efforts to formulate and verify an acceptable parole plan prove futile by the expiration of such period, the Commission shall be promptly notified in a detailed report. If the Commission does not order the prisoner to be released, the Commission shall suspend the grant of parole and conduct a reconsideration hearing on the next available docket. Following such reconsideration hearing, the Commission may deny parole if it finds that the release of the prisoner without a suitable plan would fail to meet the criteria set forth in § 2.73. However, if the prisoner subsequently presents an acceptable release plan, the Commission may reopen the case and issue a new grant of parole.

(e) The following shall be considered in the formulation of a suitable release plan: (1) Evidence that the parolee will have an acceptable residence.

(2) Evidence that the parole will be legitimately employed immediately upon release; provided, that in special circumstances, the requirement for immediate employment upon release may be waived by the Commission.

(3) Evidence that the necessary aftercare will be available for parolees who are ill, or who have any other demonstrable problems for which special care is necessary, such as hospital facilities or other domiciliary care; and

(4) Evidence of availability of, and acceptance in, a community program in those cases where parole has been granted conditioned upon acceptance or participation in a specific community program.

Comment: This rule carries forth the provisions of 28 DCMR § 208 regarding release planning. Express authority is added for the Commission to rescind a grant of parole if failure to produce an acceptable release plan persuades the Commission that the release of the prisoner would lead to rapid failure in the community.

§ 2.83 Release to other jurisdictions.

The Commission, in its discretion, may parole any individual from a facility of the District of Columbia, to live and remain in a jurisdiction other than the District of Columbia, if the authorities of that state accept the prisoner for supervision, and suitable release plans have been developed and approved by the Commission. If an individual is paroled from a federal facility to a jurisdiction other than the District of Columbia, supervision shall be provided by the local U.S. Probation Office at the request of the Commission.

Comment: This rule carries forth that part of 28 DCMR § 209 that concerns release to other jurisdictions.

§ 2.84 Conditions of release.

(a) Parole is granted subject to the conditions imposed by the Commission as set forth in the Certificate of Parole. These conditions shall include, but not be limited to, the following. The parolee must:

(1) Obey all laws;

(2) Report immediately upon release to his or her assigned parole office for instructions;

(3) Remain within the geographic limits fixed in the parole certificate unless official approval is obtained;

(4) Refrain from visiting illegal establishments;

(5) Refrain from possessing, selling, purchasing, manufacturing or distributing any controlled substance, or related paraphernalia;

(6) Refrain from using any controlled substance or drug paraphernalia unless such usage is pursuant to a lawful order of a practitioner and the parolee promptly notifies the Commission and his or her parole officer of same;

(7) Be screened for the presence of controlled substances by appropriate tests as may be required by the Board of Parole or the Parole Officer;

(8) Refrain from owning, possessing, using, selling, or having under his or her control any firearm or other deadly weapon;

(9) Find and maintain legitimate employment, and support legal dependents;

(10) Keep the parole officer informed at all times relative to residence and work;

(11) Refrain from entering into any agreement to act as an informer or special agent for any law enforcement agency; and

(12) Cooperate with the officials responsible for his or her supervision and carry out all instructions of his or her parole officer and such special conditions as may have been imposed.

(b) The Commission may add to, modify, or delete any condition of parole at any time prior to the release of the offender.

Comment: This rule carries forth the provisions of 28 DCMR § 207 pertaining to the conditions of parole.

§ 2.85 Release on parole.

(a) Where a parole release date has been set, actual release on parole on that date shall be conditioned upon the individual maintaining a good institutional conduct record and the approval of a satisfactory release plan.

(b) The Commission may reconsider any grant of parole prior to the prisoner's actual release on parole, and may advance or postpone the effective release date, or rescind and deny a parole previously granted.

(c) After a prisoner has been granted parole, the institution shall notify the Commission of any serious breach of institutional rules committed by the prisoner prior to the date of actual release. In such case, the prisoner shall not be released until the institution has been advised that no change has been made in the Commission's order granting parole.

(d) A grant of parole becomes operative upon the authorized delivery of a certificate of parole to the prisoner, and the signing of that certificate by the prisoner, who thereafter becomes a parolee subject to the jurisdiction of the Board of Parole of the District of Columbia.

Comment: This carries forth the provisions of 28 DCMR § 207 regarding release on parole. In addition, it specifies exactly when a parole becomes operative, based on 28 CFR 2.29(a).

§ 2.86 Mandatory release.

(a) When a prisoner has been denied parole at the initial hearing and all subsequent considerations; or parole consideration is expressly precluded by statute, the prisoner shall be released at the expiration of his or her imposed sentence less the time deducted for any good time allowances provided by statute.

(b) Any prisoner having served his or her term or terms less deduction for good time shall, upon release, be deemed to be released on parole until the expiration of the maximum term or terms for which he or she was sentenced, less one hundred eighty (180) days.

(c) Each prisoner released in accordance with this section shall be under the jurisdiction of the Board of Parole of the District of Columbia and subject to parole supervision, upon the authorized delivery of a certificate of mandatory release.

Comment: This rule carries forth the provisions of 28 DCMR § 212.

§ 2.87 Confidentiality of parole records.

(a) Consistent with the Privacy Act of 1974 (5 U.S.C. 552(b)), the contents of parole records shall be confidential and shall not be disclosed outside the Commission except as provided below.

(b) Information that is subject to release to the general public without the consent of the prisoner shall be limited to the information specified in § 2.37(c).

(c) Information other than as described in paragraph (b) of this section may be disclosed without the consent of the prisoner only pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552(b)). See § 2.56.

Comment: This carries forth the operative provisions of 28 DCMR § 101. It maintains the confidentiality of D.C. Board parole files while conforming the regulations to federal parole practice under the Privacy Act of 1974.

§ 2.88 Miscellaneous provisions.

Except to the extent otherwise provided by law, the following sections in subpart A of this part are also applicable to District of Columbia Code offenders:

2.5 (Sentence aggregation)
2.7 (Committed fines and restitution orders)
2.8 (Mental competency procedures)
2.10 (Date service of sentence commences)
2.16 (Parole of prisoner in State, local, or territorial institution)
2.19 (Information considered)
2.22 (Communication with Commission)
2.23 (Delegation to hearing examiners)
2.32 (Parole to local or immigration detainers)

Comment: This rule sets forth the provisions from Part A of these rules that, except to the extent otherwise provided by law, shall also apply to District of Columbia Code prisoners.

§ 2.89 Prior orders of the board of parole.

Any order entered by the Board of Parole of the District of Columbia, in a case within the proper jurisdiction of the Board, shall be accorded the status of an order of the Parole Commission unless duly reconsidered and changed by the Commission.

Comment: This is a new rule that is necessary to clarify the status of prior orders of the D.C. Board (parole grants, denials, revocations, etc.) as of August 5, 1998. It maintains the Commission's longstanding practice of respecting all prior D.C. Board orders when a D.C. Code offender enters federal jurisdiction.

Dated: April 3, 1998.

Michael J. Gaines,

Chairman, Parole Commission.

[FR Doc. 98–9330 Filed 4–9–98; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71

RIN 1219–AA53

Health Standards for Occupational Noise Exposure

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Supplemental proposed rule; extension of comment period and close of record.

SUMMARY: MSHA is extending the post-hearing comment period and close of record regarding the Agency's supplemental proposed rule for occupational noise exposure, which was published in the **Federal Register** on December 31, 1997.

DATES: Comments must be received on or before April 24, 1998.

ADDRESSES: Comments on this supplemental proposed rule must be clearly identified as such and may be transmitted by electronic mail to comments@msha.gov; by fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or by mail to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any format questions.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; MSHA, Office of Standards, Regulations, and Variances; 703–235–1910.

SUPPLEMENTARY INFORMATION: On December 31, 1997, MSHA published in the **Federal Register** (62 FR 68468) a proposed rule which would supplement MSHA's proposed rule for occupational noise exposure in coal and metal and nonmetal mines, published December 17, 1996 (61 FR 66348). The supplemental proposal would require mine operators to provide affected miners and miners' representatives with an opportunity to observe operator monitoring required under § 62.120(f) of MSHA's proposed rule for occupational noise exposure. It also would require mine operators to inform miners and miners' representatives of the dates and times of planned operator noise monitoring so that miners and miners' representatives would have an opportunity to exercise the right to observe monitoring.

The comment period closed on February 17, 1998. MSHA held a public hearing on March 10, 1998, in Washington, DC. To allow for the submission of post-hearing comments the record was scheduled to close on April 9, 1998. Due to requests from the mining community, the Agency is extending the post-hearing comment period and close of record to April 24, 1998. MSHA believes that this extension will provide sufficient time for all interested parties to review and comment on the proposal, and on the written comments and testimony that the Agency has received thus far. All interested members of the mining public are encouraged to submit comments prior to April 24, 1998.

Dated: April 7, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–9597 Filed 4–8–98; 9:53 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–015]

RIN 2115–AE47

Drawbridge Operation Regulations; Grassy Sound Channel, Middle Township, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the drawbridge across Grassy Sound Channel, mile 1.0, in Middle Township, New Jersey, by requiring two-hours advance notice for bridge openings from October 1 to May 14, and from 8 p.m. to 6 a.m. each day from May 15 to September 30. The bridge would be unattended during these time periods and requests for openings would require calling (609) 368–4591. This proposed rule is intended to help lessen the high cost of manning the drawbridge 24 hours a day while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before June 9, 1998.

ADDRESSES: Comments may be mailed to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Comments will become a part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–98–015), the specific section of this rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (Aowb), Fifth Coast Guard District, at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Ocean Drive drawbridge across the Grassy Sound Channel, mile 1.0, in Middle Township is currently required to open on signal year-round. The Cape May County Bridge Commission, through the Cape May County Department of Public Works, has requested permission to cease having the bridge attended 24-hours per day year-round. This proposed rule is intended to decrease the number of hours the bridge is attended in order to help lessen the high cost of perpetually manning the drawbridge while still

providing for the reasonable needs of navigation. In support of its request, Cape May County asserts that 8 years of drawbridge opening logs (from 1990 through 1997) show that marine vessel traffic significantly decreased at night and during the winter (Oct. 1 through May 14).

The Coast Guard has reviewed these logs (copies of which are included in the docket for this rulemaking) and they appear to support Cape May County's request. According to the January 1990 to June 1997 drawbridge logs, 680 openings occurred, of which 177 were for construction vessels and 503 for private vessels.

Of the 503 private vessel openings, the average for the 8 year period was 0.183 openings per day; only 16 of the 503 openings for private vessels occurred at night between 8 p.m. and 6 a.m. with an average opening rate of 0.005 per day for the 8-year period. Only 74 of the 503 private vessel bridge openings occurred from October 1 to May 14 with an average rate of 0.043 openings per day for the winter, as compared with the higher rate of 0.430 openings per day during the summer (May 15 to September 30). The majority of openings for construction vessels occurred during 1991 and 1992, in the daytime. Due to this circumstance and the infrequency of construction vessel bridge openings from 1990–97, and 177 construction vessel openings are not included in this analysis.

The winter and night bridge opening rates, when compared to summer and daytime averages, indicate that it would be advantageous to change the drawbridge operating regulations. Based on this data, the Coast Guard believes that requiring two-hours notice for openings, during the proposed time periods (night and winter) would not overburden marine traffic.

Discussion of Proposed Rule

The Coast Guard is proposing a new regulation governing the operation of this drawbridge. The proposed rule would require two-hours advance notice for openings from October 1 through May 14, and from 8 p.m. to 6 a.m. each day from May 15 through September 30. The bridge would be unattended during these time periods and requests for openings would require calling (609) 368–4591. The Coast Guard believes that these proposed changes will lessen the high cost of the drawbridge's operation while still providing for the reasonable needs of navigation.

The drawbridge is required to operate in compliance with 33 CFR 117.31(b), Operation of draw for emergency situations, and 33 CFR 117.55, Posting of requirements.

The new regulation would be designated § 117.721 in Title 33 of the Code of Federal Regulations.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposed rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.a. Figure 2–1(32)(e) of Commandant Instruction M16475.1C (dated 14 November 1997), this proposed rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. A new § 117.721 is added to read as follows:

§ 117.721 Grassy Sound Channel.

The draw of the Grassy Sound Channel Bridge, mile 1.0 in Middle Township, will open on signal from 6 a.m. to 8 p.m. from May 15 through September 30; two-hours advance notice is required for all other openings by phoning (609) 368–4591.

Dated: March 27, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 98–9517 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–98–3423]

RIN 2115–AD98

Implementation of the National Invasive Species Act of 1996 (NISA)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: To comply with the National Invasive Species Act of 1996 (NISA), the Coast Guard proposes both regulations and voluntary guidelines to control the invasion of aquatic nuisance species (ANS). Ballast water from ships is the largest pathway for the intercontinental introduction and spread of ANS. This rulemaking would amend existing regulations for the Great Lakes ecosystem, establish voluntary ballast water exchange guidelines for all other waters of the United States, and

establish mandatory reporting and sampling procedures for nearly all vessels entering U.S. waters. Under this proposed rule, a self-policing program would be established where ballast water exchange is initially voluntary outside of the Great Lakes ecosystem. However, if the rate of compliance is found to be inadequate, or if vessel operators fail to submit mandatory ballast water reports to the U.S. Coast Guard, the voluntary guidelines will become mandatory and will carry civil and criminal penalties. Also, the requirements of subpart C of 33 CFR part 151, which implements the provisions of NISA, would be rewritten in a question and answer format and narrative text would be reformatted into a more user-friendly table to help owners, operators, and others find out which requirements of subpart C apply to them.

DATES: Comments must reach the Coast Guard on or before June 9, 1998. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 9, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–98–3423], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also E-mail comments using the Marine Safety and Environmental Protection Regulations Web Page at http://www.uscg.mil/hq/g-m/gmhome.htm. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20593, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket on the Internet at http://dms.dot.gov. You can get the International Maritime Organization publications and documents referred to in this preamble from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelley, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329. For information on the notice of proposed rulemaking provisions, contact Lieutenant Larry Greene, Project Manager, U.S. Coast Guard Headquarters, Office of Response (G–MOR), telephone 202–267–0500.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to submit written data, views, or arguments. If you submit comments, you should include your name and address, identify this notice [USCG–98–3423] and the specific section or question in this document to which your comments apply, and give the reason for each comment. Please submit one copy of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want us to acknowledge receiving your comments, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard may schedule a public meeting depending on input received in response to this notice. You may request a public meeting by submitting a request to the Marine Safety Council where listed under **ADDRESSES.** The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that a public meeting should be held, it will hold the meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Problem

Nonindigenous or exotic aquatic nuisance species (ANS) are invading U.S. waters at a significant and increasing rate, causing serious environmental impacts, economic losses, and threats to public health. Although many nonindigenous species are benign, others have displaced or threatened the existence of native species, devastated commercial and recreational fish stocks, disrupted nutrient balances, and opened new pathways for the spread of pathogens and the bioaccumulation of toxic chemicals.

Invasions of ANS are a form of biological pollution that is qualitatively different from any other form of pollution because ANS invaders can never be cleaned up or completely removed from an invaded ecosystem. Once established, the biological invaders continue to spread into new areas and cause further harm to native ecosystems. Every successful invasion constitutes an irretrievable loss to our biological heritage. The nature and seriousness of the problem is well-documented by several scientific studies, including two conducted in North American aquatic ecosystems—the fresh water system of the Great Lakes, and the salt and brackish water system of San Francisco Bay.

Aquatic nuisance species invasions through ballast water are now recognized as a serious problem threatening global biological diversity and human health. Limited control measures similar to these regulations and guidelines have been adopted in Canada, Australia, New Zealand, Israel, Chile, the United Kingdom, Germany, Sweden, Brazil, and Japan. The International Maritime Organization (IMO) Marine Environmental Protection Committee (MEPC) has issued the following voluntary guidelines which it recommended be adopted by all maritime nations of the world:

- IMO MEPC Resolution 50(31), adopted at the 31st Session, on July 1991;
- IMO Resolution A.774(18), adopted at the 18th Assembly, on November 1993;
- IMO Assembly Resolution A.868(20), approved at the 20th Assembly, on November 1997.

According to a recent review of the scientific literature conducted by the Marine Board of the National Research Council (NRC),—

> It has been estimated that in the 1990s ballast water may transport over 3,000 species of animals and plants a day around the world * * * and there is evidence that the number of ballast-mediated introductions is steadily growing. More than 40 species have appeared in the Great Lakes since 1960; more than 50 have appeared in San Francisco Bay since 1970.

Other studies indicate that hundreds of ANS have successfully invaded North America. Some of these invaders which have made the most dramatic impacts in recent years include the following:

- *Zebra mussel.* Invaded the U.S. in 1986 and is found in 19 States and 2 Canadian Provinces; expected to cost

the Great Lakes region alone over $500 million by the year 2000.

- *Asian clam*. Filters the entire volume of northern San Francisco Bay more that once per day, severely disrupting the food chain.
- *Aquatic plant—hydrilla.* Clogs waterways in 14 States and costs Florida alone over $14 million per year to control.
- *Aquatic plant—purple loosestrife.* Has invaded 40 states where it displaces native vegetation and disrupts ecosystems.

These are only a few of the ANS that have recently invaded North America. It is also important to consider the wide range of invading microscopic organisms, which include viruses, bacteria, protozoan (single-celled organisms), and fungi, which may be pathogenic or parasitic to humans or fish. In 1991, the presence of the human pathogenic strain of cholera was documented in ballast tanks of ships in Mobile Bay, AL, threatening the food supply and forcing a temporary closure of local shellfish beds. A 1995 study conducted for the Canadian Coast Guard on ships entering the Great Lakes confirmed the presence of a wide range of invertebrates and bacteria. Most of the bacterial species detected can cause illness in aquatic life or humans under certain conditions.

Ships discharge ballast in the United States from all over the world, including many ports with untreated sewage and other contaminants. The NRC review concluded that the whole range of ANS invasions—

> [M]ay have critical economic, industrial, human health, and ecological consequences. Thus, there are compelling arguments for reducing the role of ships as a vector of nonindigenous species, particularly through ballast water.

U.S. Legislation

In response to this increasing threat to the United States, Congress enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), Pub. L. 101-646 of November 29, 1990, and the National Invasive Species Act of 1996 (NISA), Pub. L. 104–332 of October 26, 1996, both of which are codified at 16 U.S.C. 4701–4751. Under the authority of NANPCA, the U.S. Coast Guard promulgated mandatory regulations for ballast water entering the Great Lakes in 1993. (58 FR 18334 of April 8, 1993 and 33 CFR part 151, subpart C.) These regulations were expanded in 1994 to include portions of the Hudson River, which connects to the Great Lakes ecosystem. (59 FR 31959 of June 21, 1994). Generally, the Great Lakes and Hudson River regulations in 33 CFR part 151 required vessels entering the Great Lakes ecosystem with ballast water from outside the U.S. 200 nautical mile exclusive economic zone (EEZ) to exchange that ballast in the open ocean at a depth of at least 2,000 meters (6,560 feet) before crossing into the U.S. EEZ and discharging ballast. The regulations also allow approval of alternative methods of ballast water management. To date, the Coast Guard has yet to receive a formal request for approval of any alternative method. To strengthen the existing authority for the Great Lakes and Hudson River regulatory regime, NISA makes minor amendments to NANPCA, and it directs the Coast Guard to develop a new nation-wide program modeled on the existing Great Lakes and Hudson River regime. To comply with this mandate, the Coast Guard must, among other things, develop and issue voluntary ballast water exchange guidelines applicable to all vessels entering U.S. waters, and establish reporting and sampling procedures to monitor compliance with the voluntary guidelines.

It is critical that the Coast Guard receives information from vessels on their ballast water management practices in order to determine if the voluntary guidelines need to become mandatory regulations. In the absence of mandatory reporting requirements, the Coast Guard would be forced to assume that all reports that are not received correspond to vessels that failed to follow the voluntary guidelines. This would artificially bias the data collected and make mandatory regulations much more likely in the future. By requiring vessel reporting, the Coast Guard will attempt to gather the most accurate information possible so as not to unfairly burden the industry with additional regulations if voluntary guidelines will suffice. Consequently, the Coast Guard has interpreted NISA as mandating the reporting requirements proposed with this rulemaking.

To fulfill the original mandate of NANPCA, the Coast Guard is also making revisions to the mandatory Great Lakes and Hudson River regime based on the 4 years of experience with it, as well as continuing scientific study. The major changes to the existing standards are—

- Clarification of the ''open ocean exchange'' requirement, and revision of the depth requirement from more than 2,000 meters (6,560 feet) to more than 500 meters (1,640 feet); and
- Modification of the standard for compliance with the exchange requirement. Previously stated in terms of the indicator of 30 parts per thousand salinity, now a performance standard of 90 percent exchange with open ocean water by volume is proposed.

To encourage development of improvements in methods of exchanging or treating ballast water, the Coast Guard is also setting a consistent benchmark standard of 90 percent exchange or kill, as a basis for evaluating and comparing alternate methods. These methods must also be environmentally sound.

Discussion of Proposed Rule

Overview

The Coast Guard proposes to amend its pollution regulations to implement the requirements of NISA. Specifically, subpart C of 33 CFR part 151 would be revised to incorporate the new requirements. These regulations would mandate reporting and recordkeeping so the Coast Guard can determine the level of participation in the voluntary ballast water exchange program. The mandatory ballast water management regulations in the Great Lakes and Hudson River remain mostly unchanged, but will be revised to reflect a more appropriate performance standard for compliance, based on operational experience and scientific study during the first 4 years. We propose two major additions to the current regulations.

First, a voluntary ballast water management program is added for all vessels entering U.S. waters from outside of the EEZ (other than those bound for the Great Lakes or Hudson River). This voluntary program would ask the masters of all vessels with ballast tanks to perform complete ballast water exchange at sea (outside the EEZ) prior to entering U.S. waters.

The second addition would be a mandatory reporting requirement for all vessels with ballast tanks entering U.S. waters from outside of the EEZ, if their voyage included a port or place (e.g., foreign harbor or nearshore waters) beyond the EEZ. For the purpose of this rule, this would also include transits between Alaska or Hawaii and any other port in the United States. These reports would be used to monitor compliance with the voluntary program and to collect other information that must be provided to Congress on a regular basis.

If the rate of compliance is found to be inadequate, or if vessel operators fail to submit mandatory ballast water reports to the Coast Guard, the voluntary guidelines will become mandatory and will carry civil and criminal penalties (16 U.S.C. 4711).

Performance Standard for Compliance

The central issue, for both the mandatory reporting requirements and the voluntary guidelines, is the performance standard. How complete must an exchange or other treatment method be in order to be considered reasonably effective and environmentally sound? It is important to clearly explain the logic of the performance standard. In doing so, the Coast Guard hopes the marine industry will participate in the voluntary nationwide regime and the development of improved ballast water management systems. We also expect that industry will continue to comply with the Great Lakes and Hudson River regime. A complete or 100 percent removal of the biologically dangerous water is the goal because—

- We cannot predict the level of concentration of particular organisms sufficient to constitute an invasion threat; and
- Any successful invasion is irreversible.

However, because existing ballast tank and piping systems in the worldwide shipping fleet were not designed to deal with this need, the economic costs of requiring complete retrofitting of those systems makes a 100 percent standard unrealistic at this time. With future development of alternative methods and improvement in ship designs, a standard of 100 percent removal or kill should be our long-term goal. The Coast Guard has sought, since the development of this new regulatory regime in 1993, to set a standard which encourages vessel operators to conduct as near to a 100 percent exchange as is practical and safe, while not penalizing them for the current limitations in ballast tank and piping system designs. The two currently feasible methods of conducting an exchange are—

- *An empty/refill exchange.* The tank or a pair of tanks are pumped down to the point where the pumps lose suction, and then the tank is pumped back up to the original levels; or
- *A flow-through exchange.* New water is pumped in a full tank while the old water is pumped or pushed out through another opening.

Through either method, almost all vessels should be able to obtain at least a 95 percent exchange of water volume. In the case of an empty/refill exchange, the pumps should be run until losing suction. At that point, depending on the specific vessel size and design there may be anywhere between ten to a few hundred metric tons of un-pumpable slop in the bottom of the tanks or trapped in internal structure for the whole vessel. Typical ballast tank capacities for the whole vessel vary in the range of a few thousand to forty thousand metric tons. Clearly, a reasonable effort can remove more than 95 percent of the original water. (Refilling tanks containing 100 metric tons of slop with 10,000 metric tons of ballast would result in an exchange ratio of 99 percent.). Where the total amount of reballasting is limited because of ship loading or design, or where there is an unusual amount of unpumpable slop due to peculiar tank configurations (after and peak tanks or other tanks with irregular configurations), a high level of exchange should still be feasible by simply repeating the procedure once or twice. In the case of a flow-through exchange, it is clear that more than one times the original water volume will be required, especially when the flow-through is accomplished from the bottom of the tank (via the normal ballast system) and out the top of the tank (via vent pipes or hatch covers). However, both actual experiments conducted on a typical ocean-going vessel by the Australian Quarantine and Inspection Service, and computer simulations conducted by the Petrobras Research Center in Brazil, indicate that it is feasible to obtain an 89 to 95 percent exchange with the use of three times the total volume of the tank. Again, ships, tanks, and ballasting systems will vary in design. Some vessels will need to use more than three times the volume of the water to accomplish 90 percent exchange, and some vessels may not be able to conduct that level of exchange because of safety limitations. But 90 percent is a reasonable standard to set, which is of minimal cost to the industry in that it does not require any changes to current ship designs, subject to the clearly stated exemption for vessels that cannot safely conduct an exchange.

The existing regulations for the Great Lakes and Hudson River require an exchange which results in a discharge of water with a minimum salinity level of 30 parts per thousand (ppt). However, salinity is only one indicator that a reasonably effective exchange has been conducted, and is not reliable as the sole indicator. If a vessel begins with completely fresh water from the mouth of a river in another continent and exchanges that water with open ocean water from the central part of the North Atlantic, at about 36 ppt salinity, a resulting level of 30 ppt indicates an exchange by volume of only 83.33 percent of the water. However, the water typically does not begin as fresh water, and the 30 ppt level in fact may relate to a much lower level of exchange. This has been clearly demonstrated by a recent review of salinity readings on vessels reporting exchanges that were tested by the Coast Guard upon entry into the Great Lakes during the 1997 navigation season. The data show that salinity cannot be relied upon alone as an indicator of an effective exchange, and it should only be one factor in providing evidence that a performance standard has been met. It is also clear from these data that the lower cut-off point, at which it is fair to presume that an effective exchange has not occurred, should be raised to at least the level of 32.4 ppt. This would indicate a nominal exchange of 90 percent, if the tank began with completely fresh water, and it is a level that is already obtained in the great majority of the tanks in which a good exchange has been conducted. In other words, meeting the nominal indicator of a 90 percent exchange only requires improving the exchange on the worst of the poorly exchanged tanks. The need for this minimal raising of the nominal level of exchange is reinforced by a recent scientific study of ballast tanks on ships entering the Great Lakes, which indicates that a large variety of live organisms are continuing to enter the Great Lakes. When framing an appropriate enforcement policy for vessels which are able to document the reasons for a good faith difficulty in meeting the new standard, the Coast Guard will take into consideration the fact that the salinity level has been raised slightly from the old regulatory salinity standard.

Finally, the Coast Guard hopes that a clear statement of a 90 percent removal or kill standard will encourage the development of improvements in exchange and alternative ballast water treatment systems in the near future. Up to this point, there has been no clear benchmark for comparing the leading alternatives set out in the NRC Marine Board Report discussed previously, which include—

- Improvement of the current exchange mechanisms;
- Filtering;
- Heat; and
- Biocides.

Although a ''90 percent solution'' is most emphatically not the final goal of this regulatory program, it may be a useful goal by which to prompt the development of some short-term interim measures that are needed. To that end, the Coast Guard encourages owners and operators to experiment with alternative ballast water management methods (which have been approved by the Commandant, U.S. Coast Guard) and

will consider that emerging technologies require some time to fully develop when framing appropriate enforcement policies.

''Plain English'' Revision of Subpart C

The Coast Guard would also rewrite subpart C to make the requirements of NISA clearer and easier to understand. Each provision or section would be written as a question that you, as a typical reader of these regulations, might ask about the rule. This question is then followed by an answer that tells you what is required. For example, you might ask, ''what are the mandatory ballast water management requirements?'' This question, now posed in § 152.1508, is followed by the answer, which is a description of the specific water management practices that the master must follow to comply with subpart C.

In addition to the question and answer format, the Coast Guard would reformat the current and proposed text of § 151.1502. The Coast Guard proposes to replace the text with a table that is more user-friendly, and would help owners, operators, and others who use subpart C determine which requirements apply to them.

Clear, more readable regulations are essential for the success of our government's reinvention initiative. We encourage your comments on this new way of writing regulations.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The proposed rule would not have an annual effect on the economy of $100 million or more. It would not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities, and it would not initiate a substantial new regulatory program for the Coast Guard. A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary of the Evaluation follows:

Summary of Costs

Mandatory paperwork requirements would generate all of the costs associated with this proposed rule. The Coast Guard proposes to use this information to—

- Ensure that vessels have complied with mandatory ballast water management regulations, where applicable, prior to allowing vessels to enter U.S. ports; and
- Assess the effectiveness of the voluntary guidelines in this proposed rule.

Coast Guard Headquarters staff and researchers from private and other government agencies would conduct the assessment for vessels (with ballast tanks) entering U.S. waters after operating outside the EEZ. The Coast Guard will report this information to Congress on a regular basis as required by the National Invasive Species Act of 1996 (NISA). Based on typical pay (including overtime) for a third mate on a modern U.S. merchant vessel and administrative costs of up to $9, $35 was calculated as the cost per report ($81,840/year/2,080 hours/year × 40 minutes + $9). The Coast Guard used figures from the U.S. Coast Guard Marine Safety Management System (MSMS) to determine that 10,305 vessel transits were subject to this proposed rule (including the Great Lakes) with a cost of $35 per vessel arrival ($35 × 10,305 = $360,675) for a total annual cost of $360,675. However, vessels operating on the Great Lakes already file reports, so they would incur no additional cost (even though they are included in the total industry-cost figure). Owners or operators would not be required to install new equipment on the vessel to comply with either the mandatory requirements on the Great Lakes or Hudson River, or the voluntary exchange requirements in this proposed rule. This proposed rule requires only minor changes in operational procedures that are not expected to incur new costs. Costs to the Federal Government will come from reviewing and reporting ballast water management record information. To collect, collate, and file this information to the responsible research center will cost the Coast Guard about $5,000 annually.

Summary of Benefits

This proposed rule, which provides for reporting and recordkeeping on ballast water exchanges, is the next step in an ongoing effort to prevent non-indigenous species from being introduced into U.S. waters. Ultimately, this effort is expected to provide significant benefit to the U.S. economy, environment, and public health. For example, the fishing industry, the general public, and the marine environment would benefit from protecting native fish and shellfish from certain invading species. According to the U.S. Congress Office of Technology Assessment, the economic impact on the United States from introductions of non-indigenous species has exceeded several billion dollars through—

- Efforts to prevent and reduce further infestation;
- Repairs of damage to various infrastructures; and
- Lost revenues.

The Aquatic Nuisance Species Task Force found the nationwide potential costs averted from non-indigenous species invasions could exceed $30 billion (1997 dollars) over the next 5 years. However, as international maritime trade continues to expand, the economic impact of non-indigenous species invasions may result in more extensive and costly long-term control efforts, including cost associated with improving ballast water management.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considers whether this proposed rulemaking, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposed rule applies to any vessel with ballast tanks, which operates on the waters beyond the Exclusive Economic Zone (EEZ), during any part of its voyage, and then enters the waters of the United States (except those vessels that are expressly exempted in this proposed rule). However, data records indicate that no small businesses have been identified that are involved in U.S. trade and arriving from outside the Exclusive Economic Zone (EEZ). Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it. This proposed rule might economically affect recreational vessels

with ballast tanks. We encourage owners and operators of these vessels to comment on this proposed rule.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Larry Greene, Project Manager, Office of Response (G–MOR), at 202–267–0500.

Collection of Information

This proposed rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Implementation of the National Invasive Species Act of 1996 (NISA).

Summary of Collection of Information: This proposed rule contains collection-of-information requirements in the following section: § 151.1514.

Need for Information: This proposed rule would require owners or operators of each vessel with ballast water tanks, who enter the United States after operating outside the EEZ, to provide to the U.S. Coast Guard information regarding ballast water management practices.

Proposed Use of Information: The proposed use of this information is to ensure that the mandatory ballast water management regulations have been complied with prior to allowing the vessel to enter U.S. ports, and to assess the effectiveness of the voluntary guidelines. The information will be used by the Coast Guard Headquarters staff and researchers from both private and other governmental agencies to assess the effectiveness of voluntary ballast water management guidelines for vessels with ballast tanks which enter U.S. waters after operating outside the EEZ. The information will be provided to Congress on a regular basis as required by NISA.

Description of the Respondents: A vessel owner or operator who enters the United States after operating outside the EEZ.

Number of Respondents: 10,305 vessel entries.

Frequency of Response: Whenever a vessel with ballast tanks enters the United States after operating outside the EEZ.

Burden of Response: 40 minutes (0.67 hours) per respondent.

Estimated Total Annual Burden: 6,904 hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

The Coast Guard solicits public comment on the proposed collection of information to (1) evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, 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 on those who are to respond, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

If you are submitting comments on the collection of information, you should submit your comments both to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES**.

No one is required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the Coast Guard will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**.

The Coast Guard is establishing ballast water exchange guidelines for all vessels with ballast water tanks entering U.S. waters, as well as mandatory reporting for monitoring participation levels. If participation levels in this program are lacking, the National Invasive Species Act of 1996 (NISA) requires the Secretary of Transportation to mandate the ballast water exchange guidelines. Once reported, the information will be used to develop and maintain a ballast water information clearinghouse, which will monitor the effectiveness of the program and identify future needs for better protecting domestic waters from the introduction of invasive species.

The effectiveness of this recommended alternative substantiates the baseline for creating compliance in incremental stages. The solution to this problem is long-term and the most promising technology to resolve the ANS issue is in the foreseeable future. Therefore, the proposed regulations to implement provisions of NISA concerning ballast water control, when using voluntary guidelines for ballast water exchange as the control method, would not have a significant impact on the environment.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil Pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. Revise subpart C, consisting of §§ 151.1500 through 151.1516, to read as follows:

Subpart C—Ballast Water Management for Control of Nonindigenous Species

Sec.

151.1500 What is the purpose of this subpart?
151.1502 What vessels does this subpart apply to?

151.1504 What definitions apply to this subpart?
151.1506 Why must I meet the requirements of the regulations in this subpart and what are the penalty provisions?
151.1508 What are the mandatory ballast water management requirements?
151.1510 Is the master still responsible for the safety of the vessel?
151.1512 When must the master employ ballast water management alternatives?
151.1514 What are the mandatory reporting and recordkeeping requirements?
151.1516 What are the voluntary ballast water management guidelines?
151.1518 Are there methods to monitor compliance with this subpart?

Appendix to Subpart C of Part 151—Guidelines for Filling Out Ballast Water Reporting Form

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

Subpart C—Ballast Water Management for Control of Nonindigenous Species

§ 151.1500 What is the purpose of this subpart?

This subpart implements the provisions of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4751), as amended by the National Invasive Species Act of 1996 (NISA).

§ 151.1502 What vessels does this subpart apply to?

(a) This subpart applies to all vessels (except those specifically exempted below) equipped with ballast water tanks which operate in both waters outside the Exclusive Economic Zone of the United States (the EEZ, within 200 nautical miles of the baseline) and waters of the United States (within 12 miles of the baseline). Vessels bound for different parts of the United States are subject to different requirements:

(1) Vessels with ballast tanks which enter the Great Lakes or the Hudson River north of the George Washington Bridge after operating beyond the EEZ are subject to the mandatory ballast water management requirements in § 151.1508 and the reporting requirements in § 151.1514, regardless of other ports of call during their voyage to the Great Lakes or Hudson River. Vessels not conducting a ballast water exchange after operating beyond the EEZ and prior to entering U.S. or Canadian waters, that—

(i) Take on new ballast in a North American port, and

(ii) Plan to discharge ballast water in the Great Lakes or the Hudson River north of the George Washington Bridge, must—

(A) Conduct an exchange outside the EEZ in accordance with § 151.1508, or

(B) Obtain permission from the Captain of the Port (COTP) for use of an alternate exchange zone.

(2) Vessels with ballast tanks which enter other waters of the United States (within 12 miles from the baseline) after operating beyond the EEZ during any part of a voyage are requested but not required to comply with the voluntary ballast water management guidelines in § 151.1516, and are still required to comply with the mandatory reporting requirements in § 151.1514 whether or not they comply with the voluntary management guidelines.

(b) Two categories of vessels are exempt from this subpart:

(1) Crude oil tankers engaged in the coastwise trade, unless paragraph (c) of this section applies. Coastwise trade is conducted exclusively between U.S. ports.

(2) Passenger vessels equipped with treatment systems designed to kill aquatic organisms in their ballast water, and which operate those systems as designed, unless the Coast Guard determines that such treatment systems are less effective than ballast water exchange.

(c) Crude oil tankers engaged in the export of Alaskan North Slope Crude Oil may be subject to separate requirements to conduct an exchange of ballast water in 2000 meters of depth under the terms and conditions stated in Presidential Memorandum of April 28, 1996 (61 FR 19507). These vessels are also subject to the mandatory reporting requirements in § 151.1514 under the authority of NISA.

(d) Use the table 151.1502 as a guide to which sections of this regulation apply to you:

TABLE 151.1502.—WHO DOES THIS SUBPART APPLY TO?

If you operate a—	And you—	And if during any part of your voyage you enter—	Then you are subject to—
Vessel with ballast water tanks. See § 151.1502(a)(1).	Operate on waters beyond the EEZ (within 200 miles of the baseline).	The Snell Lock at Massena, NY, or the Hudson River north of the George Washington Bridge, regardless of other port calls.	The mandatory ballast water management requirements in § 151.1508 and the mandatory reporting requirements in § 151.1514.
Vessel with ballast water tanks. See § 151.1502(a)(2).	Operate on waters beyond the EEZ (within 200 miles of the baseline).	U.S. waters (within 12 miles of the baseline) other than those listed above.	The voluntary ballast water management guidelines in § 151.1516 and the mandatory reporting requirements in § 151.1514.
Crude oil tanker. See § 151.1502(b)(1).	Engage in coastwise trade (trade exclusively between U.S. ports).	N/A	No requirements.
Crude oil tanker. See § 151.1502(c).	Engage in the export of Alaskan North Slope crude oil.	U.S. waters, for the purpose of exporting Alaska North Slope crude oil.	The requirements of Presidential Memorandum of April 28, 1996 and the mandatory reporting requirements in § 151.1514.
Passenger vessel. See § 151.1502(b)(2).	Use an operating treatment system designed to kill aquatic organisms in ballast water which has not been determined to be ineffective.	N/A	No requirements.

§ 151.1504 What definitions apply to this subpart?

As used in this subpart—

Ballast tank means any tank or hold on a vessel used for carrying ballast, whether or not designed for that purpose.

Ballast water means any water used to manipulate the draft, trim, or stability of a vessel, regardless of how it is carried

on the vessel, including any slop or sediment remaining from such water.

Captain of the Port (COTP) means the Coast Guard officer designated as the COTP, or a person designated by that officer, for the COTP Zone covering the first U.S. port of destination. These COTP Zones are listed in 33 CFR part 3. For any vessel bound for the Great Lakes, regardless of the first commercial port of call inside the Great Lakes, the COTP is COTP Buffalo.

Commandant means the Commandant of the U.S. Coast Guard or an authorized representative.

Exclusive Economic Zone (EEZ) means the area established by Presidential Proclamation No. 5030 of March 10, 1983, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles, and the equivalent zone of Canada.

Environmentally sound method means methods, efforts, actions, or programs, either to prevent introductions or to control infestations of aquatic nuisance species, that minimize adverse impacts on non-target organisms and ecosystems and that emphasize integrated pest management techniques and non-chemical measures. With respect to alternative ballast water treatment methods, chemical treatment of the ballast water will not be considered environmentally sound if it results, or is likely to result, in the release of harmful concentrations of chemicals or by-products into the environment outside the ballast tank.

Great Lakes means Lake Ontario, Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

Open ocean means waters of the Atlantic, Pacific, Arctic, Antarctic, or Indian Oceans which are beyond the EEZ of the United States (beyond 200 nautical miles), beyond 200 miles from the baseline of other countries, and with a depth of more than 500 meters. It does not include the Gulf of Mexico, the Baltic Sea, the Mediterranean Sea, or other Seas.

Port means a terminal or group of terminals or any place or facility that has been designated as a port by the COTP.

Reasonably complete ballast water exchange means an exchange which results in replacement of at least 90 percent of the original water by volume with water from the open ocean or other waters approved in advance by the COTP.

Reasonably effective ballast water management system means a system determined by the Coast Guard to be effective in removing or killing at least 90 percent of the organisms in the ballast water, in terms of both individual organisms and range of species, and which is otherwise practical, safe, and environmentally acceptable.

Voyage means any transit by a vessel destined for any United States port from a port or place outside of the EEZ, including intermediate stops at a port or place within the EEZ. For the purpose of this rule, a transit by a vessel from a port in Hawaii or Alaska to any other United States port, or vice versa, is also considered a voyage.

Waters of the United States means the navigable waters and territorial sea of the United States, including the territorial sea extended to 12 nautical miles from the baseline established by Presidential Proclamation No. 5928 of December 27, 1988.

§ 151.1506 Why must I meet the requirements of the regulations in this subpart and what are the penalty provisions?

(a) *To operate unrestricted.* A vessel subject to the requirements of this subpart may not operate in the Great Lakes or the Hudson River, north of the George Washington Bridge, unless the master of the vessel has certified, in accordance with § 151.1514, that the requirements of this subpart have been met.

(b) *To maintain the required clearance.* If you are the owner or operator of a vessel not in compliance with this subpart, a COTP may request the District Director of Customs to withhold or revoke the clearance required by 46 U.S.C. app. 91.

(c) *To avoid civil penalties.* Failure to comply with these regulations may result in civil penalties up to $25,000 per day.

(d) *To avoid criminal prosecution.* Any person who knowingly violates these regulations is guilty of a class C felony.

§ 151.1508 What are the mandatory ballast water management requirements?

(a) The master of each vessel subject to this subpart must employ one of the following ballast water management practices:

(1) Carry out a reasonably complete ballast water exchange in the open ocean or in other waters approved in advance by the COTP, prior to entering the Snell Lock, at Massena, NY, or the Hudson River north of the George Washington Bridge. A level of salinity below 32.4 parts per thousand is a basis for presuming that a reasonably complete exchange has not occurred. However, a salinity of 32.4 parts per thousand or above is not a basis for presuming that a reasonably complete exchange has occurred unless supported by other evidence that the original water in the tank was fresh. The existence or non-existence of a reasonably complete exchange may be evidenced by any logical combination of salinity, other chemical or biological indicators, the voyage and ballasting history of the vessel, and shipboard records.

(2) Retain the ballast water on board the vessel. If this method of ballast water management is employed, the COTP may seal any tank or hold containing ballast water for the duration of the voyage upon the Great Lakes, or the Hudson River north of the George Washington Bridge.

(3) Use a reasonably effective ballast water management system which is consistent with an environmentally sound method, and which has been approved by the Commandant prior to the voyage. Requests for approval of alternative ballast water management methods must be submitted to the Commandant (G–M), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

(b) The master of a vessel subject to this section may not separately discharge sediment from tanks or holds containing ballast water, unless it is disposed of ashore in accordance with local requirements.

(c) Nothing in this subpart authorizes the discharge of oil or noxious liquid substances (NLS) in a manner prohibited by United States or international laws or regulations. Ballast water carried in any tank containing a residue of oil, NLS, or any other pollutant must be discharged in accordance with the applicable regulations. Nothing in this subpart affects or supersedes any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 to 1376).

§ 151.1510 Is the master still responsible for the safety of the vessel?

Nothing in this subpart relieves the master of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

§ 151.1512 When must the master employ ballast water management alternatives?

The master of any vessel subject to this subpart who, due to weather, vessel architectural design, equipment failure, or other extraordinary conditions, is unable to effect a ballast water exchange before entering the EEZ, must—

(a) Employ another method of ballast water management listed in § 151.1508; or

(b) Request permission from the COTP to exchange the vessel's ballast water within an area agreed to by the COTP. The master must discharge the vessel's ballast water within that designated area after permission is granted by the COTP.

§ 151.1514 What are the mandatory reporting and recordkeeping requirements?

(a) The master of each vessel subject to this subpart must provide the following information to the Commandant, U.S. Coast Guard or the COTP as described in paragraph (b) of this section (Note: A sample form and guidelines for completing it appear in the Appendix to this subpart):

(1) The vessel's: Name, type, International Maritime Organization (IMO) number, owner, gross tonnage, call sign, flag, agent, current location, date of arrival, last port and country of call, and next port and country of call.

(2) The total amount of ballast water being carried, and total ballast water capacity (with units).

(3) Whether or not there is a ballast water management plan on board and in use on the vessel, the total number of ballast tanks and holds on board, total number of tanks and holds in ballast, total number of tanks and holds that were exchanged, and the total number of tanks and holds that were not exchanged.

(4) The original date(s) of uptake, location(s), volumes(s) and temperature(s) of any ballast water (taken on prior to an exchange) that will be discharged into U.S. waters.

(5) The dates(s), location(s), volumes(s), thoroughness (percentage exchanged) of any ballast water exchanged, and the combined sea height (sea+swell) in meters (m) at the time of the ballast water exchange.

(6) The proposed date, location, volume, and salinity of any ballast water to be discharged into the territorial waters of the United States.

(7) The location for disposal of sediment carried upon entry into the territorial waters of the United States, if sediment is to be discharged.

(8) If ballast water was not exchanged, state other control action(s) taken. If none, state reason why not.

(9) Whether or not there is a copy of the IMO voluntary ballast water management guidelines on board (IMO Resolution A.868(20), adopted November 1997).

(10) The master's or responsible officer's printed name, title, and signature attesting to the accuracy of the information provided and certifying compliance with the requirements of this subpart.

(b) This information must be transmitted to the Coast Guard as follows:

(1) The master of a vessel bound for the Great Lakes must telefax the information to the COTP Buffalo at (315) 764–3283 before passing through the Cabot Strait at the entrance to the Gulf of Saint Lawrence.

(2) The master of a vessel bound for the Hudson River north of the George Washington Bridge must telefax the information to the COTP New York at (718) 354–4249 before entering the waters of the United States (12 miles from the baseline).

(3) Masters of other vessels subject to this section must telefax the information to the Commandant, U.S. Coast Guard at (301) 261–4319, or mail to U.S. Coast Guard, c/o Smithsonian, PO Box 28, Edgewater, MD 21037–0028, before departing the first port of call in the United States.

(c) The master or owner of the vessel must retain a copy of the information on the vessel for 2 years.

§ 151.1516 What are the voluntary ballast water management guidelines?

Masters of all vessels with ballast tanks, except those specifically exempted under § 151.1502(b), are requested to adopt and carry out the ballast water management practices described in this subpart when operating on the waters beyond the EEZ during any part of a voyage.

§ 151.1518 Are there methods to monitor compliance with this subpart?

The COTP may take samples of ballast water and sediment, examine documents, and make other appropriate inquires to assess the compliance with, and the effectiveness of, this subpart.

Appendix to Subpart C of Part 151—Guidelines for Filling out Ballast Water Reporting Form

Please fill out in English and make every effort to PRINT legibly!

SECTION 1. VESSEL INFORMATION—

Vessel Name: Print the name of the vessel clearly.

Owner: The registered owner(s) or operator(s) of the vessel.

Flag: Country under which the ship normally operates, write out, *no abbreviations please!*

Last Port and Country: Last port *and* country at which the vessel called before arrival in the current port, *no abbreviations please!*

Next Port *and* Country: Next port and country at which the vessel will call, upon departure from current port, *no abbreviations please!*

Type: List specific vessel type, write out or use the following abbreviations: bulk (bc), roro (rr), container (cs), tanker (ts), passenger (pa), oil/bulk ore (ob), general cargo (gc). Write out any additional vessel types.

GT: Gross tonnage.

Arrival Date: Arrival date to current port (i.e., *the first U.S. port of arrival* after entering the U.S. exclusive economic zone (EEZ)). Please use European date format (DDMMYY).

IMO Number: Identification number of the vessel used by the International Maritime Organization.

Call Sign: Official call sign.

Agent: Agent used for this voyage.

Arrival Port: This is the current port (i.e., the first U.S. port of arrival). *No abbreviations please!*

SECTION 2. BALLAST WATER—(Note: Segregated ballast water = clean, non-oily ballast).

Total Ballast Water On Board: Total segregated ballast water upon arrival to current port, *with units*.

Total Ballast Water Capacity: Total volume of all ballastable, tanks or holds, *with units!*

SECTION 3. BALLAST WATER TANKS—Count all tanks and holds separately (e.g., port and starboard tanks should be counted separately).

Total No. of Tanks On Board: Count all tanks and holds that can carry segregated ballast water.

Ballast Water Management Plan On Board? Do you have a ballast water management plan specific to your vessel on board? Check yes or no.

Management Plan Implemented? Do you follow the above management plan? Check yes or no.

No. of Tanks in Ballast: Number of segregated ballast water tanks and holds with ballast at the onset of the voyage to the current port. If you have no ballast water on board, go to section 5.

No. of Tanks Exchanged: This refers only to tanks and holds with ballast at the onset of the voyage to the current port.

No. of Tanks Not Exchanged: This refers only to tanks and holds with ballast at the onset of the voyage to the current port.

SECTION 4. BALLAST WATER HISTORY—BW SOURCE

Please list *all tanks and holds* that you have discharged or plan to discharge in U.S. waters (carefully write out, or use codes listed below table). Follow each tank across the page listing all source(s), exchange events, and/or discharge events separately. If the ballast water history is identical (i.e. same source, exchange, and discharge dates and locations), like tanks can be combined (example: wing tank 1 with wing tank 2 both with water from Belgium, exchanged Oct. 3, mid-ocean—can be combined. See first line of the table in the sample form). Please use an additional page if you need it, being careful to include ship name, date, and IMO number at the top.

Date: Date of ballast water uptake. Use European format (DDMMYY).

Port or Latitude/Longitude: Location of ballast water uptake, *no abbreviations for ports!*

Volume: Volume of ballast water uptake, *with units.*

Temperature: Water temperature at time of ballast water uptake, in degrees Centigrade, *with units.*

BW EXCHANGE Indicate Exchange Method: By circling empty/refill or flow through.

Date: Date of ballast water exchange. Use European format (DDMMYY).

Endpoint or Latitude/Longitude: Location of ballast water exchange. If it occurred over an extended distance, list the end point latitude and longitude.

Volume: Volume of ballast water exchanged, *with units.*

Percentage Exchanged: Percentage of ballast water exchanged. Calculate this by dividing the number of units of water exchanged by the original volume of ballast water in the tank. If necessary, estimate based on pump rate. (NOTE: For effective flow through exchange, this value should be at least 300%.)

Sea Height (m): Document the sea height in meters at the time of the ballast water exchange (Note: this is the combined height of the wind-seas, and swell, and does *not* refer to depth).

BW DISCHARGE

Date: Date of ballast water discharge. Use European format (DDMMYY).

Port or latitude/longitude: Location of ballast water discharge, *no abbreviations for ports.*

Volume: Volume of ballast water discharged, *with units.*

Salinity: Document salinity of ballast water at the time of discharge, *with units* (i.e., specific gravity (sg) or parts per thousand (ppt)).

If exchanges were not conducted, state other control actions(s) taken: If exchanges were not made on *all tanks and holds* to be discharged in U.S. waters, what other actions were taken? (i.e., transfer of water to a land based holding facility or other approved treatment).

If none, state reason why not: List specific reasons why ballast water exchange was not done. This applies to *all tanks and holds* being discharged in U.S. waters.

SECTION 5—IMO BALLAST WATER GUIDELINES ON BOARD? Check yes or no.

Responsible officers name and title (printed) and signature: e.g., the first mate, Captain, or Chief Engineer must print their name and title and sign the form.

THIS INFORMATION MUST BE TRANSMITTED TO THE U.S. COAST GUARD AS FOLLOWS:

(1) The master of a vessel bound for the Great Lakes must telefax the information to the:

COTP Buffalo at (315) 764–3283

Before passing through the Cabot Strait at the entrance to the Gulf of Saint Lawrence.

(2) The master of a vessel bound for the Hudson River, north of the George Washington Bridge must telefax the information to the:

COTP New York at (718) 354–4249

Before entering the waters of the United States (12 miles from the baseline).

(3) Masters of other vessels subject to this section must telefax the information to the:

Commandant, U.S. Coast Guard at (301) 261–4319 or mail to: U.S. Coast Guard, c/o Smithsonian, P.O. Box 28, Edgewater, MD 21037–0028 before departing the first port of call in the United States.

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

The Coast Guard estimates that the average burden for this report is 40 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MOR), U.S. Coast Guard, Washington, DC 20593–0001 or Office of Management and Budget, Paperwork Reduction Project (2115-0598), Washington, DC 20503.

BILLING CODE 4910–15–P

OMB Control Number 2115-0598

BALLAST WATER REPORTING FORM

1. VESSEL INFORMATION

2. BALLAST WATER

Vessel Name:	Type:	IMO Number:	Specify units: m^3, MT, LT, ST
Owner:	GT:	Call Sign:	Total Ballast Water on Board:
Flag:	Arrival Date:	Agent:	
Last Port and Country:		Arrival Port:	Total Ballast Water Capacity:
Next Port and Country:			

3. BALLAST WATER TANKS BALLAST WATER MANAGEMENT PLAN ON BOARD? YES ____ NO ____ MANAGEMENT PLAN IMPLEMENTED? YES___ NO___

TOTAL NO. OF TANKS ON BOARD _____ NO. OF TANKS IN BALLAST _____ **IF NONE IN BALLAST, GO TO NO. 5.**

NO. OF TANKS EXCHANGED _____ NO. OF TANKS NOT EXCHANGED _____

4. BALLAST WATER HISTORY: RECORD ALL TANKS THAT WILL BE DEBALLASTED IN PORT STATE OF ARRIVAL; IF NONE GO TO NO. 5.

Tanks/Holds (List multiple sources/tank separately)	BW SOURCE				BW EXCHANGE circle one: Empty/Refill or Flow Through					BW DISCHARGE			
	DATE DDMMYY	PORT or LAT. LONG.	VOLUME (units)	TEMP (units)	DATE DDMMYY	ENDPOINT LAT. LONG.	VOLUME (units)	% Exch.	SEA Hgt. (m)	DATE DDMMYY	PORT or LAT. LONG.	VOLUME (units)	SALINITY (units)

Ballast Water Tank Codes: Forepeak = FP, Aftpeak = AP, Double Bottom = DB, Wing = WT, Topside = TS, Cargo Hold = CH, O = Other

IF EXCHANGES WERE NOT CONDUCTED, STATE OTHER CONTROL ACTION(S) TAKEN: _____

IF NONE, STATE REASON WHY NOT: _____

5. IMO BALLAST WATER GUIDELINES ON BOARD (RES. A....(20))? YES ____ NO ____

RESPONSIBLE OFFICER'S NAME AND TITLE (PRINTED) AND SIGNATURE: _____

Dated: April 6, 1998.

R.C. North,

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

[FR Doc. 98–9429 Filed 4–09–98; 8:45 am]

BILLING CODE 4910-15-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AR–2–1–5646b; FRL–5990–8]

Approval and Promulgation of Implementation Plans; Arkansas; Recodification of Air Quality Control Regulations and Correction of Sulfur Dioxide Enforceability Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to approve Arkansas Department of Pollution Control and Ecology Regulation #19, ''Compilation of Regulations of the Arkansas State Implementation Plan for Air Pollution Control,'' as adopted by the Arkansas Commission on Pollution Control and Ecology on July 24, 1992, as a revision to the Arkansas State Implementation Plan (SIP). In the Rules and Regulations section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 11, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219–8913.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253 at the address above.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 26, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98–9555 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA–107–4066b; FRL–5994–3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Allegheny County, Pennsylvania; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Municipal Solid Waste Landfill 111(d) Plan submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County for the purpose of controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. In the final rules section of the **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 11, 1998.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Section, Mailcode 3AP22, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 566–2190, or by e-mail at topsale.james@epamail.gov.

SUPPLEMENTARY INFORMATION: See the information regarding Allegheny County's section 111(d) plan provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: March 31, 1998.

Stanley L. Laskowski,

Acting Regional Administrator, EPA Region III.

[FR Doc. 98–9553 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7251]

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: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

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 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
Maine	Portland (City), Cumberland County.	Capisic Brook	At Upstream side of Capisic Brook Dam	*34	*35
			At Warren Avenue	None	*68
		East Branch	At confluence with Capisic Brook	*51	*56
		Capisic Brook	Approximately 1,560 feet upstream of confluence of Capisic Brook.	None	*63
		West Branch	At confluence with Capisic Brook	*46	*52
		Capisic Brook	At downstream side of Maine Turnpike	None	*58
		Fall Brook	Upstream side of Ocean Avenue	*28	*29
			Approximately 0.55 mile upstream of Maine Avenue.	*83	*85
Maps available for Inspection at the City of Portland Zoning and Building Inspection Office, 389 Congress Street, Room 315, Portland, Maine. Send comments to The Honorable George Campbell, Mayor of the City of Portland, 389 Congress Street, Portland, Maine 04101.					
New Jersey	Bay Head (Borough), Ocean County.	Atlantic Ocean	At the intersection of Grove Street and Holly Avenue.	None	*6
			At the intersection of Bridge Avenue and Club Drive.	*7	*6
			At intersection of Karge Street and Main Street.	*8	#1
			Approximately 400 feet east from the intersection of East Avenue and Chadwick Street.	*12	*15
		Bay Head Harbor	At intersection of Bristol Place and Clayton Avenue.	*5	*6
Maps available for inspection at the Bay Head Borough Hall, 81 Bridge Avenue, Bay Head, New Jersey. Send comments to The Honorable Michael Hurley, Mayor of the Borough of Bay Head, P.O. Box 248, Bay Head, New Jersey 08742.					
New Jersey	Highlands (Borough), Monmouth County.	Sandy Hook Bay	At the intersection of Bay Avenue and Central Avenue.	*9	*11
			Approximately 100 feet north from the intersection of Snug Harbor Avenue and Marine Place.	*9	*15

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Shrewsbury River	At shoreline Hillside Avenue extended	*9	*11
			At shoreline Jackson Street extended	*9	*13
Maps available for inspection at the Borough of Highlands Municipal Building, 171 Bay Avenue, Highlands, New Jersey.					
Send comments to Ms. Nina Light Flannery, Borough of Highlands Clerk/Administrator, 171 Bay Avenue, Highlands, New Jersey 07732.					
New Jersey	Point Pleasant Beach (Borough), Ocean County.	Atlantic Ocean	At the intersection of Griffith Avenue and Arbutus Avenue.	None	*10
			At the intersection of Niblick Street and Baltimore Avenue.	*7	*10
			At intersection of Ocean Avenue and Main Street.	*8	#1
			Approximately 950 feet due east from the intersection of Trenton Avenue and Boston Avenue.	*12	*15
		Manasquan River	Approximately 1,400 feet north of intersection of CONRAIL and Broadway.	*9	*10
			Approximately 500 feet northwest of intersection of Cedar and Curtis Avenues.	*7	*10
			At intersection of Cedar and Curtis Avenues.	None	*10
Maps available for inspection at the Borough of Point Pleasant Beach Construction Office, 2233 Bridge Avenue, Point Pleasant Beach, New Jersey.					
Send comments to The Honorable William Fearon, Mayor of the Borough of Point Pleasant Beach, P.O. Box 25, Point Pleasant Beach, New Jersey 08742.					
New York	Deerpark (Town), Orange County.	Basher Kill	Approximately 450 feet upstream of confluence with Neversink River.	*484	*485
			At upstream county boundary	*506	*507
		Pine Kill	At confluence with Basher Kill	*506	*507
			At upstream county boundary	*506	*516
Maps available for inspection at the Town of Deerpark Offices, Route 209, Huguenot, New York.					
Send comments to Mr. Robert Cunningham, Supervisor of the Town of Deerpark, Drawer A, Huguenot, New York 12746.					
North Carolina	Alamance County (Unincorporated Areas).	Cane Creek	Approximately 1,700 feet upstream of the confluence with the Haw River.	None	*420
			Just upstream of Bethel South Fork Road (SR 2351).	None	*501
		Dry Creek	Upstream side State Route 87	*604	*605
			Approximately 775 feet upstream of State route 87.	*605	*606
		East Back Creek	At confluence with the Haw River	*493	*494
			Approximately 1,100 feet upstream of NC Highway 54.	*493	*496
		Gunn Creek	Approximately 0.8 mile upstream of confluence with Big Alamance Creek.	*503	*504
			Approximately 1.0 mile upstream of confluence with Big Alamance Creek.	*509	*512
		Meadow Creek	Approximately 0.625 mile upstream of the confluence with the Haw River.	None	*469
			Approximately 80 feet upstream of State Route 54.	None	*581
		Mill Creek	Approximately 0.61 miles downstream of Cooks Mill Road (SR 1920).	*535	*534
			Approximately 0.59 mile downstream of Cooks Mill Road (SR 1920).	*535	*534
		Otter Creek	At confluence with Graham-Mebane Lake	None	*534
			At upstream side of Mebane-Rogers Road.	None	*620
		Unnamed Tributary to East Back Creek.	At confluence with East Back Creek	*493	*496
			Approximately 1.6 miles upstream of Governor Scott Farm Road.	None	*581
		Unnamed Tributary to the Haw River at Glencoe.	Approximately 550 feet upstream of confluence with Haw River.	None	*572
			Approximately 50 feet upstream of Greenwood Drive (SR 1597).	None	*579

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Varnals Creek	Approximately 0.34 mile upstream of Preacher Holmes Road (SR 2116).	*471	*472
			Approximately 0.92 mile upstream of Thompson Mill Road (SR 2328).	None	*555
		Tickle Creek	Approximately 0.52 mile upstream of State Route 1500.	None	*643
			Approximately 0.53 mile upstream of State Route 1500.	None	*643
		Graham-Mebane Lake	Entire shoreline within community	None	*534
Maps available for inspection at the Alamance County Planning Department, 124 West Elm Street, Graham, North Carolina.					
Send comments to Mr. Robert C. Smith, Alamance County Manager, 124 West Elm Street, Graham, North Carolina 27253.					
North Carolina	Burlington (City), Alamance County.	Gunn Creek	Approximately 2,450 feet downstream of Anthony Road (SR 1148).	*509	*512
			Approximately 1,300 feet upstream of Berwick Road.	*640	*638
		Michaels Branch	Approximately 320 feet upstream of confluence with West Back Creek.	None	*575
			Approximately 50 feet upstream of U.S. Highway 70.	None	*616
		Dry Creek	Upstream side Powerline Road	None	*631
			Upstream side of Private Drive	None	*631
		Unnamed	Confluence with Gunn Creek	*537	*540
		Tributary to Gunn Creek ..	Upstream side of Interstate Route 40 and 85.	None	*623
Maps available for inspection at the Burlington Engineering Department, 425 South Lexington Avenue, Burlington, North Carolina.					
Send comments to Mr. William Baker, Burlington City Manager, 425 South Lexington Avenue, P.O. Box 1358, Burlington, North Carolina 27216.					
North Carolina	Elon College (Town), Alamance County.	Dry Creek	Approximately 775 feet upstream of State Route 87.	*605	*606
			Downstream side of Powerline Road	None	*626
		Gunn Creek	Approximately 1,300 feet upstream of Berwick Road.	*640	*638
			Approximately 1,100 feet upstream of Berwick Road.	*637	*636
Maps available for inspection at the Elon College Town Hall, 104 South Williamson Avenue, Elon College, North Carolina.					
Send comments to Mr. Michael A. Dula, Elon College Town Manager, P.O. Box 595, Elon College, North Carolina 27244.					
North Carolina	Graham (City), Alamance County.	Steelhouse Branch	Approximately 125 feet upstream of Gilbreath Street.	*494	*495
			Approximately 75 feet upstream of Ivey Street.	None	*534
		East Back Creek	Approximately 350 feet upstream of State Route 54.	*493	*494
			Approximately 5,800 feet upstream of Trollingwood Road (SR 1940).	*512	*514
		Unnamed	At the confluence with East Back Creek ..	None	*496
		Tributary to East, Back Creek.	Approximately 1.45 mile upstream of Governor Scott Farm Road (SR 2124).	None	*572
Maps available for inspection at the Graham City Hall, 201 South Main Street, Graham, North Carolina.					
Send comments to Mr. Ray Fogleman, Graham City Manager, P.O. Drawer 357, Graham, North Carolina 27253.					
North Carolina	Green Level (Town), Alamance County.	Otter Creek	At upstream side of Deer Run Trail	None	*594
			Approximately 575 feet upstream of Deer Run Trail.	None	*596
Maps available for inspection at the Green Level Town Hall, 2510 Green Level Church Road, Green Level, North Carolina.					
Send comments to The Honorable Algene Tarpley, P.O. Box 729, Haw River, North Carolina 27258.					
North Carolina	Haw River (Town), Alamance County.	East Back Creek	Approximately 1.5 miles downstream of Stone Street Extension.	*511	*513
			At toe of Graham-Mebane Lake Spillway	*519	*522
		Graham-Mebane Lake	Entire shoreline within community	*519	*534
		East Back Creek (Overflow Path).	At the confluence with East Back Creek ..	*513	*515

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 700 feet downstream of Southern Railway.	*515	*517
		McAdams Creek	At confluence with East Back Creek (Overflow Path).	*515	*517
			Approximately 58 miles upstream of confluence with East Back Creek (Overflow Path).	*516	*517
Maps available for inspection at the Haw River Town Hall, 403 East Main Street, Haw River, North Carolina.					
Send comments to The Honorable Linda Massey, Mayor of the Town of Haw River, P.O. Box 103, Haw River, North Carolina 27258.					
North Carolina	Hickory (City), Burke and Catawba Counties.	Snow Creek	Approximately 120 feet downstream of a private drive.	None	*957
			Approximately 30 feet upstream of a private drive.	None	*959
Maps available for inspection at the City of Hickory Planning Office, 76 North Center Street, Hickory, North Carolina.					
Send comments to The Honorable William R. McDonald, Mayor of the City of Hickory, P.O. Box 398, Hickory, North Carolina 28603–0398.					
North Carolina	Mebane (City), Alamance County.	Mill Creek	Approximately 0.58 mile downstream of Cooks Mill Road (SR 1920).	*535	*534
			Approximately 1.27 miles upstream of North First Street (State Route 119).	*590	*584
		Unnamed Tributary to East Back Creek.	1.7 miles upstream of Governor Scott Farm Road (State Route 2124).	None	*580
			2.2 miles upstream of Governor Scott Farm Road (State Route 2124).	None	*592
		Graham-Mebane Lake	Entire shoreline within community	None	*534
		Eastside Creek	At confluence with Mill Creek	*567	*564
			Approximately 200 feet downstream of Diet Road.	*567	*566
		Lake Michael	Confluence with Mill Creek	*586	*581
		Tributary	Approximately 300 feet upstream of confluence with Mill Creek.	*586	*585
Maps available for inspection at the Mebane City Hall, 106 East Washington Street, Mebane, North Carolina.					
Send comments to The Honorable Glendel Stephenson, Mayor of the City of Mebane, 106 East Washington Street, Mebane, North Carolina 27302.					
Ohio	Columbus (City) Franklin County.	Olentangy River	Approximately 0.6 mile upstream of confluence of Fisher Run.	*761	*764
			Approximately 0.8 mile upstream of Henderson Road.	*741	*742
Maps available for inspection at the City of Columbus Development Regulation Division, 1250 Fairwood Avenue, Columbus, Ohio.					
Send comments to The Honorable Gregory L. Lashutka, Mayor of the City of Columbus, City Hall, 90 West Broad Street, Columbus, Ohio 43215.					
Ohio	Delaware County (Unincorporated Areas).	Bartholomew Run	Approximately 750 feet upstream of State Route 315.	None	*780
			Approximately 75 feet upstream of CSX Transportation.	None	*921
		Big Run	At confluence with Weeping Rock Run	None	*809
			Approximately 100 feet upstream of Hyatts Road.	None	*909
		Big Walnut Creek	At Sunbury Road	None	*902
			Approximately 215 feet upstream of U.S. Highway 36.	None	*996
		Deep Run	At confluence with Olentangy River	*776	*777
			Approximately 60 feet upstream of U.S. Highway 23.	None	*935
		Fulton Creek	At a point just upstream of Fulton Creek Road.	None	*901
			At upstream county boundary	None	*923
		Lewis Center Run	At confluence with Alum Creek	*825	*826
			Approximately 100 feet upstream of Big Walnut Road.	None	*863
		Lick Run	At confluence with Olentangy River	*782	*783
			Approximately 50 feet upstream of CSX Transportation.	None	*922
		Little Walnut Creek	At downstream side of U.S. Highway 36	*914	*915

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At Carters Corner Road	None	*939
		Olentangy River	At the downstream county boundary	*765	*768
			Approximately 4,000 feet downstream of U.S. Highway 23.	*821	*820
		Reed Run	At confluence with Olentangy River	*789	*790
			At CSX Transportation	None	*918
		Weeping Rock Run	At confluence with Olentangy River	*791	*792
			At North Road	None	*920
		Wildcat Run	At confluence with Reed Run	None	*803
			Approximately 40 feet upstream of CSX Transportation.	None	*923
		Tylers Run	At confluence with Bartholomew Run	None	*826
			Approximately 100 feet downstream of Liberty Street.	None	*884
		Spring Run	Approximately 500 feet downstream of Maxtown Road.	None	*892
			At Maxtown Road	None	*893

Maps available for inspection at the Delaware County Floodplain Administrator's Office, 50 Channing Street, Delaware, Ohio.

Send comments to Mr. Donald Wuertz, Chairman of the Delaware County Board of Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015.

Ohio	Franklin County (Unincorporated Areas).	Olentangy River	At upstream county boundary	*765	*768
			Approximately 0.9 mile upstream of Henderson Road.	*741	*742

Maps available for inspection at the Franklin County Emergency Management Office, 756 Harmon Avenue, Columbus, Ohio.

Send comments to Ms. Arlene Shoemaker, President of the Franklin County Board of Commissioners, 373 South High Street, Columbus, Ohio 43215.

Ohio	Galena (Village) Delaware County.	Big Walnut Creek	At Sunbury Road	None	*902
			At a point approximately 1,000 feet downstream of Abandoned Railroad bridge.	None	*908

Maps available for inspection at the Village of Galena Municipal Building, 9 West Columbus Street, Galena, Ohio.

Send comments to The Honorable John Harpst, Mayor of the Village of Galena, 9 West Columbus Street, Galena, Ohio 43021.

Ohio	Ostrander (Village) Delaware County.	Blues Creek	Approximately 900 feet downstream of Penn Road (downstream corporate limits).	None	*908
			Approximately 200 feet downstream of Ostrander Road.	None	*914

Maps available for inspection at the Jacob C. Ostrander Community Center, South Main Street, Ostrander, Ohio.

Send comments to The Honorable Gwen Stayner, Mayor of the Village of Ostrander, P.O. Box 35, Ostrander, Ohio 43061.

Ohio	Powell (Village) Delaware County.	Olentangy River	At downstream corporate limit	*774	*776
			At upstream corporate limit	*775	*777
		Retreat Run	At confluence with Olentangy River	*775	*776
			Approximately 25 feet downstream of State Route 315.	*775	*776

Maps available for inspection at the Village of Powell Municipal Building, 260 Village Park Drive, Powell, Ohio.

Send comments to The Honorable Richard Cline, Mayor of the Village of Powell, 260 Village Park Drive, Powell, Ohio 43065.

Ohio	Riverlea (Village) Franklin County.	Olentangy River	Approximately 600 feet upstream of confluence of Rush Run.	*746	*748
			Approximately 0.5 mile upstream of confluence of Rush Run.	*749	*750

Maps available for inspection at the Mayor's Office, 301 West Riverglen Drive, Worthington, Ohio.

Send comments to The Honorable Patricia Anderson, Mayor of the Village of Riverlea, 301 West Riverglen Drive, Worthington, Ohio 43085.

Ohio	Sunbury (Village) Delaware County.	Big Walnut Creek	At confluence of Prairie Run	None	*926
			At a point approximately 150 feet downstream of U.S. Route 36.	None	*994

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Village of Sunbury Building Department, 37 East Granville Street, Sunbury, Ohio. Send comments to The Honorable Len Weatherby, Mayor of the Village of Sunbury, P.O. Box 508, Sunbury, Ohio 43074.					
Ohio	Worthington (City) Franklin County.	Olentangy River	Approximately 400 feet downstream of Interstate 270.	*758	*760
			Approximately 700 feet downstream of confluence of Rush Run.	*745	*746
Maps available for inspection at the Worthington City Engineer's Office, 380 Highland Avenue, Worthington, Ohio. Send comments to Mr. David B. Elder, Worthington City Manager, 6550 North High Street, Worthington, Ohio 43085.					
Virginia	Luray (Town), Page County.	Dry Run	Approximately 100 feet downstream of U.S. Route 11 Bypass.	None	*792
			Approximately 0.3 mile upstream of U.S. Route 211 Business Route.	None	*873
Maps available for inspection at the Luray Town Hall, 45 East Main Street, Luray, Virginia. Send comments to The Honorable Ralph H. Dean, Mayor of the Town of Luray, 45 East Main Street, Luray, Virginia 22835.					
West Virginia	Jefferson County (Unincorporated Areas).	Rockymarsh Run	Approximately 430 feet downstream of Billmyer Mill Road.	None	*411
			Approximately 700 feet upstream of State Route 45.	None	*442
		Tributary to Rockymarsh Run.	At confluence with Rockymarsh Run	None	*427
			Approximately 820 feet upstream of State Route 45.	None	*436
Maps available for inspection at the Jefferson County Clerk's Office, 100 East Washington Street, Charles Town, West Virginia. Send comments to Mr. James Knode, President of the Jefferson County Commission, P.O. Box 250, 110 East Washington Street, Charles Town, West Virginia 25414.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: April 2, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–9527 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–40, RM–9240]

Radio Broadcasting Services; Gurdon, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of PGR Communications, Inc., licensee of Station KYXK(FM), proposing the substitution of Channel 295A for Channel 224A at Gurdon and modification of the license for Station KYXK(FM) accordingly. Coordinates for Channel 295A at Gurdon are 33–56–59 and 93–11–08.

As the petitioner's modification proposal seeks an equivalent channel substitution, we will not accept competing expressions of interest in the use of Channel 295A at Gurdon, Arkansas.

DATES: Comments must be filed on or before May 18, 1998, and reply comments on or before June 2, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Teper, Esq., Booth, Freret, Imlay & Tepper, P.C., 5101 Wisconsin Avenue, NW., Suite 307, Washington, DC 20016–4120.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–40, adopted March 18, 1998, and released March 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–9497 Filed 4–9–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF ENERGY

48 CFR Parts 915 and 970

RIN 1991–AB32

Acquisition Regulation; Department of Energy Management and Operating Contracts and Other Designated Contracts

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to amend the Department of Energy Acquisition Regulation (DEAR) to revise its fee policies and related procedures for management and operating contracts and other designated contracts. The proposed rule focuses on the use of fees to ensure that they: are reasonable and commensurate with performance, business and cost risks; create and implement tailored incentives for performance based management contracts; are structured to attract best business partners; and afford flexibility to provide incentives to contractors to perform better at less cost.

DATES: Comments must be received by 4:30 p.m. local time on or before June 9, 1998. A workshop will be held on May 19, 1998, beginning at 9:30 a.m. local time at the address listed below. Requests to speak at the workshop or comments you would like specifically addressed should be received by 4:30 p.m. local time on May 11, 1998. Later requests will be accommodated to the extent practicable.

ADDRESSES: All comments (three copies), as well as requests to speak at the workshop or issues you would like addressed, should be submitted to: Stephen Michelsen, Office of Contract and Resource Management (HR–53), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1368, (202) 586–9356 (facsimile), stephen.michelsen@hq.doe.gov (Internet).

The workshop will be held at Department of Energy, 1000 Independence Avenue, SW, Room 8E089, Washington, DC.

The administrative record regarding this rulemaking that is on file for public inspection, including a copy of the transcript of the workshop and any additional public comments received, is located in the Department's Freedom of Information Public Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Stephen Michelsen, Office of Contract and Resource Management (HR–53), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1368; (202) 586–9356 (facsimile); stephen.michelsen@hq.doe.gov (Internet).

SUPPLEMENTARY INFORMATION:

I. Background and Analysis
II. Public Comments
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act
IV. Opportunities for Public Workshop

I. Background and Analysis

The proposed rule would amend DEAR Subpart 970.1509 to revise fee policies and related procedures for management and operating contracts and other designated contracts. Among other things, the proposed rule complements the Department's June 27, 1997 (62 FR 34842) rulemaking which implemented a number of recommendations to improve its management and operating contracts. One of these recommendations involved the adoption of performance-based contracting concepts. Since the initiation of its contract reform initiatives, the Department has tested a number of approaches to conform its use of fee to such concepts. An additional element of contract reform was the adoption of cost allowability and liability provisions which placed greater financial risk on both for profit and nonprofit contractors. This proposed rule also reflects these changes. The amendments to DEAR proposed by this action are intended to ensure that fees are: reasonable and commensurate with contract type and associated performance and financial risks; structured to attract the best organizations; and effectively used in conjunction with performance-based management contract concepts as implemented by final rule dated June 27, 1997 (62 FR 34842).

Proposed revisions to Subpart 970.1509 would: update fee schedules based on the Bureau of Labor Statistics Producer Price Index for Industrial Commodities to reflect the effects of inflation since 1991 (Sections 915.971–5 and 970.1509–5); add a new fee schedule for environmental management work effort (Section 970.1509–5); redefine and increase facility categories consistent with changes in work at major facilities (Section 970.1509–8); eliminate management allowance for educational institutions and place limitations on both fixed fee and total available fee, including special limits on fee available to nonprofit organizations (Section 970.1509–2); recognize and provide guidance on the availability of various contract types (Section 970.1509–3); provide a preference for those contract types that appropriately maximize the incentives for superior performance (Section 970.1509–3); define criteria for the use of multiple fee approaches (Section 970.1509–3); correlate incentive-fee type arrangements to Federal Acquisition Regulation guidance (Section 970.1509–3); require that fee amounts tied to specific accomplishments or work activities reflect the value of that work to the Department (Section 970.1509–4); provide a preference for contract types under which all fee will be based on performance (Section 970.1509–3); require the maximum practical use of outcome oriented performance expectations consistent with performance based management contract concepts (Section 970.1509–3); eliminate references to fees for management and operating contracts for support services; provide specialized policies for nonprofit federally funded research and development centers, including those run by educational institutions (Section 970.1509–2); restructure considerations and techniques for determining fixed fees and total available fee (Sections 970.1509–4 and 970.1509–8); delete a specified contractor performance grading scale, Fee Conversion Table, and replace it with a requirement for a site specific method of rating the contractor's performance of the contract requirements and determining fee earned (Section 970.1509–8); provide a new clause to establish a threshold for the payment of any fee to ensure, among other things, that performance in the critical area of environment, safety and health is not compromised by any other performance objective (Section 970.5204–XX); and prescribe a new contract clause to address cost reduction proposal programs based on guidance in DEAR 970.1509 (Section 970.5204–YY).

II. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments on the major items identified in the ''PUBLIC

WORKSHOP'' section should be identified on separate pages, with the name of the item at the top of each page, e.g., comments regarding the Department's fee policy as it applies to the use of multiple contract types. In addition, it is requested that you provide a copy of your comments on a WordPerfect 6.1 or ASCII diskette. Comments may be sent to the Internet address in the **ADDRESSES** section of this notice instead of the written copies and diskette, provided they are transmitted in a WordPerfect 6.1 compatible format and include the name, title, organization, postal address, and Internet address with the text of the comments. All comments received will be available for public inspection in the Department's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by the Department before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. The Department reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The Department's generally applicable procedures for handling information which has been submitted in a document and may be exempt from public disclosure are set forth in 10 CFR 1004.11.

III. Procedural Requirements

A. Review Under Executive Order 12866

This 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, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

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) and section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly 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 proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. Based on the history of the Department and the requirements contained in its management and operating contracts, the impact of the proposed rule will be limited to large businesses not subject to the Regulatory Flexibility Act, as small businesses generally do not have the resources required to manage and operate the complex activities at the Department's largest sites. Based on this review the Department certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed by this proposed rule. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

IV. Opportunities for Public Workshop

For significant proposals to revise procurement regulations, DOE has a practice of providing an opportunity for affected contractors, potential offerors, and other interested persons to be heard. In this rulemaking, a public workshop will be conducted on the proposed regulatory amendments rather than a standard public hearing. There are issues involved in this rulemaking that are both significant and complex. DOE believes that the resolution of these issues, as well as the overall quality of the final rule, will be enhanced by an interactive exchange of ideas conducted in a more informal conference style setting. The agenda for the workshop will include, at a minimum, the following topics:

1. The use of multiple contract types within the structure of a cost-plus-

award-fee contract. The Department believes that management and operating contracts may be more efficiently and effectively performed if there is latitude to utilize multiple contract types within the structure of a cost-plus-award-fee contract. Therefore, the revised policy allows for management and operating contracts, or portions of these contracts to be awarded on a cost-plus-incentive-fee (CPIF), fixed-price incentive (FPI), or firm-fixed-price (FFP) basis or combination thereof. Comments are specifically solicited regarding:

a. the appropriateness of requiring that the preconditions set forth in FAR 16.1 be met, as appropriate, for the contract type employed;

b. the appropriateness of employing several contract types, (assuming the contractor has the ability to segregate and track costs by task); and

c. the impact on fee of using several contract types.

2. The approach which places all fee at performance risk. The Department believes that with the introduction of performance based incentives into its award fee management and operating contracts, that all fee should be tied to performance risk. Comments are specifically solicited regarding: the risk posed to contractors by not having any base (fixed) fee amount; and the type and magnitude of potential costs which would be incurred by the contractor if no fee were earned.

3. The policy, as it applies to contracts with nonprofit organizations including educational institutions. The Department, while generally preferring to minimize the amount of fee available for the operation of its laboratories, believes that fee considerations should include the nature and extent of financial or other liability or risk assumed under the contract and the utility of fee as a performance incentive. Any fee exceeding that associated with liability risk should be tied to the organizations's performance. Comments are specifically solicited regarding:

a. the appropriateness of fee in contracts with nonprofit organizations or educational institutions;

b. limiting the fixed fee or base fee to an amount that reflects the cost risk associated with the liability assumed by the organization;

c. the ability of an organization to identify and support the potential cost risk associated with its assumption of liability; and

d. the appropriateness of tying fee to performance.

4. An alternative to the proposed policy as described in item 3 above. The alternative under consideration would establish a fee policy for the operators of the Department's FFRDCs which would not distinguish between the types of business organizations operating them. Consideration is being given to limiting the fee to a minimum amount which recognizes that organizations may incur costs and risks in doing business with the government which are not reimbursed. Comments are specifically solicited regarding:

a. establishing a section of the policy which applies solely to the Department's FFRDCs in contrast to all of its other operations;

b. the principle of setting a maximum allowable fee that is the same for any entity which would operate a FFRDC;

c. minimizing the fee to an amount which recognizes that organizations may incur costs and risks in doing business with the government which are not reimbursed; and

d. the implications of an organization's tax status on the foregoing.

5. The amount of fee necessary to attract the most capable contractors. The Department, with this revised fee policy, is attempting to provide meaningful incentives for contractors to perform better at less cost. In addition, the Department is hoping to enlarge the pool of contractors who are available to help DOE accomplish its important and challenging missions. For these reasons, the Department has created a fee policy which is intended to offer contractors reasonable levels of total available fee relative to the work to be performed and the contractor resources brought to the work. Comments are specifically solicited on the Department's approach to the determination of fee objectives and amounts specifically with regard to the following elements:

a. the use of fee schedules;

b. the use of significant factors and facility/task category factors; and

c. the calculation of total available fee.

6. The application of the Conditional Payment of Fee or Incentives clause. As a general rule, performance requirements that do not lend themselves to a specific incentive fee, should be included in the award fee. However, there are certain performance requirements that are so fundamental to the accomplishment of the overall mission objectives that meeting expected levels of performance should be a prerequisite to earning fee. In such cases, it may be appropriate to condition the payment of any earned fee on the contractor's satisfactory performance of these requirements. The proposed clause allows any otherwise earned fee to be adjusted downward based on a lack of or failure to comply with an environmental, safety, and health plan, or the occurrence of a catastrophic event, or poor technical performance or poor cost performance. Comments are specifically solicited including those specifically regarding:

a. the need for such a clause in a performance based contract;

b. the relationship between primarily objective performance incentives and a clause which allows the subjective adjustment to fee earned based on the occurrence of specified events; and

c. alternatives by which the Department can ensure acceptable performance of work effort under its management and operating contracts not specifically tied to an incentive.

DOE is interested in receiving at the workshop comments and views of interested persons concerning: (1) The above-listed topics; (2) the proposed approach contained in this proposed rulemaking; and (3) possible alternatives to the approach contained in this proposed rulemaking. DOE is also interested in receiving views concerning other topics relevant to the proposed regulatory amendments that workshop participants believe should be discussed.

Members of the public interested in participating actively in the workshop are invited to submit requests to speak to the **FOR FURTHER INFORMATION CONTACT** identified at the beginning of this notice. Those who make such a request are invited to suggest topics for inclusion in the workshop agenda. DOE requests that participants who wish to make brief oral presentations provide a written version or summary of their views for inclusion in the rulemaking record. As time permits, there will be an opportunity to engage in a general discussion of the topics raised during the workshop.

The meeting will be conducted conference-style by a DOE official. A record will be made of the proceedings of the workshop. A copy of the minutes will be placed in the record available for public inspection in the DOE Freedom of Information Public Reading Room at the address indicated in the **ADDRESSES** section. Since this proceeding is not a formal negotiated rulemaking, DOE officials will not seek a consensus of workshop participants on how to resolve issues in principle or on the specific wording of changes to the proposed regulatory text. Otherwise, DOE welcomes public participation in its policy making process and hopes that the workshop will be well attended.

List of Subjects in 48 CFR Parts 915 and 970

Government procurement.

Issued in Washington, D.C., on April 3, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 915—CONTRACTING BY NEGOTIATION

1. The authority citation for Part 915 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Section 915.971–5 is amended by revising paragraphs (d), (f), and (h) to read as follows:

915.971–5 Fee schedules.

* * * * *

(d) The following schedule sets forth the base for construction contracts:

CONSTRUCTION CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Increase (percent)
Up to $1 Million	.....	.....	5.47
1,000,000	54,700	5.47	3.88
3,000,000	132,374	4.41	3.28
5,000,000	198,014	3.96	2.87
10,000,000	341,328	3.41	2.60
15,000,000	471,514	3.14	2.20
25,000,000	691,408	2.77	1.95
40,000,000	984,600	2.46	1.73
60,000,000	1,330,304	2.22	1.56
80,000,000	1,643,188	2.05	1.41
100,000,000	1,924,346	1.92	1.26
150,000,000	2,552,302	1.70	1.09
200,000,000	3,094,926	1.55	0.80
300,000,000	3,897,922	1.30	0.68
400,000,000	4,581,672	1.15	0.57
500,000,000	5,148,364	1.03	.....
Over $500 Million	5,148,364	.....	0.57

* * * * *

(f) The following schedule sets forth the base for construction management contracts:

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Increase (percent)
Up to $1 Million	.....	.....	5.47
1,000,000	54,700	5.47	3.88
3,000,000	132,374	4.41	3.28
5,000,000	198,014	3.96	2.87
10,000,000	341,328	3.41	2.60
15,000,000	471,514	3.14	2.20
25,000,000	691,408	2.77	1.95
40,000,000	984,600	2.46	1.73
60,000,000	1,330,304	2.22	1.56
80,000,000	1,643,188	2.05	1.41
100,000,000	1,924,346	1.92	1.26
150,000,000	2,552,302	1.70	1.09
200,000,000	3,094,926	1.55	0.80
300,000,000	3,897,922	1.30	0.68
400,000,000	4,581,672	1.15	0.57
500,000,000	5,148,364	1.03	.....
Over $500 Million	5,148,364	.....	0.57

* * * * *

(h) The schedule of fees for consideration of special equipment purchases and for consideration of the subcontract program under a construction management contract is as follows:

SPECIAL EQUIPMENT PURCHASES/SUBCONTRACT WORK SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Increase (percent)
Up to $1 Million	.....	.....	1.64
1,000,000	16,410	1.64	1.09

SPECIAL EQUIPMENT PURCHASES/SUBCONTRACT WORK SCHEDULE—Continued

Fee base (dollars)	Fee (dollars)	Fee (percent)	Increase (percent)
2,000,000	27,350	1.37	0.93
4,000,000	45,948	1.15	0.77
6,000,000	61,264	1.02	0.71
8,000,000	75,486	0.94	0.66
10,000,000	88,614	0.89	0.61
15,000,000	119,246	0.79	0.53
25,000,000	171,758	0.69	0.47
40,000,000	242,868	0.61	0.43
60,000,000	329,294	0.55	0.39
80,000,000	406,968	0.51	0.37
100,000,000	480,266	0.48	0.28
150,000,000	619,204	0.41	0.23
200,000,000	732,980	0.37	0.13
300,000,000	867,542	0.29	.....
Over $300 Million	867,542	.....	0.13

Section 915.972 is amended by revising the introductory text of paragraph (a) to read as follows:

915.972 Special considerations for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on a cost-plus-award-fee basis in accordance with 48 CFR 916.404–2, several special considerations are appropriate. Fee objectives for management and operating contracts or other site management contracts as determined by the Procurement Executive, including those using the Construction, Construction Management, or Special Equipment Purchases/Subcontract Work schedules from 48 CFR 915.971–5, shall be developed pursuant to the procedures set forth in 48 CFR 970.1509–8. Fee objectives for other cost-plus-award-fee contracts shall be developed as follows:

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

4. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

5. Section 970.1509, including subsections 970.1509–1 through 970.1509–8, is revised to read as follows:

970.1509 Fees for management and operating contracts.
970.1509–1 Fee policy.
970.1509–2 Special considerations: nonprofit organizations.
970.1509–3 Types of Contracts.
970.1509–4 General considerations and techniques for determining fixed fees.
970.1509–5 Calculating fixed fee.
970.1509–6 Fee base.
970.1509–7 Special equipment purchases.
970.1509–8 Specific considerations: cost-plus-award-fee.
970.1509–9 Special considerations: fee limitations.
970.1509–10 Documentation.
970.1509–11 Solicitation provision and contract clauses.

970.1509 Fees for management and operating contracts.

This section sets forth the Department's policies on fees for management and operating contracts and may be applied to other site management contracts as determined by the Procurement Executive or designee.

970.1509–1 Fee policy.

(a) DOE management and operating contractors may be paid a fee in accordance with the requirements of this part.

(b) Fee objectives and amounts are to be determined for each contract. Standard fees or across the board agreements will not be used or made. Due to the nature of funding management and operating contracts, it is anticipated that fee shall be established in accordance with the funding cycle; however, with the prior approval of the Procurement Executive or designee, a longer period may be used where necessary to incentivize performance objectives that span funding cycles or to optimize cost reduction efforts.

(c) Fee amounts payable shall be established in accordance with this part. Amounts payable shall not exceed maximum amounts derived from the appropriate fee schedule (and classification factor, if applicable) unless approved in advance by the Procurement Executive or designee. In no event shall any fee exceed statutory limits imposed by 41 U.S.C. 254(b).

(d) Prior to the issuance of a competitive solicitation or the initiation of negotiations for an extension of an existing contract, the HCA shall coordinate the maximum available fee as allowed by 48 CFR part 970 and the fee amount targeted for negotiation, if less, with the procurement executive. Solicitations shall identify maximum available fee under the contract. Offerors are invited to propose fee less than the maximum available.

(e) When a contract subject to this part requires a contractor to use its own facilities or equipment, or other resources to make its own cost investment for contract performance, (e.g., when there is no letter-of-credit financing) consideration may be given subject to approval by the Procurement Executive or designee, to increasing the fee amount above that otherwise provided by this part.

(f) Multiple fee arrangements may be used in accordance with 48 CFR 970.1509–3.

970.1509–2 Special considerations: nonprofit organizations.

(a) A nonprofit organization is a business entity:

(1) Which operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) Which is exempted from Federal income taxation under section 501 of the Internal Revenue Code (title 26, United States Code).

(b) For nonprofit organizations, the contracting officer:

(1) Should consider whether any fee is appropriate. Considerations should include:

(i) The nature and extent of financial or other liability or risk assumed or to be assumed under the contract;

(ii) The proportion of retained earnings (as established under generally accepted accounting methods) that relates to DOE contracted effort;

(iii) Facilities capital or capital equipment acquisition plans;

(iv) Other funding needs, to include contingency funding, working capital funding, and provision for funding unreimbursed costs deemed ordinary and necessary; and

(v) The utility of fee as a performance incentive.

(2) In the event fee is considered appropriate, shall determine the amount of fee in accordance with this part.

(i) Fee shall be limited to that amount necessary to reflect the need for fee based on the applicable considerations in 48 CFR 1509–2(b)(1).

(ii) If only a cost-plus-fixed-fee type contract is appropriate, the fee shall not exceed the lesser of: the cost risk associated with liabilities that the contractor assumes; or 75% of the fixed fee that would be calculated per 48 CFR 970.1509–4. If a cost-plus-award-fee type contract is appropriate, the total available fee shall not exceed 75% of the fee calculated per 48 CFR 970.1509–8, with any base fee not exceeding the cost risk associated with liabilities that the contractor assumes and all remaining fee associated with performance.

(iii) If the nonprofit organization is a federally funded research and development center operated by an educational institution, the contractor's use of fee may be restricted.

970.1509–3 Types of contracts.

(a) Contract types suitable for management and operating contracts may include cost, cost-plus-fixed-fee, cost-plus-award-fee, and under a multiple fee arrangement, cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price. See FAR 16.1.

(b) Consistent with the concept of a performance based management contract, those contract types which incentivize performance and cost control are preferred over a cost-plus-fixed-fee arrangement. Accordingly, a cost-plus-fixed-fee contract may only be used when approved in advance by the Procurement Executive or designee.

(c) A cost-plus-award-fee contract is generally the appropriate contract type for a management and operating contract.

(1) The attainment of acquisition objectives generally will be enhanced by using a cost-plus-award-fee contract to effectively motivate the contractor to exceptional performance and to provide the Department with flexibility to evaluate actual performance and the conditions under which it was achieved. Also, it may not be feasible to devise effective predetermined objective incentive targets applicable to cost, technical performance, or schedule for work activities under other types of contracts.

(2) The construct of fee for a cost-plus-award-fee management and operating contract is that total available fee will equal a base fee amount and a performance fee amount. The base fee amount will typically equal zero unless otherwise approved by the Procurement Executive or designee. The performance fee amount will consist of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both.

(3) In a cost-plus-award-fee type contract any base fee amount is fixed at inception of the contract and the performance fee amount the contractor may earn, in whole or in part during performance, is established sufficient to motivate performance excellence. However, consistent with concepts of performance based contracting, it is Departmental policy to place all fee at risk based on performance. Accordingly, a base fee amount will be available only where approved in advance by the Procurement Executive or designee, except in the case of a nonprofit organization, where a base amount reflecting financial risk assumed under the contract may be used.

(d) Consistent with performance based contracting concepts, performance objectives and criteria related to performance fee should be as clearly defined as possible, and where feasible expressed in terms of desired performance results or outcomes. Specific measures for determining performance achievement may be used.

(e) Because the nature of the work performed under a management and operating contract may be complex and varied, opportunities may exist to utilize multiple contract types. The contracting officer should apply that contract type most appropriate to the work component, consistent with FAR 16.1. However, such multiple fee arrangements must conform to the requirements of FAR part 16, and where appropriate to the type, must be supported by negotiated costs subject to the requirements of the Truth in Negotiations Act, and require a pre-negotiation memorandum and a plan describing how each contract type will be administered.

(f) A clause providing for cost reduction incentives which result in quantifiable cost reductions for contractor proposed changes to a design, process, or method that has an established baseline, is defined, and is subject to a formal control procedure may be included in management and operating contracts. Proposed changes must be initiated by the contractor, must be innovative, applied to a specific project or program, and not otherwise be included in an incentive under the contract. Such cost reduction incentives do not constitute fee and are not subject to statutory or regulatory fee limitations, however, they shall be subject to all appropriate requirements set forth in this section.

(g) Operations and field offices shall take the lead in developing and implementing the most appropriate pricing arrangement or cost reduction incentive for the requirements. Pricing arrangements which provide incentives for performance and cost control are preferred over those that do not. The operations and field offices are to ensure the necessary resources and infrastructure exist within both the contractor's and government's organizations to prepare, evaluate, and administer the pricing arrangement or cost reduction incentive prior to their implementation.

970.1509–4 General considerations and techniques for determining fixed fees.

(a) The Department's fee policy recognizes that fee is remuneration to contractors for the entrepreneurial function of organizing and managing resources, the use of their resources (including capital resources), and their assumption of the risk that all incurred costs (operating and capital) may not be reimbursed.

(b) Use of a purely cost-based structured approach for determining fee objectives and amounts for typical DOE management and operating contracts is inappropriate considering the limited level of contractor cost, capital goods, and operating capital outlays for performance of such contracts. Instead of being solely cost-based, the desirable approach calls for a structure that allows judgmental evaluation of eight significant factors, as outlined in this paragraph (b) in order of importance, and the assignment of appropriate fee values (subject to the limitations on fixed fee in 48 CFR 970.1509–5):

(1) Management risk relating to performance, including:

(i) The composite risk and complexity of principal work tasks required to do the job;

(ii) The labor intensity of the job;

(iii) The special control problems; and

(iv) The advance planning, forecasting and other such requirements;

(2) The presence or absence of financial risk, including the type and terms of the contract;

(3) The relative difficulty of work, including specific performance objectives, environmental, safety and health concerns, and the technical and administrative knowledge, and skill necessary for work accomplishment and experience;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, as compared to the nature and degree of subcontracting and the relative complexity of subcontracted efforts, subcontractor management and integration;

(5) Size and operation (number of locations, plants, differing operations, etc.);

(6) Influence of alternative investment opportunities available to the contractor (i.e., the extent to which undertaking a task for the Government displaces a contractor's opportunity to make a profit with the same staff and equipment in some other field of activity);

(7) Benefits which may accrue to the contractor from gaining experience and knowledge of how to do something, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(8) Other special considerations, including support of Government programs such as those relating to small and minority business subcontracting, energy conservation, etc.

(c) The total fee objective for a particular fixed fee negotiation is established by evaluating the factors in paragraph (b) of this section, assigning fee values to them, and totaling the resulting amounts (subject to limitations on total fixed fee in 48 CFR 970.1509–5).

970.1509–5 Calculating fixed fee.

(a) In recognition of the complexities of the fee determination process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, the following fee schedules set forth the maximum amounts of fee that contracting activities are allowed to award for a particular fixed fee transaction.

(b) Fee schedules representing the maximum allowable fixed fee available under management and operating contracts have been established for the following management and operating contract efforts:

(1) Production;

(2) Research and Development; and

(3) Environmental Management.

(c) The schedules are:

PRODUCTION EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Increase (percent)
Up to $1 Million	.....	.....	7.66
1,000,000	76,580	7.66	6.78
3,000,000	212,236	7.07	6.07
5,000,000	333,670	6.67	4.90
10,000,000	578,726	5.79	4.24
15,000,000	790,962	5.27	3.71
25,000,000	1,161,828	4.65	3.35
40,000,000	1,663,974	4.16	2.92
60,000,000	2,247,076	3.75	2.57
80,000,000	2,761,256	3.45	2.34
100,000,000	3,229,488	3.23	1.45
150,000,000	3,952,622	2.64	1.12
200,000,000	4,510,562	2.26	0.61
300,000,000	5,117,732	1.71	0.53
400,000,000	5,647,228	1.41	0.45
500,000,000	6,097,956	1.22	.....
Over $500 Million	6,097,956	.....	0.45

RESEARCH AND DEVELOPMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Increase (percent)
Up to $1 Million	.....	.....	8.42
1,000,000	84,238	8.42	7.00
3,000,000	224,270	7.48	6.84
5,000,000	361,020	7.22	6.21
10,000,000	671,716	6.72	5.71
15,000,000	957,250	6.38	4.85
25,000,000	1,441,892	5.77	4.22
40,000,000	2,075,318	5.19	3.69
60,000,000	2,813,768	4.69	3.27
80,000,000	3,467,980	4.33	2.69
100,000,000	4,006,228	4.01	1.69
150,000,000	4,850,796	3.23	1.14
200,000,000	5,420,770	2.71	0.66
300,000,000	6,083,734	2.03	0.58
400,000,000	6,667,930	1.67	0.50
500,000,000	7,172,264	1.43	.....
Over $500 Million	7,172,264	.....	0.50

ENVIRONMENTAL MANAGEMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Increase (percent)
Up to $1 Million	.....	.....	7.33
1,000,000	73,298	7.33	6.49
3,000,000	203,120	6.77	5.95
5,000,000	322,118	6.44	5.40
10,000,000	592,348	5.92	4.83
15,000,000	833,654	5.56	4.03
25,000,000	1,236,340	4.95	3.44
40,000,000	1,752,960	4.38	3.29
60,000,000	2,411,890	4.02	3.10
80,000,000	3,032,844	3.79	2.49
100,000,000	3,530,679	3.53	1.90
150,000,000	4,479,366	2.99	1.48
200,000,000	5,219,924	2.61	1.12
300,000,000	6,337,250	2.11	0.88
400,000,000	7,219,046	1.80	0.75
500,000,000	7,972,396	1.59	0.58
750,000,000	9,423,463	1.26	0.55
1,000,000,000	10,786,788	1.08	.....
Over $1.0 Billion	10,786,788	.....	0.55

970.1509–6 Fee base.

(a) The fee base is an estimate of necessary allowable costs, with some exclusions. It is used in the fee schedules to determine the maximum fee for a fixed fee contract. That portion of the fee base that represents the cost of the Production, Research and Development, or Environmental Management work to be performed, shall be exclusive of: the cost of source and special nuclear materials; estimated costs of land, buildings and facilities whether to be leased, purchased or constructed; depreciation of Government facilities; and any estimate of effort for which a separate fee is to be negotiated.

(b) Such portion of the fee base, in addition to the adjustments in paragraph (a) of this section, shall exclude:

(1) Any part of the following types of costs which are of such magnitude or nature as to distort the technical and management effort actually required of the contractor:

(i) Estimated cost of capital equipment (other than special equipment) which the contractor procures by subcontract;

(ii) Estimated cost or price of subcontracts and other major contractor procurements, however, up to 80 percent of such costs may be included if the contracting officer determines that there are unique circumstances involving extraordinary management effort required to manage subcontract activities; and

(iii) Other similar costs.

(2) Special equipment as defined in 48 CFR 970.1509–7;

(3) Estimated cost of Government-furnished property, services and equipment;

(4) All estimates of costs not directly incurred by or reimbursed to the operating contractor;

(5) Estimates of home office or corporate general and administrative expenses that shall be reimbursed through the contract;

(6) Estimates of any independent research and development cost or bid and proposal expenses that may be approved under the contract;

(7) Any cost of work funded with uncosted balances previously included in a fee base of this or any other contract; and

(8) Cost of rework attributable to the contractor.

(c) In calculating the fee amounts associated with the Production, Research and Development, or Environmental Management work to be performed, the fee base is to be allocated to the category reflecting the work to be performed and the appropriate fee schedule utilized.

(d) The portion of the fee base associated with the Production, Research and Development, or Environmental Management work to be performed and the associated schedules in this part are not intended to reflect the portion of the fee base or related compensation for unusual architect-engineer, construction services, or special equipment provided by the management and operating contractor. Architect-engineer and construction services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. Fees paid for such services shall be calculated using the provisions of 48 CFR 915.9 relating to architect-engineer or construction fees. Fees paid for such purchases shall be in addition to the operating fees calculated for the Production, Research and Development, or Environmental Management work to be performed. Special equipment purchases shall be addressed in accordance with the provisions of 48 CFR 970.1509–7 relating to Special equipment.

970.1509–7 Special equipment purchases.

(a) Special equipment is sometimes procured in conjunction with management and operating contracts. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment and use the schedule in 48 CFR 915.971–5(h).

(b) In determining appropriate fees, factors such as complexity of equipment, ratio of procurement transactions to volume of equipment to be purchased and completeness of services should be considered. Where possible, the reasonableness of the fees should be checked by their relationship to actual costs of comparable procurement services.

(c) The maximum allowable fee for such services shall not exceed the fee schedule set forth in 48 CFR 915.971–5(h) for such services as performed by construction contractors. The fee is based on the estimated price of the equipment being purchased.

(d) For purposes of this part, special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to distort the amount of technical direction and management effort required of the contractor. Special

equipment is of a nature that requires less management attention. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment using the schedule in 48 CFR 915.971–5(h). The determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved in each project. This category of equipment would generally include:

(1) Major items of prefabricated process or research equipment; and

(2) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment. In some cases, it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

970.1509–8 Special considerations: cost-plus-award-fee.

(a) When a management and operating contract is to be awarded on a cost-plus-award-fee basis, several special considerations are appropriate.

(b) All performance incentives identified under these contracts are funded from total available fee, which consists of a base fee amount (which may be zero) and a performance fee amount (which may consist of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both).

(c) The total available fee for the contract shall equal the product of the fee(s) that would have been calculated for a fixed fee contract and the classification factor(s) most appropriate for the work. (The fixed fee(s) for nonprofit organizations is calculated per 48 CFR 970.1509–2. The fixed fee(s) for profit making organizations is calculated per 48 CFR 970.1509–4) If more than one fee schedule is applicable to the contract, the total available fee shall be the sum of the available fees derived from: each fee schedule; consideration of significant factors applicable to each fee schedule; and application of a Classification Factor(s) most appropriate for the work.

(d) Classification factors applied to each Facility/Task Category are:

Facility/task category	Classification factor
A	3.00
B	2.50
C	2.00
D	1.25

(e) The contracting officer shall select the Facility/Task Category after considering the following:

(1) Facility/Task Category A. The main focus of effort performed is related to:

(i) The manufacture, assembly, retrieval, disassembly, or disposal of nuclear weapons with explosive potential;

(ii) The physical cleanup, processing, or storage of nuclear radioactive or toxic chemicals if the nature of the work is significantly advancing state of the art technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is significantly more demanding than that found in similar industrial/DOE settings (i.e., nuclear energy, chemical processing, industrial environmental cleanup); or

(iii) Research and development directly supporting paragraphs (e)(1)(i) or (ii) of this section and not conducted in a laboratory, or as designated by the Procurement Executive. (Classification factor 3.0)

(2) Facility/Task Category B. The main focus of effort performed is related to:

(i) The safeguarding and maintenance of nuclear weapons or nuclear material;

(ii) The manufacture or assembly of nuclear components;

(iii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals, or other substances which pose a significant threat to the environment or the health and safety of workers or the public, if the nature of the work is using state of the art technologies or applications in such operations and/or the inherent difficulty or risk of the work is more demanding than that found in similar industrial/DOE settings (i.e., nuclear energy, chemical or petroleum processing, industrial environmental cleanup);

(iv) The detailed planning necessary for the assembly/disassembly of nuclear weapons/components; or

(v) Research and development directly supporting paragraphs (e)(2)(i), (ii), (iii), or (iv) of this section and not conducted in a laboratory, or as designated by the Procurement Executive. (Classification factor 2.5)

(3) Facility/Task Category C. The main focus of effort performed is related to:

(i) The physical cleanup, processing, or storage of nuclear radioactive or toxic chemicals if the nature of the work is using routine technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is similar to that found in similar industrial/DOE settings (i.e., nuclear energy, chemical processing, industrial environmental cleanup);

(ii) Plant and facility maintenance;

(iii) Plant and facility security (other than the safeguarding of nuclear weapons and material); or

(iv) Research and development directly supporting paragraphs (e)(3)(i), (ii) or (iii) of this section and not conducted in a laboratory, or as designated by the Procurement Executive. (Classification factor 2.0)

(4) Facility/Task Category D. The main focus of the effort performed is research and development conducted at a laboratory. (Classification factor 1.25)

(f) Where the Procurement Executive or designee has approved a base fee, the Classification Factors shall be reduced, as approved by the Procurement Executive or designee.

(g) Any risks which are indemnified by the Government (for example, by the Price-Anderson Act) will not be considered as risk to the contractor.

(h) All management and operating contracts awarded on a cost-plus-award-fee basis shall set forth in the contract, or the Performance Evaluation and Measurement Plan(s) required by the contract clause at 48 CFR 970.5204–54, a site specific method of rating the contractor's performance of the contract requirements in relation to the required/desired performance of the contract requirements, and a method of fee determination tied to the method of rating.

(i) Prior approval of the Procurement Executive or designee, is required for total available fee amount exceeding the guidelines in paragraph (c) of this section.

(j) Fee Determination Officials must ensure that all important areas of contract performance are specified in the contract or Performance Evaluation and Measurement Plan(s), even if such areas are not assigned specific weights or percentages of available fee.

970.1509–9 Special considerations: fee limitations.

In situations where the objective performance incentives are of unusual difficulty or where the successful completion of the performance incentives would provide extraordinary value to the Government, fees in excess of those allowed under other provisions of this fee policy may be allowed with the approval of the Procurement Executive or designee. Requests to allow fees in excess of those allowed under other provisions of the fee policy in this section must be accompanied by a written justification with detailed supporting rationale as to how the

specific circumstances satisfy the two criteria listed in this subsection.

970.1509–10 Documentation.

The contracting officer shall tailor the documentation of the determination of fee prenegotiation objective based on FAR 15.406–1, Prenegotiation objectives, and the determination of the negotiated fee in accordance with FAR 15.406–3, Documenting the negotiation. The contracting officer shall include as part of the documentation: the rationale for the allocation of cost and the assignment of facility/task categories; a discussion of the calculations described in 48 CFR 970.1509–4; and discussion of any other relevant provision of this section.

970.1509–11 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 48 CFR 970.5204–54, Total Available Fee: Base Fee Amount and Performance Fee Amount, in management and operating contracts, and other contracts designated by the Procurement Executive or designee, that include cost-plus-award-fee structures.

(b) Due to the various types of fee and incentive arrangements which may be included in a contract and the need to ensure the overall balanced performance of the contract, the contracting officer shall insert the clause at 48 CFR 970.5204–XX, Conditional Payment of Fee or Incentives, in management and operating contracts, and other contracts designated by the Procurement Executive or designee, awarded on a cost-plus-award-fee, multiple fee, or incentive basis.

(c) The contracting officer shall insert the clause at 48 CFR 970.5204–YY, Cost Reduction, in management and operating contracts, and other contracts designated by the Procurement Executive or designee, if cost savings programs are contemplated.

(d) The Contracting Officer shall insert the provision at 48 CFR 970.5204–ZZ, Limitation on Fee, in solicitations for management and operating contracts, and other contracts designated by the Procurement Executive or designee.

6. Section 970.5204–54 is revised to read as follows:

970.5204–54 Total available fee: base fee amount and performance fee amount.

As prescribed in 48 CFR 970.1509–11(a), insert the following clause. The clause should be tailored to reflect the contract's actual inclusion of base fee amount and performance fee amount.

Total Available Fee: Base Fee Amount and Performance Fee Amount (Month and Year TBE)

(a) *Total available fee.* Total available fee, consisting of a base fee amount (if any) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled ''Payments and advances.''

(b) *Fee Negotiations.* Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon, the Contracting Officer and Contractor shall enter into negotiation of the evaluation areas and individual requirements subject to incentives, the amount of fee, and the allocation of fee. The Contracting Officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated evaluation areas and individual requirements subject to incentives, the amount of fee, and the allocation of fee. In the event the parties fail to agree on the amount of fee, the Contracting Officer may make a unilateral decision, subject to appeal under the clause of the contract entitled Disputes. In the event the parties fail to agree on the evaluation areas and individual requirements subject to incentives or on the allocation of fee, a unilateral determination will be made by the Contracting Officer. It is herein agreed the total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be approved by the Procurement Executive or designee.

(c) *Determination of Total Available Fee Amount Earned.*

(1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period and determine the total available fee amount earned. At the Contracting Officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of the incentivized requirement.

(2) The Government Fee Determination Official (FDO) will be (insert title of FDO). The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the Government FDO.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d), below, unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the reasons why the total available fee amount was or was not earned. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, the FDO may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled ''Conditional Payment of Fee or Incentives'' if contained in the contract.

(d) *Performance Evaluation and Measurement Plan(s).* To the extent not set forth elsewhere in the contract:

(1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will contain all important areas of contract performance specified in the contract, even if such areas are not assigned specific weights or percentages of available fee; and evaluation areas and individual requirements that are subject to incentives and the amount and allocation of fee to such areas and requirements. A copy of the Plan(s) shall be provided to the Contractor:

(i) prior to the start of an evaluation period if the evaluation areas, individual requirements, amount of fee, and allocation of fee to such evaluation areas and individual requirements have been mutually agreed to by the parties; or

(ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the evaluation areas, individual requirements, amount of fee, and allocation of fee to such evaluation areas and requirements have been unilaterally established by the Contracting Officer.

(2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria may be objective, subjective, or both. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

(3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The Contracting Officer shall notify the contractor:

(i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

(ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or

(iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.

(e) *Schedule for total available fee amount earned determinations.* The FDO shall issue the final total available fee amount earned determination in accordance with the schedule set forth in the Performance Evaluation and Measurement Plan(s). However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment, if one is required or permitted per paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their

completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the ''Renegotiation Board Interest Rate,'' and is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

Alternate I: When the award fee cycle consists of two or more evaluation periods, add the following as paragraph (c)(4): At the sole discretion of the Government, unearned total available fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle.

Alternate II: When the award fee cycle consists of one evaluation period, add the following as paragraph (c)(4): Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.

Alternate III: When the FDO requires the contractor to submit a self-assessment, add the following text as paragraph (f): *Contractor self-assessment.* Following each evaluation period, the Contractor shall submit a self-assessment within (*Insert Number*) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the Contractor's self-assessment, if submitted, as part of the evaluation of the contractor's management during the period. The self-assessment, if any, itself will not be the basis for the award fee determination.

Alternate IV: When the FDO permits the contractor to submit a self-assessment at the contractor's option, add the following text as paragraph (f): *Contractor self-assessment.* Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within (*Insert Number*) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the Contractor's self-assessment, if submitted, as part of the evaluation of the Contractor's management during the period. The self-assessment, if any, itself will not be the basis for the award fee determination.

7. Section 970.5204–XX, Conditional Payment of Fee or Incentives; 970.5204–YY, Cost Reduction; and 970.5204–ZZ, Limitation on Fee, are added to read as follows:

970.5204–XX Conditional payment of fee or incentives.

As prescribed in 48 CFR 970.1509–11(b), insert the following clause:

Conditional Payment of Fee or Incentives (Month and Year TBE)

In order for the Contractor to receive all otherwise earned fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations Office Manager or his/her designee may make a unilateral determination to reduce the evaluation period's otherwise earned fee, profit or share of cost savings as described in paragraphs (a) through (d) of this clause. This clause does not apply to any Base Fee included in the contract.

(a) *Minimum requirements for Environment, Safety & Health (ES&H) Program.* The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, ''Integration of Environment, Safety and Health into Work Planning and Execution,'' if included in the contract, or as otherwise agreed to with the Contracting Officer. The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations Office Manager or his/her designee, at his/her sole discretion, may reduce, any otherwise earned fees, profit or share of cost savings, for the evaluation period by an amount up to the amount earned.

(b) *Minimum requirements for catastrophic event.* If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace related injury or illness to one or more employees, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations Office Manager or his/her designee, may reduce any otherwise earned fee for the evaluation period by an amount up to the fees earned. In determining any diminution of fee resulting from a catastrophic event, the DOE Operations Office Manager or his/her designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources. This clause is in addition to any other remedies available to the Government that may be contained in this contract.

(c) *Minimum requirements for specified level of performance.*

(1) At a minimum the Contractor must perform the following:

(i) the requirements with specific incentives at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document;

(ii) all of the performance requirements directly related to the incentive requirements at a level of performance such that the overall performance of these requirements is at an acceptable level; and

(iii) all other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Contracting Officer. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the evaluation period, the DOE Operations Office Manager or his/her designee, may reduce any otherwise earned fee, profit, or shared net savings for the evaluation period, by an amount up to the amount earned.

(d) *Minimum requirements for cost performance.*

(1) Requirements incentivized by other than cost incentives must be performed within their specified cost and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The Contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the Contracting Officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations Office Manager or his/her designee, at his/her sole discretion, may reduce in whole or in part any otherwise earned fee, profit, or shared net savings for the evaluation period by an amount up to the amount earned.

970.5204–YY Cost Reduction.

As prescribed in 48 CFR 970.1509–11(c), insert the following clause:

Cost Reduction (Month and Year TBE)

(a) *General.* It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected and develop and submit Cost Reduction Proposals (CRPs) to the Contracting Officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g).

(b) *Definitions.*

Administrative cost is the contractor cost of developing and administering the CRP.

DOE cost is the Government cost incurred in implementing and validating the CRP.

Design, process, or method change is a change to a design, process, or method which has an established baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

Development cost is the contractor cost of up front planning, engineering, prototyping, and testing of a design, process, or method.

Implementation cost is the contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to the DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

(1) a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis and are the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort or

(2) which result directly from a design, process, or method change, occur in the fiscal year in which the change is accepted and the subsequent fiscal year and are the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the Contracting Officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

(c) *Procedure for submission of CRPs.*

(1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:

(i) Current Method (Baseline)—A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative; and supporting documentation.

(ii) New Method (Baseline)—A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished; and supporting documentation.

(iii) Feasibility Assessment—A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.

(2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:

(i) the proposed contractual arrangement and the justification for its use; and

(ii) a detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.

(d) *Evaluation and Decision.* All CRPs must be submitted to and approved by the Contracting Officer. Included in the information provided by the CRP must be the following regarding the extent the proposed cost reduction effort may:

(1) pose a risk to the health and safety of workers, the community, or to the environment;

(2) result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;

(3) require a change in other contractual agreements;

(4) result in significant organizational and personnel impacts;

(5) create a negative impact on the cost, schedule, or scope of work in another area;

(6) pose a potential negative impact on the credibility of the Contractor or the DOE; and

(7) impact successful and timely completion of any of the work in the baseline.

(e) *Acceptance or Rejection of CRPs.* Acceptance or rejection of a CRP is a unilateral determination made by the Contracting Officer. The Contracting Officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (*Insert Number*) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:

(1) result in net savings (in the sharing period if a design, process, or method change);

(2) not reappear as costs in subsequent periods; and

(3) not result in any impairment of essential functions. The failure of the Contracting Officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.

(f) *Adjustment to Original Estimated Cost and Fee.* If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort from which the CRP effort was removed shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.

(g) *Sharing Arrangement.* If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage no greater than 25 percent of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

(h) *Validation of Shared Net Savings.* The Contracting Officer shall validate actual shared net savings. If actual shared net savings can not be validated, the contractor will not be entitled to a share of the net shared savings.

(i) *Relationship to Other Incentives.* Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.

(j) *Subcontracts.* The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any Subcontractor's allowable costs, and any CRP incentive payments to a Subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for Subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

970.5204–ZZ Limitation on Fee.

As prescribed in 48 CFR 970.1509–11(d), insert the following provision:

Limitation of Fee (Month and Year TBE)

For the purpose of this solicitation fee amounts shall not exceed the total available fee allowed by the fee policy. The Government reserves the unilateral right, in the event an offeror's proposal is selected for award, to limit: fixed fee to not exceed an amount established pursuant to 48 CFR 970.1509–4; and total available fee to not exceed an amount established pursuant to 48 CFR 970.1509–8.

[FR Doc. 98–9501 Filed 4–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–96–41; FHWA–97–2289]

RIN 2125–AE05

Public Meeting To Discuss the Development of the North American Standard for Protection Against Shifting or Falling Cargo

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FHWA is announcing a public meeting concerning the development of the North American Standard for Protection Against Shifting or Falling Cargo. The meeting will include a review of the most recent version of the North American Standard for Protection Against Shifting or Falling Cargo and a discussion of issues related to the adoption of the guidelines by jurisdictions throughout North America.

DATES: The meeting will be held on May 2, 1998. The meeting will begin at 9:00 a.m. and end at 5:00 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Irvine, 17900 Jamboree Boulevard in Irvine, California.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su__docs.

Background

On October 17, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM) concerning the development of the North American Standard for Protection Against Shifting or Falling Cargo (61 FR 54142). The ANPRM indicated that the FHWA is considering proposing amendments to its regulations concerning cargo securement requirements for commercial motor vehicles engaged in interstate commerce. Specifically, the agency is considering adopting new cargo securement rules that will be based upon the results of a multi-year comprehensive research program to evaluate current regulations and industry practices. The FHWA requested comments on the process to be used in developing the cargo securement guidelines.

Standard Development Process

The preliminary efforts at developing the North American Standard for Protection Against Shifting or Falling Cargo are currently being managed by a drafting group. The drafting group is developing a model set of cargo securement guidelines based upon the results from the multi-year research program. Membership in the drafting group includes representatives from the FHWA, Transport Canada, the Canadian Council of Motor Transport Administrators (CCMTA), the Ontario Ministry of Transportation, the Quebec Ministry of Transportation—Ontario and Quebec are conducting most of the research—and the Commercial Vehicle Safety Alliance (CVSA).

The meeting on May 2 is a continuation of a series of public meetings and is intended to serve as part of a process for further developing the guidelines. The meeting will involve a review of the work completed to date by the drafting group, discussions concerning the process for each of the jurisdictions in North America to adopt the guidelines, and the identification of any additional research or data that may be needed to resolve concerns raised during previous public meetings. The meeting is open to all interested parties. This process is intended to ensure that all interested parties have an opportunity to participate in the development of the guidelines, and to identify and consider the concerns of the Federal, State, and Provincial governments, carriers, shippers, industry groups, and associations as well as safety advocacy groups and the general public.

For individuals and groups unable to attend the meeting, copies of the draft standard may be obtained, free of charge, by contacting Mr. Larry W. Minor at the address and telephone number listed at the beginning of this notice. Further, the CCMTA has posted the complete draft standard and related information (e.g., minutes of the previous public meetings, information about ordering copies of the cargo securement research reports, etc.) on the INTERNET. The website is: http://www.ab.org/ccmta/ccmta.html.

With regard to future rulemaking notices, the FHWA will publish a separate notice concerning its review of the docket comments submitted in response to the ANPRM. That notice will summarize the comments and identify any issues that warrant reconsideration of the standard development process.

Meeting Information

The meeting will be held on May 2, 1998, at the Hyatt Regency Irvine Hotel, 17900 Jamboree Boulevard in Irvine, California. The meeting is scheduled from 9:00 a.m. to 5:00 p.m. in conjunction with the Commercial Vehicle Safety Alliance's 1998 Spring Workshop. Attendance for the cargo securement meeting is free of charge and open to all interested parties. However, anyone interested in attending the sessions and committee meetings of the CVSA's 1998 Spring Workshop must register with the CVSA and pay the appropriate registration fee. For further information about registration for other sessions or meetings of the CVSA's 1998 Spring Workshop please contact the CVSA at (301) 564–1623.

The FHWA notes that since the CVSA's 1998 Spring Workshop is being held at the Hyatt Regency Irvine Hotel, the availability of guest rooms at the hotel is very unlikely. Therefore, those needing hotel accommodations should attempt to make reservations at other hotels in the vicinity.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued on: April 6, 1998.

George L. Reagle,

Associate Administrator for Motor Carriers.

[FR Doc. 98–9470 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register

Vol. 63, No. 69

Friday, April 10, 1998

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

Forest Service

Analysis of Veteran/Boulder Project Area, Black Hills National Forest, Spearfish/Nemo Ranger District, Lawrence and Meade Counties, SD

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: Pursuant to 36 CFR 219.10(g), the District Ranger of the Spearfish/Nemo Ranger District, Black Hills National Forest, gives notice of the agency's intent to prepare an environmental impact statement for the analysis of the Veteran/Boulder Project Area. The responsible official for this project is John C. Twiss, Forest Supervisor, Black Hills National Forest.

ADDRESSES: Send written comments to District Ranger, Spearfish/Nemo Ranger District, Black Hills National Forest, 2014 N. Main, Spearfish, SD 57783.

DATES: This project schedule is as follows: File Draft EIS—May 1998 File Final EIS and Record of Decision signature—August 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Seay, Project Interdisciplinary Team Leader, 605–642–4622. Additional information, such as maps, scoping summary and list of issues identified through the scoping process can be obtained by written request to the Spearfish Ranger District office, or by phone at the above address and phone number.

SUPPLEMENTARY INFORMATION: Timber harvest and associated activities within the Veteran/Boulder Project Area (27,463 acres) is proposed by the Spearfish/Nemo Ranger District. The 1997 Revised Land and Resource Management Plan (Forest Plan), which guides management of the Black Hills National Forest, identifies an allowable sale quantity (ASQ) of timber volume and a desired future condition of the Forest that we are trying to achieve sometime in the future. The planning team has identified that there is a need, and opportunities exist, for activities which would move the project area toward the Desired Future Condition. Proposed activities include about 3700 acres of timber harvest, 2000 acres of prescribed burning, 9 miles of new road construction, 35 miles of road reconstruction, and about 65 miles of roads to be closed to motor vehicles. The project is predicted to generate about 15 million board feet of commercial timber and is intended to emphasize big game habitat and production of timber. It will also enhance hardwood stands and meadows to maintain diversity, create additional forage for big game, and treat pine stands to improve forest health.

This project area includes Beaver Park, an inventoried (RARE II) roadless area. The Record of Decision (ROD) for the 1997 Forest Plan did not recommend wilderness designation for Beaver Park, and placed this area into 4 different management emphasis areas. The majority of the area (2,637 acres) is to be managed for Backcountry Non-motorized Recreation, and is not part of the landbase considered suitable for timber harvest. Another 106 acres was placed into the Sturgis Experimental Watershed, an area set aside for watershed research, and is also not part of the suitable landbase. The remaining area was placed into the landbase considered suitable for timber harvest; 1,795 acres are to be managed for Limited Motorized Use and Forest Production Emphasis, and 571 acres are to be managed for Big Game Winter Range Emphasis.

This proposal does include timber harvest and new road construction within a portion of the former RARE II area, now to be managed for Limited Motorized Use and Forest Product Emphasis. Most of the known sites of mountain pine beetle infestations occurring within this project area are located within this management emphasis area.

The EIS will analyze the Proposed Action, a No Action Alternative and a third alternative that would not treat any area within the former RARE II boundary, including areas infested with mountain pine beetles.

The comment period on the draft environmental impact statement will be a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 1, 1998.

J. Thomas Millard,

District Ranger.

[FR Doc. 98–9453 Filed 4–9–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 980323074–01]

Notice of General Order Prohibiting Exports of Unprocessed Timber From Certain Public Lands

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice; Order on log exports.

SUMMARY: Section 602(b) of Title VI of Pub. L. 105–83 requires the Secretary of Commerce to issue an Order concerning the export of timber originating from non-Federal public lands in the western continental United States pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C. 620 *et seq.*). This notice announces the Department's Order and publishes that Order as an appendix to this notice.

DATES: Order signed on January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Manager, Short Supply Program, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: (202) 482–0894; Fax: (202) 482–0751.

SUPPLEMENTARY INFORMATION:

Background

Section 602(b) of Title VI of Pub. L. 105–83 requires the Secretary of Commerce to issue an Order making permanent the total prohibition contained in section 491(b)(2)(A) of the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C. 620 *et seq.*), on the export of unprocessed timber originating from public lands in states west of the 100th meridian in the contiguous 48 states with more than 400,000,000 board feet of annual sales volumes of such timber.

The Secretary of Commerce has delegated the authority for carrying out the policies and programs necessary to administer laws regarding the control of U.S. exports to the Under Secretary of Commerce for Export Administration. On January 9, 1998, the Under Secretary of Commerce for Export Administration signed an Order prohibiting exports of unprocessed timber as described above. The Order is reproduced in the following Appendix.

Dated: April 6, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

Appendix

General Order Prohibiting Exports of Unprocessed Timber From Certain Public Lands

This order is issued pursuant to Pub. L. 105–83. Section 602(b) of Pub. L. 105–83 requires the Secretary of Commerce to make permanent the total prohibition of section 491(b)(2)(A) of the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C. 620 *et seq.*) (the Act) on the export of unprocessed timber originating from public lands in states west of the 100th meridian in the contiguous 48 States with more than 400,000,000 board feet of annual sales volumes of such timber.[1] As the Secretary of Commerce has delegated the authority for carrying out the policies and programs necessary to administer laws regarding the control of U.S. exports to the Under Secretary for Export Administration, I therefore order the following:

(a) *States with annual sales volumes of greater than 400,000,000 board feet of unprocessed timber originating from state or other public lands.* Notwithstanding any other provision of law, the export, from the United States to any destination, of unprocessed timber originating from public lands in any state located west of the 100th meridian in the contiguous 48 States with annual sales volumes of such timber greater than 400,000,000 board feet is prohibited. This prohibition is effective November 14, 1997. (Section 602(b) of Title VI of Pub. L. 105–83 and 16 U.S.C. 620c(b)(2)(A) and (B)).

(b) *Prohibition on substitution.* Notwithstanding any other provision of law, all persons are prohibited from purchasing, directly or indirectly, unprocessed timber originating from public lands in a state if:

(1) Such unprocessed timber would be used in substitution for exported unprocessed timber originating from private lands in that state; or

(2) Such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands in that state. (16 U.S.C. 620c(b)(3)(A)).

(c) *Exemption.* The prohibitions in section (b) of this Order do not apply in a state on or after the date on which:

(1) The Governor of that state provides the Secretary of Commerce with notification of a prior state program under section 491(d)(2)(C) (16 U.S.C. 620c(d)(2)(C)) of the Act; or

(2) The Secretary of Commerce approves a state program under section 491(d)(2)(A) (16 U.S.C. 620c(d)(2)(A)) of the Act; or

(3) The Secretary of Commerce issues implementing regulations under the Act, whichever occurs first.[2] (16 U.S.C. 620c(b)(3)(B).)

(d) *Prior contracts.* This Order does not apply to any contract for the purchase of unprocessed timber from public lands entered into before September 10, 1990, with respect to states with annual sales volumes of 400,000,000 board feet or less, or January 1, 1991, with respect to states with annual sales volumes greater than 400,000,000 board feet, or any contract under which exports were permitted pursuant to an Order of the Secretary of Commerce in effect under the Act before October 23, 1992. (16 U.S.C. 620c(e).)

(e) *Western Red Cedar.* This Order shall not be construed to supersede the controls on the export of Western Red Cedar required by section 7(i) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2406(i)), as supplemented by the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), Executive Order 12924 of August 19, 1994 (3 CFR 1994 Comp. at 916 (1995)), as extended by Presidential Notice on August 15, 1995 (3 CFR 1995 Comp. at 501 (1996)), on August 14, 1996 (3 CFR 1996 Comp. at 298 (1997)), and on August 13, 1997 (62 FR 43629 (August 15, 1997)) and as set out in § 754.4 of the Export Administration Regulations (15 CFR 754.4). (16 U.S.C. 620c(f).)

(f) *Definitions.*—(1) *Public lands.* As defined in section 493(5) (16 U.S.C. 620e(5)) of the Act, ''public lands'' means lands west of the 100th meridian in the contiguous 48 states that are held or owned by a state or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is:

(i) Held by the United States;

(ii) Held in trust by the United States for the benefit of any Indian tribe or individual;

(iii) Held by any Indian tribe or an individual subject to a restriction by the United States against alienation; or

(iv) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(2) *Unprocessed Timber.* As defined in section 493(7) (16 U.S.C. 620e(7)) of the Act, the term ''unprocessed timber'' means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. The term ''unprocessed timber'' does not include timber processed into any one of the following:

(i) Lumber or construction timbers, except Western Red Cedar, meeting current American Lumber Standard Grades or Pacific Lumber Inspection Bureau Export ''R'' or ''N'' list grades, sawn on 4 sides, not intended for remanufacture.

(ii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export ''R'' or ''N'' list clear grades, sawn on four sides, not to exceed twelve inches in thickness.

[1] The Secretary of Commerce's August 23, 1993 General Order Prohibiting Exports of Unprocessed Timber From Certain Public Lands continues in effect to prohibit the export from the United States, to any destination, of unprocessed timber originating from public lands in states located west of the 100th meridian in the contiguous 48 States with annual timber sales volumes of 400,000,000 board feet or less.

[2] On June 1, 1995, the Secretary of Commerce gave final approval to the programs of Washington and Oregon.

(iii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in clause (ii) and are sawn on four sides, with wane less than one-quarter of any face, not exceeding eight and three-quarters inches in thickness.

(iv) Chips, pulp, or pulp products.

(v) Veneer or plywood.

(vi) Poles, posts, or piling cut or treated with preservatives for use as such.

(vii) Shakes or shingles.

(viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(ix) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

(3) *Substitution.* Consistent with section 493(8) (16 U.S.C. 620e(8)) of the Act, the acquisition of unprocessed timber from public lands west of the 100th meridian in the contiguous 48 States to be used in ''substitution'' for exported unprocessed timber originating from private lands means acquiring unprocessed timber from such public lands and engaging in export, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area.

(4) *Acquisition.* As defined in section 493(1) (16 U.S.C. 620e(1)) of the Act, the term ''acquire'' means to come into possession of whether directly or indirectly through a sale, trade, exchange, or other transaction and the term ''acquisition'' means the act of acquiring.

(5) *Person.* As defined in section 493(3) (16 U.S.C. 620e(3)) of the Act, the term ''person'' means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary subcontractor or parent company and business affiliates where one affiliate controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

Dated: January 9, 1998.

William A. Reinsch,

Under Secretary for Export Administration, Department of Commerce.

[FR Doc. 98–9532 Filed 4–9–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054 and A–588–604]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan, and Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decisions and amended final results of antidumping duty administrative reviews.

SUMMARY: Since the publication of the August 18, 1976, antidumping finding on tapered roller bearings (TRBs), four inches or less in outside diameter, and components thereof, from Japan (41 FR 34974) (the A–588–054 TRBs case), and the October 6, 1987, antidumping duty order on TRBs, finished and unfinished, and parts thereof, from Japan (52 FR 37352) (the A–588–604 TRBs case), the Department of Commerce (the Department) has published final results in the TRBs cases as follows:

Date of publication	Periods reviewed
For the A–588–054 Case	
6/15/82, 3/9/84, and 6/1/90.	1974–79.
11/10/94	1979–86.
9/20/90	1986–87.
6/6/91	1987–88.
12/16/91	1988–89.
2/11/92	1989–90.
3/16/92	1989–90 (amended).
12/9/93	1990–92.
1/18/94	1990–92 (amended).
11/7/96	1992–93.
For the A–588–604 Case	
8/21/91	1987–88.
2/11/92	1988–89.
2/11/92	1989–90.
3/16/92	1989–90 (amended).
12/9/93	1990–92.
1/18/94	1990–92 (amended).
11/7/96	1992–93.
3/13/97	1994–95.
3/13/97	1994–95.

Subsequent to our publication of each of the above final results of administrative reviews, parties to the proceedings challenged certain aspects of our final results determinations before the Court of International Trade (CIT) and, in certain instances, before the United States Court of Appeals for the Federal Circuit (CAFC) (collectively, the Court).

With respect to the 1974–79 A–588–054 final results and the 1987–88 A–588–054 final results, we have already issued instructions to the U.S. Customs Service (Customs) to liquidate entries of TRBs within the scope of the A–588–054 finding during these periods as a result of final and conclusive court decisions made with respect to the litigation for these proceedings at earlier dates.

With respect to the 1988–89 final results for the A–588–054 case and the 1992–93 and 1994–95 final results for both TRBs cases, the Court has not yet issued final and conclusive decisions. Therefore, we are unable at this time to publish amended final results for these periods and we are unable to instruct Customs to liquidate entries of subject merchandise made by certain manufacturers/exporters during these periods.

The Court, however, recently affirmed final remand results affecting final assessment rates for certain manufacturers/exporters for the 1979–86 A–588–054, 1986–87 A–588–054, 1987-88 A–588–604, 1988–89 A–588–604, 1989–90 A–588–054, 1989–90 A–588–604, and the 1990–92 A–588–054 and A–588–604 proceedings. As there are now final and conclusive court decisions with respect to certain litigation for these final results, where applicable, we are amending our final results of review and will subsequently instruct Customs to liquidate entries subject to these reviews.

EFFECTIVE DATE: April 10, 1998.

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak or John Kugelman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0145 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

Below is a summary of the litigation for each of the TRBs final results for which the Court has issued final and conclusive decisions. The summary highlights those court orders/decisions which were not in harmony with the Department's original final results and/or required a recalculation of a respondent's final results margin. It is important to note that, due to the fact that litigation for each TRBs final results was unconsolidated, often the Court issued two or more orders throughout the course of litigation for a given final results which required us to recalculate a respondent's final results margin several times. To ensure the accurate calculation of amended final results, any recalculation we performed for a given respondent pursuant to a specific order reflected all recalculations we performed for that respondent pursuant to earlier orders. As a result, our recalculation pursuant to the last order requiring a recalculation of a respondent's final results margin reflects the final amended margin for the respondent, provided that final and conclusive decisions have been made by the Court with respect to each segment of litigation which impacted the respondent's final results.

A. The 1979–86 Period for A–588–054

Summary

On November 10, 1994, we published in the **Federal Register** our notice of the final results of administrative reviews for the 1979–86 periods of review (POR) in the A–588–054 TRBs case (59 FR 56035). This notice covered the administrative reviews for 1) Koyo Seiko Co., Ltd. (Koyo) for the 1979–86 PORs, 2) NSK Ltd. (NSK) for the 1980–86 PORs, 3) Mitsubishi Corporation and Sumitomo Yale Co., Ltd. for the 1980–85 PORs, and 4) Sumitomo Corporation, Nachi-Fujikoshi, Niigata Converter, Toyosha, Toyota, Yamaha, Suzuki, Maekawa Bearing Manufacturer, Nissan, Mazda, and MC International for the 1985–86 POR. Subsequent to the publication of these final results NSK and Koyo challenged certain issues before the CIT (Court Nos. 94–12–00771 and 94–12–00779, respectively). The CIT has issued final and conclusive decisions with respect to the 94–12–00771 (NSK) litigation and the 94–12–00779 (Koyo) litigation.

The opinions/decisions issued by the Court with respect to Koyo's final results which were not in harmony with and/or required a recalculation of Koyo's final results were:

- *Koyo* v. *U.S.*, Slip Op. 96–122 (August 5, 1996) (The CIT ruled in favor of the Department on all issues and dismissed the case).
- *Koyo* v. *U.S.*, CAFC Appeal No. 97–1031 (July 22, 1997 decision and September 12, 1997 mandate) (The CAFC overturned the CIT's decision in Slip Op. 96–122 and ordered the Department to reconsider the treatment of Koyo's U.S. sample sales).
- *Koyo* v. *U.S.*, Slip Op. 97–134 (September 18, 1997) (The CIT's remand in light of the CAFC's July 22 decision and September 12 mandate) affirmed/dismissed, Slip Op. 97–169 (December 8, 1997).

Status

All Other Firms: All firms except NSK and Koyo did not pursue litigation and the existing litigation had no impact on their final results. Because the Department has not yet issued instructions to Customs to liquidate entries made by these firms during the applicable periods, where appropriate, we will issue instructions to Customs to liquidate entries of A–588–054 merchandise made by these firms pursuant to our November 10, 1994, 1979–86 final results.

NSK: The CIT issued only one order with respect to the 94–12–00771 (NSK) litigation (*NSK* v. *U.S.*, Slip Op. 96–157 September 12, 1996). Because this order was in harmony with the Department's final results for NSK and there was no other segment of litigation for these periods which impacted NSK's 1980–86 final results, Slip Op. 96–157 stands as the final and conclusive court decision with respect to NSK's final results. Because this order did not require a recalculation of NSK's 1980–86 final results margins, we will instruct Customs to liquidate entries of A–588–054 merchandise made by NSK during the 1980–86 PORs pursuant to our November 10, 1994 final results.

Koyo: The CIT issued one order with respect to the 94–12–00779 (Koyo) litigation (*Koyo* v. *U.S.*, Slip Op. 97–134 September 18, 1997). Because this order did not require a recalculation of Koyo's 1979–86 final results margins, we will instruct Customs to liquidate entries of A–588–054 merchandise made by Koyo during the 1979–86 PORs pursuant to our November 10, 1994 final results.

B. The 1986–87 Period for A–588–054

Summary

On September 20, 1990, we published in the **Federal Register** our final results of administrative review for the 1986–87 POR in the A–588–054 TRBs case (55 FR 38720). This notice covered the administrative reviews for Koyo, Isuzu Motors, Toyota, Nissan Motor Company, and Nachi Fujikoshi. Subsequent to our publication of these final results, Koyo (with Isuzu as plaintiff-intervenor), NSK, and the Timken Company (Timken), the petitioner in both cases, challenged aspects of our final results before the CIT (Court Nos. 90–10–00546, 90–10–00543, and 90–10–00548, respectively). The CIT has issued final and conclusive decisions with respect to each segment of the litigation for these final results.

The opinions/decisions issued by the Court with respect to Koyo's final results which were not in harmony with and/or required a recalculation of Koyo's final results were:

- *Koyo and Isuzu* v. *U.S.*, Slip Op. 93–3 (January 8, 1993).
- *Timken* v. U.S., Slip Op. 92–209 (November 25, 1992), affirmed/dismissed, Slip Op. 93–100 (June 8, 1993).
- *Koyo and Isuzu* v. *U.S.*, CAFC No. 93–1525, 1534 (September 30, 1994 decision and October 21, 1994 mandate) (The CAFC overturned the CIT's order in Slip Op. 93–3 to add U.S. direct expenses to foreign market value in exporter's sales price calculations).
- *Koyo and Isuzu* v. *U.S.*, Slip Op. 94–177 (November 14, 1994) (The CIT's remand in light of the CAFC's September 30 decision and October 21 mandate) affirmed/dismissed, Slip Op. 95–41 (March 14, 1995).

The opinions/decisions issued by the Court with respect to NSK's final results which were not in harmony with and/or required a recalculation of NSK's final results were:

- *NSK* v. *U.S.*, Slip Op. 92–205 (November 19, 1992).
- *Timken* v. *U.S.*, Slip Op. 92–209 (November 25, 1992) affirmed/dismissed, Slip Op. 93–100 (June 8, 1993).
- *NSK* v. *U.S.*, Slip Op. 93–47 (March 30, 1993) affirmed/dismissed, Slip Op. 93–100 (June 8, 1993).

While Timken appealed an issue to the CAFC which affected both NSK and Koyo (*Timken* v. *U.S.*, CAFC Appeal No. 92–1312, 1955), the CAFC's September 27, 1994 decision did not require any further recalculation of NSK's or Koyo's margins and affirmed the CIT's determinations with respect to the 90–10–00543, –00546, and –00548 litigation.

Status

All Other Firms: All firms noted above, except Koyo and NSK, did not pursue litigation and none of the existing litigation had any effect on their final results. Because the Department has not yet issued instructions to Customs with respect to these firms, where appropriate, we will instruct Customs to liquidate entries of A–588–054 merchandise made by these firms during the 1986–87 period pursuant to our September 20, 1990 final results.

NSK: As there are now final and conclusive court decisions with respect to the 90–10–00543 (NSK) and 90–10–00548 (Timken) litigation, we are amending our final results of review for NSK based on the last court order which required a recalculation of NSK's rate (*NSK* v. *U.S.*, Slip Op. 93–47). Because the margin we calculated for NSK pursuant to this order reflected all prior recalculations made to NSK's margin pursuant to earlier orders, the amended final results margin for NSK for the 1986–87 period for A–588–054 merchandise is that which we calculated pursuant to Slip Op. 93–47 (15.41 percent). We will subsequently issue instructions to Customs to liquidate entries of A–588–054 merchandise made by NSK pursuant to these amended final results.

Koyo: As there are now final and conclusive court decisions with respect to the 90–10–00546 (Koyo) and 90–10–00548 (Timken) litigation, we are amending our final results of review for Koyo based on the last court order which required a recalculation of Koyo's rate (*Koyo* v. *U.S.*, Slip Op. 94–177).

Because the margin we calculated for Koyo pursuant to this order reflected all prior recalculations made to Koyo's margin pursuant to earlier orders, the amended final results margin for Koyo for the 1986–87 period for A–588–054 merchandise is that which we calculated pursuant to Slip Op. 92–47 (40.89 percent). We will subsequently issue instructions to Customs to liquidate entries of A–588–054 merchandise made by Koyo pursuant to these amended final results.

C. The 1987–88 Period for A–588–604

Summary

On August 21, 1991, we published in the **Federal Register** our final results for the 1987–88 review of the A–588–604 TRBs case (56 FR 41508). This notice contained our final results for NTN Corporation (NTN) and Koyo. Subsequent to our publication of these final results Koyo, NTN, and Timken challenged certain aspects of our final results before the CIT (Court Nos. 91–09–00704, 91–09–00695, and 91–09–00697, respectively). The CIT has issued final and conclusive decisions with respect to each segment of litigation for these final results.

The opinions/decisions issued by the Court with respect to NTN's final results which were not in harmony with and/or required a recalculation of NTN's final results margin were:

- *NTN* v. *U.S.*, Slip Op. 93–204 (October 22, 1993) affirmed/dismissed, Slip Op. 94–95 (February 11, 1994).
- *Timken* v. *U.S.*, Slip Op. 94–87 (May 27, 1994) affirmed/dismissed, Slip Op. 95–55 (March 31, 1995).

While NTN appealed to the CAFC in *NTN* v. *U.S.*, CAFC Appeal No. 94–1271, the CAFC's November 7, 1994 decision required no recalculation of NTN's margin and dismissed the 91–09–00695 proceeding.

Status

NTN: As there are now final and conclusive court decisions with respect to the 91–09–00695 (NTN) and 91–09–00697 (Timken) litigation, we are amending our final results of review for NTN based on the last court order which required a recalculation of NTN's rate (*Timken* v. *U.S.*, Slip Op. 94–87). Because the margin we calculated for NTN pursuant to Slip Op. 94–87 reflected previous recalculations of NTN's rate we made pursuant to earlier orders, the amended final results margin for NTN is that which we calculated pursuant to Slip Op. 94–87 (10.19%). We will subsequently issue instructions to Customs to liquidate entries of A–588–604 merchandise made by NTN during this period pursuant to these amended final results.

Koyo: Although there are now final and conclusive court decisions with respect to each segment of the litigation which affects Koyo's 1987–88 A–588–604 final results, we cannot amend our final results of review for Koyo based on the last court order (*Koyo* v. *U.S.*, Slip Op. 95–193) at this time due to pending litigation regarding the forgings case (*Timken* v. *U.S.*, Slip Op. 97–109). Upon completion of the forgings litigation at the CIT, we will publish an amended final results of this review.

D. The 1988–89 Period for A–588–604

Summary

On February 11, 1992, we published in the **Federal Register** the final results of our 1988–89 review of the A–588–604 case (57 FR 4951). These final results covered Koyo, NSK, NTN, and Nachi. Subsequent to the publication of these final results Timken, NTN, Koyo, and NSK challenged certain aspects of our final results before the CIT (Court numbers 92–03–00162, 92–03–00167, 92–03–00169, and 92–03–00158, respectively). The CIT has issued final and conclusive decisions with respect to each segment of the litigation for these final results.

The opinions/decisions issued by the Court with respect to NTN's final results which were not in harmony with and/or required a recalculation of NTN's final results margin were:

- *NTN* v. *U.S.*, Slip Op. 94–123 (June 8, 1994) affirmed/dismissed, Slip Op. 95–52 (March 27, 1995).
- *NTN* v. *U.S.*, Slip Op 94–108 (July 6, 1994) affirmed/dismissed, Slip Op. 95–52 (March 27, 1995).
- *Timken* v. *U.S.*, Slip Op. 94–150 (September 20, 1994) affirmed/dismissed, Slip Op. 95–26 (February 24, 1995).
- *NTN* v. *U.S.*, CAFC No. 95–1356 (March 19, 1996 decision and March 20, 1996 mandate) (The CAFC overturned the CIT's order in Slip Op. 94–108 and ordered the Department to remove the 10-percent cap from the Department's sum-of-the-deviations TRBs model-match methodology).
- *NTN* v. *U.S.*, Slip Op 96–93 (June 12, 1996) (The CIT's remand to the Department in light of the CAFC's March 19th decision and March 20th mandate) affirmed/dismissed, Slip Op. 96–155 (September 6, 1996).

The opinions/decisions issued by the Court with respect to NSK's final results which were not in harmony with and/or required a recalculation of NSK's final results margin were:

- *Timken* v. *U.S.*, Slip Op. 94–150 (September 20, 1994) affirmed/dismissed, Slip Op. 95–26 (February 24, 1995).
- *NSK* v. *U.S.*, Slip Op. 94–182 (November 28, 1994) affirmed/dismissed, Slip Op. 95–43 (March 14, 1995).

Status

NTN: As there are now final and conclusive court decisions with respect to the 92–03–00167 (NTN) and 92–03–00162 (Timken) litigation, we are amending our final results of review for NTN based on the last court order which required a recalculation of NTN's rate (*NTN* v. *U.S.*, Slip Op. 96–93). Because the margin we calculated for NTN pursuant to this order reflected previous recalculations of NTN's rate we made pursuant to earlier orders, the amended final results margin for NTN is that which we calculated pursuant to Slip Op. 96–93 (7.08%). We will subsequently issue instructions to Customs to liquidate NTN's entries of subject merchandise during this period pursuant to these amended final results.

NSK: As there are now final and conclusive court decisions with respect to the 92–03–00158 (NSK) and 92–03–00162 (Timken) litigation, we are amending our final results of review for NSK based on the last court order which required a recalculation of NSK's rate (*NSK* v. *U.S.*, Slip Op. 94–182). Because the margin we calculated for NSK pursuant to this order reflected previous recalculations of NSK's rate we made pursuant to earlier orders, the amended final results margin for NSK is that which we calculated pursuant to Slip Op. 94–182 (15.59%). We will subsequently issue instructions to Customs to liquidate NSK's entries of subject merchandise during this period pursuant to these amended final results.

Koyo: Although there are now final and conclusive court decisions with respect to each segment of the litigation which affects Koyo's 1988–89 A–588–604 final results, we cannot amend our final results of review for Koyo based on the last court order (*Koyo* v. *U.S.*, Slip Op. 95–193) at this time due to pending litigation regarding the forgings case (*Timken* v. *U.S.*, Slip Op. 97–109). Upon completion of the forgings litigation at the CIT, we will publish an amended final results of this review.

F. The 1989–90 Period for A–588–054

Summary

On February 11, 1992, we published in the **Federal Register** the 1989–90 final results for the A–588–054 case (57 FR 4975), and on March 16, 1992, we published an amendment to these final results (57 FR 9105). Subsequent to the

publication of these final and amended final results, Timken, Koyo, and NSK challenged various aspects of our final results before the CIT (Court Nos. 92–03–00163, 92–03–00170, and 92–03–00159, respectively). The CIT has issued final and conclusive decisions with respect to each segment of the litigation for these final results.

The opinions/decisions issued by the Court which were not in harmony with and/or required a recalculation of Koyo's final results margin were:

- *Koyo* v. *U.S.*, Slip Op. 94–127 (August 11, 1995) affirmed/dismissed, Slip Op. 95–63 (April 13, 1995).
- *Timken* v. *U.S.*, Slip Op. 94–157 (October 7, 1994).
- *Timken* v. *U.S.*, Slip Op. 96–127 (August 7, 1996) (On April 13, 1995 the CIT granted a stay in the Timken proceedings pending a decision by the CAFC with respect to the Japanese value added tax (VAT) issue in *Koyo* v. *U.S.*, CAFC Nos. 94–1097, –1044. Based on a motion by plaintiff (Timken), in Slip Op. 96–127 the CIT lifted the stay in these proceedings and remanded the case to the Department to apply the tax-neutral VAT adjustment methodology approved by the CAFC in *Koyo* v. *U.S.*, 63 F.3d 1572 (Fed. Cir. 1995). We filed our final remand results pursuant to Slip Op. 96–127 on September 7, 1996. These results were affirmed and the CIT dismissed the 92–03–00163 litigation on October 18, 1996).

The opinions/decisions issued by the Court which were not in harmony with and/or required a recalculation of NSK's final results margin were:

- *Timken* v. *U.S.*, Slip Op. 94–157 (October 7, 1994).
- *Timken* v. *U.S.*, Slip Op. 96–127 (August 7, 1996) (As explained above for Koyo, the CIT granted a stay in the Timken proceedings pending a decision by the CAFC with respect to the Japanese VAT issue in *Koyo* v. *U.S.*, CAFC Nos. 94–1097, –1044. Based on a motion by plaintiff (Timken), in Slip Op. 96–127 the CIT lifted the stay in these proceedings and remanded the case to the Department to apply the tax-neutral VAT adjustment methodology approved by the CAFC in *Koyo* v. *U.S.*, 63 F.3d 1572 (Fed. Cir. 1995). However, it was not until after the CIT affirmed our September 7, 1996 remand results on October 18, 1996 that we realized that we inadvertently excluded NSK from our September 7, 1996 recalculations pursuant to Slip Op. 96–127. We sought to amend our September 7, 1996 final remand results to include NSK's recalculation but, based on the extremely small effect the recalculation had on NSK's final results margin, and the fact that the CIT had already affirmed our remand results and dismissed the 92–03–00163 litigation, NSK agreed that amended remand results were unnecessary).

While the CIT also issued an order in the 92–03–00159 (NSK) litigation (*NSK* v. *U.S.*, Slip Op. 94–22, February 8, 1994), the CIT's opinion in this order was in harmony with the Department's final results and did not require a recalculation of NSK's margin. As a result, it stands as the Court's final and conclusive decision with respect to the 92–03–00159 litigation.

Status

Koyo: As there are now final and conclusive court decisions with respect to both the 92–03-00163 (Timken) and 92–03–00170 (Koyo) litigation, we are amending our final results of review for Koyo based on the last court order which required a recalculation of Koyo's rate (*Timken* v. *U.S.*, Slip Op. 96–127). Because the margin we calculated for Koyo pursuant to Slip Op. 96–127 reflected previous recalculations of Koyo's rate we made pursuant to earlier orders, the amended final results margin for Koyo is that which we calculated pursuant to Slip Op. 96–127 (15.96%). We will subsequently issue instructions to Customs to liquidate entries of subject merchandise made by Koyo during this period pursuant to these amended final results.

NSK: As there are now final and conclusive court decisions with respect to each segment of the litigation affecting NSK's final results, we are amending our final results of review for NSK based on that which we calculated pursuant to *Timken* v. *U.S.*, Slip Op. 94–157. As indicated in our summary above, while Slip Op. 96–127 is technically the last order which called for a recalculation of NSK's final results margin, we inadvertently did not include NSK in our recalculations pursuant to this order and did not amend these remand results with NSK's agreement. Therefore, the last calculated rate for NSK for this period is that which we calculated pursuant to Slip Op. 94–157 (2.76%). We will subsequently issue instructions to Customs to liquidate entries of subject merchandise made by NSK during this period pursuant to these amended final results.

G. The 1989–90 Final Results for A–588–604

Summary

On February 11, 1992, we published in the **Federal Register** the final results of our 1989–90 review of the A–588–604 TRBs case (57 FR 4960). On March 16, 1992, we published amended final results for this same period (57 FR 9104). These final results covered the administrative reviews for Koyo, NTN, NSK, and Nachi. Subsequent to the publication of these final results, Timken, Koyo, NTN, and NSK challenged certain aspects of our final results before the CIT (Court numbers 92–03–00161, 93–03–00156, 92–03–00168, –00257, and 92–03–00157, respectively). While the CIT has issued final and conclusive decisions with respect to the 92–03-00161 (Timken), 93–03–00156 (NSK), and 92–03–00157 (Koyo) litigation, it has yet to issue a final and conclusive decision for the NTN segment of the litigation for these final results.

The opinions/decisions issued by the Court which were not in harmony with and/or required a recalculation of NSK's final results margin were:

- *Timken* v. *U.S.*, Slip Op. 94–141 (September 14, 1994) affirmed/dismissed, Slip Op. 95–26 (February 10, 1995).

While the CIT also issued an order with respect to the 92–03–00157 (NSK) litigation (Slip Op. 93–89, June 1, 1993), the order was in harmony with the Department's final results for NSK, did not require a recalculation of NSK's final results margin, and dismissed the NSK litigation. As a result, Slip Op. 93–89 stands as the final and conclusive court decision with respect to the 92–03–00157 (NSK) litigation.

Status

NSK: As there are now final and conclusive court decisions with respect to each segment of the litigation affecting NSK's final results, we are amending our final results of review for NSK based on that which we calculated pursuant to *Timken* v. *U.S.*, Slip Op. 94–141. Because the margin we calculated for NSK pursuant to Slip Op. 94–141 reflects our only recalculation of NSK's margin, the amended final results margin for NSK is that which we calculated pursuant to Slip Op. 94–141 (1.54%). We will subsequently issue instructions to Customs to liquidate entries of subject merchandise made by NSK during this period pursuant to these amended final results.

NTN: Because the Court has not yet issued a final and conclusive decision with respect to the NTN segment of litigation for these final results, we are unable at this time to instruct Customs to liquidate entries of subject merchandise made by NTN during the 1989–90 period. Upon the issuance of a final and conclusive Court decision with respect to this litigation, we will publish amended final results for NTN

and will subsequently issue instructions to Customs to liquidate entries of A–588–604 merchandise made by NTN during this period.

Koyo: Although there are now final and conclusive court decisions with respect to both the 92–03–00161 (Timken) and 92–03–00156 (Koyo) litigation, we cannot amend our final results of review for Koyo based on the last court order (*Koyo* v. *U.S.*, Slip Op. 95–193) at this time due to pending litigation regarding the forgings case (*Timken* v. *U.S.*, Slip Op. 97–109). Upon completion of the forgings litigation at the CIT, we will publish an amended final results of this review.

H. The 1990–92 Period for A–588–054 and A–588–604

Summary

On December 9, 1993, we published in the **Federal Register** the 1990–92 final results for the A–588–054 and A–588–604 reviews (58 FR 64720). Subsequent to the publication of these final results, Timken, Koyo, NSK, and NTN challenged various aspects of our final results before the CIT (Court Nos. 94–01–00008, 93–12–00795, 93–12–00831, and 93–12–000793, respectively). The CIT has issued final and conclusive decisions with respect to each segment of the litigation for these final results.

The opinions/decisions issued by the Court which were not in harmony with and/or required a recalculation of Koyo's final results margin were:

- *Koyo* v. *U.S.*, Slip Op. 96–101 (June 19, 1996) affirmed/dismissed, Slip Op. 96–173 (October 25, 1996).
- *Timken* v. *U.S.*, Slip Op. 96–86 (May 31, 1996) affirmed/dismissed, Slip Op. 97–87 (July 3, 1997).

The opinions/decisions issued by the Court which were not in harmony with and/or required a recalculation of NSK's final results margin were:

- *NSK* v. *U.S.*, Slip Op. 96–53 (March 13, 1996) affirmed/dismissed, Slip Op. 96–174 (October 25, 1996).
- *NSK* v. *U.S.*, Slip Op. 95–204 (December 18, 1995) affirmed/dismissed, Slip Op. 96–118 (July 26, 1996).
- *Timken* v. *U.S.*, Slip Op. 96–86 (May 31, 1996) affirmed/dismissed, Slip Op. 97–87 (July 3, 1997).

The opinions/decisions issued by the Court which were not in harmony with and/or required a recalculation of NTN's final results margin were:

- *Timken* v. *U.S.*, Slip Op. 96–86 (May 31, 1996) affirmed/dismissed, Slip Op. 97–87 (July 3, 1997).

Status

Nachi: Nachi did not pursue litigation and the existing litigation had no impact on its final results. Because the Department has not yet issued instructions to Customs to liquidate entries made by this firm during the applicable periods, where appropriate, we will issue instructions to Customs to liquidate entries of A–588–054 and A–588–604 merchandise made by Nachi pursuant to our January 18, 1994 amended final results.

Koyo: As there are now final and conclusive court decisions with respect to each segment of the litigation affecting Koyo's final results, we are amending our final results of review for Koyo based on that which we calculated pursuant to *Timken* v. *U.S.*, Slip Op. 96–86. Because the margin we calculated for Koyo pursuant to Slip Op. 96–86 reflected all prior recalculations made to Koyo's margin pursuant to earlier orders, the amended final results margin for Koyo for the 1990–91 and 1991–92 periods for A–588–054 merchandise is that which we calculated pursuant to Slip Op. 96–86 (23.97% for 1990–91 and 35.37% for 1991–92). We will subsequently issue instructions to Customs to liquidate entries of A–588–054 merchandise made by Koyo during these periods pursuant to these amended final results.

Although there are now final and conclusive court decisions with respect to both the 94–01–00008 (Timken) and 93–12–00795 (Koyo) litigation, at this time we cannot amend our final results of review for Koyo for A–588–604 merchandise based on the last court order (*Koyo* v. *U.S.*, Slip Op. 95–193) due to pending litigation regarding the forgings case (*Timken* v. *U.S.*, Slip Op. 97–109). Upon completion of the forgings litigation at the CIT, we will publish an amended final results of this review for A–588–604 merchandise.

NSK: As there are now final and conclusive court decisions with respect to each segment of the litigation affecting NSK's final results, we are amending our final results of review for NSK based on that which we calculated pursuant to *Timken* v. *U.S.*, Slip Op. 96–86. Because the margin we calculated for NSK pursuant to Slip Op. 96–86 reflected all prior recalculations made to NSK's margin pursuant to earlier orders, the amended final results margin for NSK for the 1990–91 and 1991–92 periods for A–588–054 and A–588–604 merchandise is that which we calculated pursuant to Slip Op. 96–86. The margins for the A–588–054 merchandise are 17.87% for 1990–91 and 12.66% for 1991–92, while the margins for the A–588–604 merchandise are 12.17% for 1990–91 and 8.40% for 1991–92. We will subsequently issue instructions to Customs to liquidate entries of subject merchandise made by NSK during this period pursuant to these amended final results.

NTN: As there are now final and conclusive court decisions with respect to each segment of the litigation affecting NTN's final results, we are amending our final results of review for NTN based on the that which we calculated pursuant to *Timken* v. *U.S.*, Slip Op. 96–86. Because the margin we calculated for NTN pursuant to Slip Op. 96–86 reflected all prior recalculations made to NTN's margin pursuant to earlier orders, the amended final results margin for NTN for the 1990–91 and 1991–92 periods for A–588–604 merchandise is that which we calculated pursuant to Slip Op. 96–86 (16.03% for 1990–91 and 19.25% for 1991–92). We will subsequently issue instructions to Customs to liquidate entries of A–588–604 merchandise made by NTN during this period pursuant to these amended final results.

Amendment to Final Determinations

Pursuant to 19 U.S.C. 1516a(e), we are now amending the final results of administrative reviews of the antidumping duty order and finding on TRBs from Japan. The weighted-average margins are as follows.

Period	Manufacturer/ exporter	Final results margin (percent)
For the A–588–054 Case		
8/1/79–7/31/80	Koyo	(1).
8/1/80–7/31/81	NSK	(1).
8/1/80–7/31/81	Koyo	(1).
8/1/80–7/31/81	Mitsubishi Corp	(1).
8/1/80–7/31/81	Sumitomo Yale	(1).
8/1/81–7/31/82	NSK	(1).
8/1/81–7/31/82	Koyo	(1).
8/1/81–7/31/82	Mitsubishi Corp	(1).
8/1/81–7/31/82	Sumitomo Yale	(1).
8/1/82–7/31/83	NSK	(1).
8/1/82–7/31/83	Koyo	(1).
8/1/82–7/31/83	Mitsubishi Corp	(1).
8/1/82–7/31/83	Sumitomo Yale	(1).
8/1/83–7/31/84	NSK	(1).
8/1/83–7/31/84	Koyo	(1).
8/1/83–7/31/84	Mitsubishi Corp	(1).
8/1/83–7/31/84	Sumitomo Yale	(1).
8/1/84–7/31/85	NSK	(1).
8/1/84–7/31/85	Koyo	(1).
8/1/84–7/31/85	Mitsubishi Corp	(1).
8/1/84–7/31/85	Sumitomo Yale	(1).
8/1/85–7/31/86	NSK	(1).
8/1/85–7/31/86	Koyo	(1).
8/1/85–7/31/86	Sumitomo Corp	(2).
8/1/85–7/31/86	Nachi	(2).
8/1/85–7/31/86	Toyosha	(1).
8/1/85–7/31/86	Toyota	(1).
8/1/85–7/31/86	Yamaha	(1).

Period	Manufacturer/ exporter	Final results margin (percent)
8/1/85–7/31/86	Suzuki	(1).
8/1/85–7/31/86	Maekawa	(1).
8/1/85–7/31/86	Nissan	(3).
8/1/85–7/31/86	Mazda	(4).
8/1/85–7/31/86	MC International.	(3).
8/1/85–7/31/86	Niigata Converter.	(2).
8/1/86–7/31/87	Koyo	5 40.89.
8/1/86–7/31/87	NSK	5 15.41.
8/1/86–7/31/87	Toyota	(1).
8/1/86–7/31/87	Nissan	(1).
8/1/86–7/31/87	Nachi	(2).
8/1/86–7/31/87	Isuzu	6 40.89.
8/1/89–7/31/90	Koyo	5 15.96.
8/1/89–7/31/90	NSK	5 2.76.
8/1/89–7/31/90	Nachi	(2).
8/1/90–7/31/91	Nachi	1 18.07.
8/1/90–7/31/91	Koyo	5 23.97.
8/1/90–7/31/91	NSK	5 17.87.
8/1/91–7/31/92	Nachi	1 18.07.
8/1/91–7/31/92	Koyo	5 35.37.
8/1/91–7/31/92	NSK	5 12.66.
For the A–588–604 Case		
3/27/87–9/30/88	NTN/Caterpillar	5 10.19.
10/1/88–9/30/89	NSK	5 15.59.
10/1/88–9/30/89	NTN/Caterpillar	5 7.08.
10/1/89–9/30/90	NSK	5 1.54.
10/1/89–9/30/90	Nachi	(2).
10/1/90–9/30/91	Nachi	7 40.37.
10/1/90–9/30/91	NSK	5 12.17.
10/1/90–9/30/91	NTN	5 16.03.
10/1/91–9/30/92	Nachi	7 40.37.
10/1/91–9/30/92	NSK	5 8.40.
10/1/91–9/30/92	NTN	5 19.25.

1 Litigation for period did not result in a change in the final results margin for the firm. The Department will instruct Customs to assess duties pursuant to the final results notice published for the corresponding review period.

2 The firm had no entries of subject merchandise during the period.

3 The review for this firm was terminated. The Department will assess duties using the rate in effect at the time of entry.

4 The review for the firm was terminated. The Department will assess duties using the rate in effect at the time of entry and in the manner explained in our 11/10/94 notice of final results for the 1979–86 period.

5 This is an amended final results margin resulting from recalculations pursuant to Court orders.

6 In our 1986–87 final results for Isuzu we applied a total BIA margin equal to the highest rate we calculated for any firm for the final results. Because that rate was Koyo's final results margin, and because Koyo's final results margin has been amended pursuant to litigation, we are accordingly amending the BIA rate applied to Isuzu.

7 Litigation for period did not result in a change in the final results margin for the firm. The Department will instruct Customs to assess duties pursuant to the amended final results notice published for the corresponding review period.

The above rates will become the antidumping duty deposit rates for those firms that have not had a deposit rate established for them in subsequent reviews.

Accordingly, the Department will determine and Customs will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by the reviews of the periods listed above. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department will issue appraisement instructions directly to Customs.

Dated: April 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–9546 Filed 4–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032598C]

Magnuson-Stevens Act Provisions; Overfished Fishery for Spiny Dogfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of an overfished fishery.

SUMMARY: In September 1997, NMFS identified overfished stocks or stocks that are approaching an overfished condition, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). As a result of a stock assessment completed since the identification of these fisheries, an additional stock, spiny dogfish (*Squalus acanthias*), has been identified as overfished. The intent of this action is to notify interested persons that the spiny dogfish stock is being added to the list of overfished stocks.

FOR FURTHER INFORMATION CONTACT: Mary Tokarcik, NMFS, 978-281- 9326.

SUPPLEMENTARY INFORMATION: Section 304(e) of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) requires that the Secretary of Commerce (Secretary) report annually to Congress and the Regional Fishery Management Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. The Councils were notified by letter on September 30, 1997, of the stocks that were overfished or approaching an overfished condition based on information available at that time. Since that time, an additional stock has been determined to be overfished. The 26th Northeast Regional Stock Assessment Workshop assessed the current status of the spiny dogfish resource. This assessment concluded that reproductive biomass and recruitment have declined due to high fishing mortality on mature females. Minimum biomass estimates of mature females have decreased by nearly 50 percent since 1990. Harvest rates of spiny dogfish have exceeded the replacement level of the stock and recruitment has declined. The stock is overexploited. Spiny dogfish are distributed in the Northwest Atlantic between Labrador and Florida and are most abundant between Nova Scotia and Cape Hatteras. Seasonal migrations occur northward in spring/summer and southward in autumn/winter.

Section 304(e) of the Magnuson-Stevens Act requires that, within 1 year of being notified of the identification of a stock as being overfished, the Councils develop measures to end overfishing and to rebuild the stock. On April 3, 1998, the Mid- Atlantic and New England Fishery Management Councils, which share joint management responsibilities for spiny dogfish, were notified of the overfished status of this stock. The letter to these Councils reads as follows:

Dear Council Chair:

In September of 1997, you received a copy of the Report on the Status of Fisheries of the United States, prepared pursuant to section 304 of the Magnuson- Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act on October 11, 1996.

Since your receipt of that report, an additional stock has been identified as being overfished. In January 1998, the 26th Northeast Regional Stock Assessment Workshop determined that spiny dogfish are over- exploited. This assessment concluded that mean lengths of spiny dogfish are declining rapidly, minimum biomass estimates of mature females have decreased by nearly 50 percent since 1990, and fishing mortality rates are well above sustainable levels. Based on this information, spiny dogfish are being added to the list of overfished stocks.

This letter serves as your official notification of the identification of spiny dogfish as an overfished species. Section 304(e) of the Magnuson-Stevens Act states that a Council will have one year from the identification of a stock as being overfished to develop measures to end overfishing and rebuild the stock. This letter initiates the 1-year period for spiny dogfish.

I am pleased that you have begun work on management measures for this fishery, as it means the time requirement will be more

easily satisfied. If you have any questions, please do not hesitate to contact me.

Sincerely,
Rolland A. Schmitten
Assistant Administrator
for Fisheries

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 6, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–9563 Filed 4–9–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration (NTIA)

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Open Meeting; Change of Location

ACTION: Notice is hereby given of a change in location of the meeting of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters on April 14, 1998. This notice also contains an updated agenda for the meeting.

REFERENCE: This notice amends the original notice of open meeting published in the **Federal Register** on March 30, 1998. Citation: 63 FR 15178.

DATES: The meeting will be held on Tuesday, April 14, 1998 from 9:30 a.m. until 5:30 p.m.

LOCATION: The meeting will be held at the National Association of Broadcasters, 1771 N Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4720; 14th Street and Constitution Avenue, N.W.; Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

MEDIA INQUIRIES: Please contact Paige Darden at the Office of Public Affairs, at 202–482–7002.

Agenda

Tuesday, April 14

Opening remarks
Briefing on the NAB survey of broadcasters' public service activities
Committee deliberations
Public comment
Committee business
Closing remarks

This agenda is subject to change. For an updated, more detailed agenda, please check the Advisory Committee homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm.

Shirl Kinney,

Deputy Assistant Secretary, NTIA.

[FR Doc. 98–9697 Filed 4–9–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Grant of Certificate of Interim Extension of the Term of U.S. Patent No. 4,177,290: PROVIGIL

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,177,290.

FOR INFORMATION CONTACT: Karin Tyson by telephone at (703) 305–9285; by mail marked to her attention and addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231; by fax marked to her attention at (703) 308–6916, or by e-mail to karin.tyson@uspto.gov.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to 5 years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review. Under Section 156(e)(1), a patent is eligible for term extension only if regulatory review of the claimed product was completed before the original patent term expired.

On December 3, 1993, Section 156 was amended by Pub. L. No. 103–179 to provide that if the owner of record of the patent or its agent reasonably expects the applicable regulatory review period to extend beyond the expiration of the patent, the owner or its agent may submit an application to the Commissioner of Patents and Trademarks for an interim extension of the patent term. If the Commissioner determines that, except for permission to market or use the product commercially, the patent would be eligible for a statutory extension of the patent term, the Commissioner shall issue to the applicant a certificate of interim extension for a period of not more than one year. The owner of record of the patent or its agent may apply for subsequent one-year interim extensions.

On February 20, 1998, Cephalon, agent of the patent owner Laboratoire L. Lafon, filed an application under 35 U.S.C. 156(d)(5) for interim extension of the term of U.S. Patent No. 4,177,290. The patent claims the active ingredient modafinil in the human drug product ''PROVIGIL.'' The application indicates that the product is currently undergoing a regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application suggests that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156. Since it is apparent that the regulatory review period will extend beyond the date of expiration of the patent, and interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate. Accordingly, an interim extension under 35 U.S.C. 156(d)(5) of the term U.S. Patent No. 4,177,290 is granted for a period of one-year from the original expiration date of the patent, March 9, 1998.

Dated: April 6, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–9535 Filed 4–9–98; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Romania

April 6, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 14, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on

embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryforward, special shift, and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63526, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 6, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on April 14, 1998, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	3,266,555 square meters.
410	70,641 square meters.
433/434	11,719 dozen.
435	11,261 dozen.
442	14,542 dozen.
443	93,566 numbers.
444	50,784 numbers.
447/448	29,627 dozen.
647	104,972 dozen.
648	82,338 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–9508 Filed 4–9–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on a Request that the United States Consult with Mexico and Canada Concerning Short Supply of Certain Polyester Filament Yarns

April 6, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for consultations on certain polyester filament yarns.

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The purpose of this notice is to advise the public that CITA has been petitioned to initiate consultations with Mexico and Canada under Section 7(2) of Annex 300–B of the North American Free Trade Agreement (NAFTA) for the purpose of amending the NAFTA rules of origin for HTS subheading 6002.43 and the subheadings in chapter 61 to allow the use of certain non-North American polyester filament yarns, described below, which are classified in HTS subheadings 5402.33, 5402.43 and 5402.52, in NAFTA originating goods.

Denier (Decitex)	Filament count	Cross section	Luster	Luster	Luster
[1] 75 (83.3)	72	Round	Semi dull		
75 (83.3)	72	Trilobal	Semi dull		
75 (83.3)	36	Round	Semi dull	Bright	Dull
75 (83.3)	36	Trilobal	Semi dull	Bright	Dull
75 (83.3)	36	Octolobal	Semi dull	Bright	Dull
40 (44.4)	12	Round	Semi dull	Bright	Dull
40 (44.4)	12	Trilobal	Semi dull	Bright	Dull
40 (44.4)	12	Octolobal	Semi dull	Bright	Dull
40 (44.4)	24	Round	Semi dull	Bright	Dull
40 (44.4)	24	Trilobal	Semi dull	Bright	Dull
40 (44.4)	24	Octolobal	Semi dull	Bright	Dull
40 (44.4)	30	Round	Semi dull	Bright	Dull
40 (44.4)	30	Trilobal	Semi dull	Bright	Dull
40 (44.4)	30	Octolobal	Semi dull	Bright	Dull
40 (44.4)	36	Round	Semi dull	Bright	Dull
40 (44.4)	36	Trilobal	Semi dull	Bright	Dull
40 (44.4)	36	Octolobal	Semi dull	Bright	Dull
50 (55.6)	24	Round	Semi dull	Bright	Dull
50 (55.6)	24	Trilobal	Semi dull	Bright	Dull

Denier (Decitex)	Filament count	Cross section	Luster	Luster	Luster
50 (55.6)	36	Round	Semi dull	Bright	Dull
50 (55.6)	36	Trilobal	Semi dull	Bright	Dull
50 (55.56)	36	Octolobal	Semi dull	Bright	Dull
21textured (23.3)	1	Round	Semi dull		
20 (22.2)	1	Round	Semi dull		
45 (50.0)	20	Round			Dull

[1] In both flat (non-textured) and textured forms. Unless otherwise noted, all above-listed yarns are flat.

There will be a 30-day comment period beginning on April 10, 1998 and extending through May 11, 1998.. Anyone wishing to comment or provide data or information regarding domestic production or availability of the listed polyester filament yarns classified in HTS subheadings 5402.33, 5402.43 and 5402.52 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–9509 Filed 4–9–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Application of Cantor Financial Futures Exchange, Inc., as a Contract Market in US Treasury Bond, Ten-Year Note, Five-Year Note, and Two-Year Note Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on notice of application of Cantor Financial Futures Exchange, Inc., for initial designation as a contract market.

DATES: Comments must be received on or before April 27, 1998.

FOR FURTHER INFORMATION CONTACT: With respect to questions about the terms and conditions of the proposed futures contracts, please contact Thomas M. Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, at Three Lafayette Centre, 21st Street NW, Washington, DC 20581; Telephone: (202) 418–5278; Facsimile number: (202) 418–5527; or Electronic mail: tleahy@cftc.gov. With respect to questions about the trading rules and rules of government, please contact Adam E. Wernow, Division of Trading and Markets, at the same address; Telephone: (202) 418–5042; Facsimile number: (202) 418–5536; or Electronic mail: awernow@cftc.gov.

SUPPLEMENTARY INFORMATION: Cantor Financial Futures Exchange, Inc. (''CFFE'') has applied for designation as a contract market for the computer-based trading of US Treasury bond, ten-year note, five-year note, and two-year note futures contracts. CFFE has not previously been approved by the Commission as a contract market in any commodity, thus, in addition to the terms and conditions of the proposed futures and options contracts, CFFE has also submitted proposed trading rules, rules of government, and other materials to meet the requirements for a board of trade seeking initial designation as a contract market. Notice of CFFE's application was initially published under delegated authority for public comment on February 3, 1998 (63 FR 5505), for a 60-day comment period ending April 6, 1998. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets and the Division of Economic Analysis (''Division'') have determined to extend until April 27, 1998 the deadline for comments on the notice of application of CFFE to be designated as first-time contract market. The Divisions believe that extension of the deadline for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act. The Divisions seek comment regarding all aspects of CFFE's application and addressing any issues commenters believe the Commission should consider. Any request for a further extension of the public comment period will be looked upon with disfavor.

Any person interested in submitting written data, views, or arguments on the proposal to designate CFFE should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CFFE application for designation as a computer-based contract market for US Treasury bond, ten-year note, five-year note, and two-year note futures contracts. Copies of the proposed terms and conditions, Exchange rules, compliance procedures, clearing and settlement description, and other related materials are available for inspection at the Office of the Secretariat at the above address. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9. Requests or copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, D.C., on April 6, 1998.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 98–9480 Filed 4–9–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Preparation of an Environmental Impact Statement (EIS) for the Disposal and Reuse of Surplus U.S. Navy Property Located in the Territory of Guam

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy announces the intent to prepare an Environmental Impact Statement (EIS) for the disposal and subsequent reuse of surplus U.S. Navy property in the Territory of Guam. A public scoping workshop will be held to receive oral and written comments to identify potentially significant issues for study in the EIS and to notify parties interested in and affected by the property disposal and reuse. Federal, state and local agencies, and interested individuals are invited to be present or represented at the workshop.

DATES: Public scoping workshop date is Thursday, May 7, 1998, 7 to 9 p.m.

ADDRESSES: Public scoping workshop location is Chamorro Village Main Pavilion, Paseo Complex, Agana, Guam.

FOR FURTHER INFORMATION CONTACT: Mr. John Bigay, (808) 471–9338.

SUPPLEMENTARY INFORMATION: Preparation of this EIS is pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508).

The proposed action of the EIS is disposal by the Navy and subsequent reuse of 19 parcels of land, totaling approximately 2,800 acres, at 14 sites on the island. The properties consist of developed and undeveloped land, buildings and infrastructure. The properties will be disposed of in accordance with the provisions of the Defense Base Closure and Realignment Act (Pub. L. 101–510) of 1990 as amended, and applicable federal property disposal regulations.

The properties are among those identified in a plan for Department of Defense real estate on Guam, the Guam Land Use Plan Update 1994 (GLUP 94). The GLUP reviewed all military land requirements on Guam and made recommendations for land retention and disposal based on foreseeable mission tasking and force levels.

The properties to be disposed of are identified as: the former Federal Aviation Administration (FAA) Housing Area in Dededo; the Navy Print Shop (Harmon Annex) and Marine Drive (Wettengel Junction) parcels in Dededo; Tamuning Telephone Exchange; four parcels adjacent to Naval Computer and Telecommunications Activity Master Station, Barrigada; Nimitz Hill Enlisted Housing and nearby vacant land; parcels at Sasa Valley and Tenjo Vista in Piti; a parcel at Polaris Point; a parcel near the New Apra Heights family housing area; a parcel on Route 2A in Santa Rita; Rizal or Aflleje Beach in Santa Rita; Old Apra Heights and; two parcels at the naval ordnance area in Santa Rita.

Potential reuse alternatives for the parcels are defined in a Government of Guam (GovGuam) reuse plan prepared for the GLUP 94 Reuse Planning Committee and the Guam Economic Development Authority. Excluded from consideration in this EIS are GLUP 94 Air Force properties. Also excluded are GLUP 94 Navy power plant properties and areas at the former Naval Air Station, Agana, which are being addressed as separate actions.

The EIS will analyze the proposed action, reasonable alternatives to the proposed action, and individual and cumulative environmental impacts. Alternatives considered in the EIS will be influenced by the identification of feasible future uses of the land areas. The GovGuam reuse plan features various land uses, including resort, industrial, commercial, residential, agricultural, parks, recreation, historic and conservation use.

Environmental issues to be considered will include, but are not limited to, effects on cultural resources, terrestrial and aquatic habitats, threatened or endangered species, air and water quality, infrastructure, traffic, noise, flood plain management, installation restoration and environmental clean-up, and the socioeconomic environment. Direct, indirect and cumulative impacts will be analyzed, and mitigation measures will be developed if appropriate.

The scoping workshop will provide opportunities for clarification of the U.S. Navy's action in response to Base Realignment and Closure (BRAC) decisions and subsequent identification of surplus properties, and to solicit input from representatives of government agencies and interested individuals regarding the scope of the EIS. The U.S. Navy and the Guam Economic Development Authority will set up information stations at the workshop. Each information station will be attended by a knowledgeable person who will be available to answer questions from attendees. Agency representatives and the public are encouraged to provide comments. Comments will be entered into the official record via written comment sheets available to attendees at the workshop and via summary of oral comments. To ensure accuracy of the record, it is suggested that comments be submitted in writing. All comments, oral and written, will become part of the public record and will receive attention and consideration during EIS preparation.

Written comments may also be mailed to Mr. John Bigay (Code 231), Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860–7300; or contact Mr. Bigay by telephone (808) 471–9338 or facsimile (808) 474–5909. Written comments are requested not later than May 26, 1998. Additional information concerning this notice may be obtained by contacting Mr. Leland Munson (Department of Defense Base Transition Coordinator) at (671) 339–5443 on Guam.

Dated: April 7, 1998.

Lou Rae Langevin,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 98–9566 Filed 4–9–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Pacific Missile Range Facility Enhanced Capability Draft Environmental Impact Statement at Pacific Missile Range

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy announces that it will hold two public hearings to inform the public of the Pacific Missile Range Facility Enhanced Capability Draft Environmental Impact Statement (DEIS) findings and to solicit comments.

Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearings. Oral statements will be heard and transcribed by a stenographer. However, to assure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this action and will be given equal consideration.

In the interest of available time, each speaker will be asked to limit his or her oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing(s) and submitted in writing either at the public hearing(s) or mailed

to the address below. Written comments on the DEIS should be mailed to the address below and must be postmarked not later than May 26, 1998 to be part of the official record.

The DEIS has been distributed to various federal, state and local agencies, elected officials, special interest groups, the media, and concerned citizens. Copies of the DEIS have also been placed in local libraries in Hawaii. A limited number of copies are available at the address below.

DATES AND ADDRESSES: Public hearing dates and locations are as follows:

1. Saturday, April 25, 1998, 10 a.m., Waimea United Church of Christ Educational Center, Waimea, Hawaii
2. Tuesday, April 28, 1998, 5 p.m., Weinberg Memorial Hall, Disabled American Veterans Park, 2685 North Nimitz Hwy., Honolulu, Oahu, Hawaii

FOR FURTHER INFORMATION, TO PROVIDE COMMENTS OR FOR A COPY OF THE DEIS CONTACT: Ms. Vida Mossman, P.O. Box 128, Kekaha, Kauai, Hawaii, 96752–0128.

SUPPLEMENTARY INFORMATION: Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency, the Pacific Missile Range Facility (PMRF) Enhanced Capability Draft Environmental Impact Statement at Pacific Missile Range Facility. The DEIS assesses the potential impacts associated with enhancing PMRF capabilities. The Proposed Action would enable PMRF to fully accommodate the testing and training needs of the Navy's Theater Ballistic Missile Defense (TBMD) program as well as other DOD Theater Missile Defense (TMD) programs. The proposed enhancement would also serve to increase PMRF's viability in the future by providing the capability for potential customers to develop, test and train in the use of evolving defensive systems.

The DEIS analyzes additional missile launch and support locations, facility construction, launch preparation activities, missile flight tests, radar and optical tracking operations, and intercept tests in the Pacific Ocean.

Environmental issues analyzed in the DEIS for enhancing PMRF include: Air quality; airspace control; biological resources; cultural resources; geology and soils; hazardous materials and waste; safety and health; land use; noise; socioeconomics; transportation; utilities; visual and aesthetics; and water resources. In addition, the document addresses ocean areas and environmental justice.

Proposed Action

The Navy proposes to enhance capabilities of PMRF to conduct missile defense testing by (1) upgrading existing radar, telemetry, optics, electronic warfare, differential global positioning system, and other instrumentation facilities; and (2) the construction and operation of additional missile launch sites, sensor and instrumentation facilities, and a missile storage building.

Areas being considered for the launch and/or instrumentation sites include (1) Kauai and Niihau; (2) land-based support locations on Tern Island and Johnston Atoll; and (3) ocean areas within and outside U.S. territorial waters. Any testing would comply with current U.S. policy concerning compliance with treaties and international agreements.

No Action

The No-Action Alternative is the continuation of existing range and land-based training and operations; existing research development, testing and evaluation activities; and ongoing base operations and maintenance of the technical and logistical facilities that support the training and operations missions conducted at PMRF.

Dated: April 7, 1998.

Lou Rae Langevin,

LT, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 98–9561 Filed 4–9–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Thursday, April 28, 1998: 6:00 p.m.–9:00 p.m.; 6:30 p.m. to 7:00 p.m. (public comment session)

ADDRESSES: Sweeney Center, 201 West Marcy Street, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m.
Call to Order—Agenda Approval—Minutes of Previous Meeting
6:15 p.m.
DOE Comments
6:30 p.m.
Public Comments
7:00 p.m.
Introduction of Committees
7:15 p.m.
Break
7:30 p.m.
Discussion: Bylaws, Elections, Retreat, Next Meeting
8:30 p.m.
Review of Outstanding Environmental Restoration/Waste Management Recommendations
9:00 p.m.
Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (505) 665–5048. A sign-up sheet will also be available at the door of the meeting room for members of the public to indicate their desire to address the Board. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mr. Mat Johansen, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on April 2, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–9503 Filed 4–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Meeting cancellation notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the cancellation of the open Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site Advisory Committee meeting, which was scheduled to be held on Wednesday, May 6, 1998, from 5:30 p.m.–9:00 p.m., at the U.S. Department of Energy Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada. This meeting was announced in the **Federal Register** on Thursday, March 26, 1998 (63 FR 14690).

Issued at Washington, DC on April 6, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–9504 Filed 4–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, May 6, 1998—6:00 p.m.–9:30 p.m.

ADDRESSES: Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–0314.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: A business meeting will be conducted with no technical presentation provided.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–0314.

Issued at Washington, DC on April 6, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–9505 Filed 4–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Task Force on Education

DATES AND TIMES: Monday, April 20, 1998, 8:30 AM–3:30 PM.

ADDRESSES: Georgetown University Conference Center, Salon E, 3800 Reservoir Road, NW, Washington, D.C. 20057.

FOR FURTHER INFORMATION CONTACT: Bruce Bornfleth, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–4040 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on Education is to provide information and recommendations to the Secretary of Energy Advisory Board on ways to make the Department's scientific, technical and supercomputing capabilities more available to our Nation's schools, colleges and universities, and to provide recommendations on how the Department can best enhance science, technology, engineering and mathematics education in the United States. The Task Force on Education will prepare a report for submission to the Secretary of Energy Advisory Board.

Tentative Agenda

Monday, April 20, 1998

8:30–8:45 AM Welcome and Opening Remarks—Dr. Hanna Gray, Task Force Chairman
8:45–10:15 AM Discussion of Outcomes: DOE Education Activities
10:15–10:30 AM Break
10:30–11:00 AM Presentation and Discussion of NSTA/DOE Mentoring Partnership
11:00–11:30 AM Presentation and Discussion of NSF/DOE Tutorial
11:30–1:30 PM Lunch
1:30–2:00 PM Presentation
2:00–2:30PM Discussion of Report on Workforce Issues
2:30–3:15 PM Presentation by Dr. Neal Abraham, President of the Council on Undergraduate Research
3:15—3:30 PM Public Comment Period

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila

Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Task Force on Education and future reports may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on April 6, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–9506 Filed 4–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Biological and Environmental Research Advisory Committee Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Biological and Environmental Research Advisory Committee.

DATES: Monday, April 27, 1998, 8:30 a.m. to 5:30 p.m.; and Tuesday, April 28, 1998, 8:30 a.m. to 12:00 p.m.

ADDRESSES: Marriott, Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–9817; david.thomassen@oer.doe.gov), and Ms. Shirley Derflinger (301–903–0044; shirley.derflinger@oer.doe.gov), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Energy Research, Office of Biological and Environmental Research, ER–70, 19901 Germantown Road, Germantown, Maryland 20874–1290.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director of Energy Research of the Department of Energy on the many complex scientific and technical issues that arise in the development and implementation of the biological and environmental research program.

Tentative Agenda

Monday April 27, 1998, and Tuesday April 28, 1998

- Opening of Meeting.
- Remarks from Director, Office of Energy Research.
- Remarks from Associate Director for Science, Office of Science Technology Policy.
- Review of Human Genome Subcommittee Activities.
- Science Talk: Microbial Genomics.
- Update on Office of Biological and Environmental Research Activities.
- BER Program Outreach.
- DOE Computational Initiatives.
- Scientific Facilities: FY 1999 and Beyond.
- New Business.
- Public Comment (10-minute rule).

Public Participation: The day and a half meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. Requests to make oral statements must be received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on April 6, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–9502 Filed 4–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–311–000]

High Island Offshore System; Notice of Application

April 6, 1998.

Take notice that on March 30, 1998, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–311–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon transportation service currently being rendered for Texas Gas Transmission Corporation (TGT), all as more fully set forth in the application on file with the Federal Energy Commission (Commission) and open to public inspection.

HIOS proposes to abandon its firm transportation service which HIOS is rendering in accordance with HIOS' Rate Schedule T–3, as well as associated Interruptible Overrun Transportation Service rendered in accordance with HIOS' Rate Schedule I.

HIOS proposes to terminate these services at the end of the evergreen term of Rate Schedule T–3, effective May 29, 1998 in accordance with the terms of such rate schedule and in accordance with timely notice given by TGT to HIOS.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1998, 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 357.10). 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for HIOS to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9493 Filed 4–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–312–000]

Koch Gateway Pipeline Company; Notice of Application

April 6, 1998.

Take notice that on March 31, 1998, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–312–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon an obsolete transportation service for Cytec Industries (Cytec) all as more fully set forth in the application on file with the Federal Energy Commission (Commission) and open to public inspection.

Koch Gateway proposes to abandon an obsolete transportation service formally provided to Cytec pursuant to Koch Gateway's Rate Schedule X–162. Koch Gateway states that Cytec concurs with the proposed abandonment and that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1998, 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 357.10). 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 designees on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity, If a motion for leave to intervene is timely filed, or it 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 Koch Gateway to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9492 Filed 4–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–313–000]

Koch Gateway Pipeline Company; Notice of Application

April 6, 1998.

Take notice that on March 31, 1998, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–313–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon various obsolete transportation services for Transcontinental Gas Pipe Line Corporation (Transco) all as more fully set forth in the application on file with the Federal Energy Commission (Commission) and open to public inspection.

Koch Gateway proposes to abandon obsolete transportation services formally provided to Transco pursuant to Koch Gateway's Rate Schedule X–158. Koch Gateway states that Transco concurs with the proposed abandonment and that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1998, 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 357.10). 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9494 Filed 4–9–98; 8:45 am]

BILLING CODE 4717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–314–000]

Koch Gateway Pipeline Company; Notice of Application

April 6, 1998.

Take notice that on March 31, 1998, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–314–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon an obsolete transportation service for Mississippi River Transmission

Corporation (MRT) all as more fully set forth in the application on file with the Federal Energy Commission (Commission) and open to public inspection.

Koch Gateway proposes to abandon a transportation service formally provided to MRT pursuant to Koch Gateway's Rate Schedule X–91. Koch Gateway states that MRT concurs with the proposed abandonment and that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 22, 1998, 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 357.10). 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9495 Filed 4–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. GP98–26–000, GP98–27–000, GP98–28–000, and GP98–29–000 (Not consolidated)]

ONEOK Resources Company; Notice of Petitions for Dispute Resolution

April 6, 1998.

Take notice that, on March 12, 1998, ONEOK Resources Company (ONEOK Resources), successor to ONEOK Exploration Company (ONEOK Exploration) and Imperial Oil & Gas, Inc., filed:

(1) A petition, in Docket No. GP98–26–000, requesting the Commission to resolve ONEOK Resources' dispute with Northern Natural Gas Company (Northern), over ONEOK Resources' Kansas ad valorem tax refund liability to Northern;

(2) A petition, in Docket No. GP98–27–000, requesting the Commission to resolve ONEOK Resources' dispute with Panhandle Eastern Pipe Line Company (Panhandle), over ONEOK Resources' Kansas ad valorem tax refund liability to Panhandle;

(3) A petition to Docket No. GP98–28–000, requesting the Commission to resolve ONEOK Resources' dispute with Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company (Williams), over ONEOK Resources' Kansas ad valorem tax refund liability to Williams; and

(4) A petition in Docket No. GP98–29–000, requesting the Commission to resolve ONEOK Resources' dispute with KN Interstate Gas Transmission Company (KNI), over ONEOK Resources' Kansas ad valorem tax refund liability to KNI.

The Commission, by order issued September 10, 1997, in Docket No. RP97–369–000 *et al.*,[1] on remand from the D.C. Circuit Court of Appeals,[2] required first sellers to refund the Kansas ad valorem tax reimbursements to the pipelines, with interest, for the period from 1983 to 1988. In its January 28, 1998, Order Clarifying Procedures, the Commission stated that producers (i.e., first sellers), could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds owed, see 82 FERC ¶ 61,059 (1998). ONEOK Resources' petitions are on file with the Commission and open to public inspection.

In each petition, ONEOK Resources states that: (1) it has no records prior to its purchase of certain producing interests in the State of Kansas; (2) it assumed the obligation for those producing interests on September 1, 1985; (3) through the close of business on March 9, 1998, it attempted to resolve its differences with each pipeline; (4) its attempts failed with respect to each pipeline; and (5) it now requests the Commission to establish procedures to resolve the issue of the correct amount of the refunds due each pipeline.

In its petition in Docket No. GP98–26–000, ONEOK Resources states that it disputes owing $21,386.07, plus interest, to Northern, and has placed that money into escrow. ONEOK Resources states that it has paid Northern the remaining balance of $4,952.60 in principal and $10,717.32 in interest.

In its petition in Docket No. GP98–27–000, ONEOK Resources concludes that it does not owe Panhandle any refunds for the 1985 Kansas ad valorem tax reimbursements, because it did not receive the maximum lawful price for those gas sales. Therefore, ONEOK Resources concludes that it does not owe Panhandle the $12,326.09 and $18,555.79 in related interest to Panhandle. ONEOK Resources states that it has placed these amounts into escrow. ONEOK Resources further concludes that it does not owe Panhandle the $76,366.95 in principal and $166,902.91 in related interest pertaining to Kansas ad valorem tax reimbursements that were paid to an individual prior to ONEOK Resources' acquisition of that individual's working interest in the wells. ONEOK Resources states that the remaining $16,467.51 in principal and $30,379.94 in related interest has been paid to Panhandle.

In its petition in Docket No. GP98–28–000, ONEOK Resources states that it received a copy of a Statement of Gas Settlement, dated September 25, 1986, identifying $6,642.24 of the original $15,526.45 of principal requested by Williams. ONEOK Resources states that it is trying to confirm this information, and that it will dispute the remaining $8,884.22 of principal, and the related interest, until it confirms this information. ONEOK Resources also states that it disagrees with Williams' interest calculation methodology. ONEOK Resources contends that interest should be computed from the date the check was issued (September

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

26, 1986) to ONEOK Exploration, rather than the date that ONEOK Exploration paid the ad valorem tax to the State of Kansas. According to ONEOK Resources, the true interest on the $6,642.24 principal is $10,381.41. ONEOK Resources states that the revised total ($17,023.65) has been remitted to Williams.

In its petition in Docket No. GP98–29–000, ONEOK Resources states that it has requested verification from KNI concerning the statement that KNI sent, requesting payment of $46,491.46. ONEOK Resources states that such verification was not received until March 9, 1998, that it has not had time to review this information, and that it has placed the entire sum into escrow.

Any person desiring to comment on or make any protest with respect to any of the above-referenced petitions should, on or before April 22, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9491 Filed 4–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–25–000]

Plains Petroleum Company and Plains Petroleum Operating Company; Notice of Petition for Procedural Adjustment and Dispute Resolution

April 6, 1998.

Take notice that on March 9, 1998, Plains Petroleum Company and Plains Petroleum Operating Company (Plains), filed a petition for procedural adjustment and dispute resolution with the Commission. Plains requests Commission authorization to place certain disputed Kansas ad valorem tax refund amounts and potential refund amounts attributable to royalty interest owners into an interest-bearing escrow account, pending resolution of Plains dispute with K N Interstate Gas Transmission Company (KNI), over the amount of Kansas ad valorem tax refunds that Plains owes KNI. Plains further requests that the Commission resolve Plains' dispute with KNI as to whether Plains owes KNI Kansas ad valorem tax refunds when Plains was a wholly-owned subsidiary of KN Energy, Inc., (KNE). Plains now reiterates, in Docket No. GP98–25–000, its request for a summary ruling that KNE is responsible for these refunds. Plains' petition is on file with the Commission and open to public inspection.

In Part I of its petition in Docket No. GP98–25–000, Plains explains that KNI's original $10,413,154.37 refund claim against Plains was too high, and that Plains has been able to demonstrate that, for much of the 1986 through mid-1988 time period covered by KNI's Statement of Refunds Due, in Docket No. RP98–53–000, the total contract price paid by KNE for Plains' gas, including the Kansas ad valorem tax reimbursements, was less than the applicable maximum lawful price for that gas. Plains further explains that KNI has since issued a revised invoice to Plains in the amount of $2,705,260.92. Plains, however, continues to dispute portions of this total and requests that the Commission authorize Plains to escrow disputed amounts, that the Commission permit Plains to defer payment of refunds related to royalty interests while Plains determines whether such sums are uncollectible, and that the Commission, in the interim, allow Plains to escrow potential royalty refund amount. Specifically, Plains contends that the Commission should authorize it:

(1) To defer payment and escrow, for one year, the $476,987.18 in principal and interest that Plains owes in refunds with respect to its working interests;

(2) To recalculate its own refund obligation to exclude the refunds attributable to other working interest owners, for which Plains is not responsible; and

(3) To place $1,344,824.32, representing the remaining principal and interest amounts, into an escrow account, pending the outcome of proceedings before the Commission and the courts regarding whether Plains is liable for refunds associated with (a) the grossed-up tax, (b) interest on the grossed-up tax, (c) interest generally on the refund principal.

In Part II of its pleading in Docket No. GP98–25–000, Plains explains that KNE contends that Plains owes $2,848,688.12 in principal and interest for Kansas ad valorem tax reimbursements that KNE allegedly made to Plains in January and June of 1985, during the period that Plains was KNE's wholly-owned subsidiary. Plains disputes that it owes any part of this amount, and requests the Commission to summarily rule that KNE is responsible for refunding these sums or, in the alternative, to require KNE to prove that it did not retain the refund monies at issue and enjoy the use of those funds, since 1985. Plains previously requested a summary ruling from the Commission on this issue in Docket No. GP97–6–000, and incorporates by reference the claims, facts, and arguments contained in its pleadings in that docket.

In the GP97–6–000 pleading, Plains requested that the Commission summarily rule that KNE should be required to make any Kansas ad valorem tax refunds that Plains might otherwise be required to make for the period from October 1, 1984 through September 13, 1985. In support of its request, Plains explained:

(1) That Plains Petroleum Company was a wholly-owned subsidiary of KNE until September 30, 1985;

(2) That Plains Petroleum Company was the lessee with respect to certain leases within the State of Kansas, from October 1, 1984 through November 30, 1986;

(3) That the Kansas leases were transferred to Plains Petroleum Operating Company, effective December 1, 1986;

(4) That Plains either did not receive Kansas ad valorem tax reimbursements from KNE during the period from October 1, 1984 through September 13, 1985, or returned any Kansas ad valorem tax reimbursements it did receive to KNE by means of a $1,051,000 dividend that was paid to KNE on June 30, 1985; and

(5) That, by means of the $1,051,000 dividend, KNE withdrew virtually all cash from Plains Petroleum Company, leaving Plains Petroleum Company with only $18,211 in cash as of June 30, 1985.

In view of the above, Plains asserted in Docket No. GP97–6–000 that KNE was the entity enriched by the reimbursement of Kansas ad valorem taxes, that KNE (not Plains) retained the use of those funds. Therefore, Plains requested that the Commission summarily rule that any Kansas ad valorem tax refunds that Plains might otherwise be required to make, for the period from October 1, 1984 through September 13, 1985, should be made by KNE or, in the alternative, that the Commission require KNE to show that KNE did not receive value from Plains (in the form of dividends, or otherwise) for any Kansas ad valorem tax

reimbursement payments that KNE made to Plains and, therefore, that KNE should not be required to bear the burden of any refunds to its customers.

Plains' pleading in Docket No. GP98–25–000 is a continuation of Plains' claims and arguments in Docket No. GP97–6–000. In Docket No. GP98–25–000, Plains states that the aforementioned $1,051,000 dividend that went to KNE is considerably greater than the principal and interest of $987,399.45 that KNE's invoice shows that Plains owed as of July 1985.

Any person desiring to comment on or make any protest with respect to said petition should, on or before April 22, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9490 Filed 4–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP98–24–000]

Bill C. Romig; Notice of Petition

April 6, 1998.

Take notice that, on March 9, 1998, the Commission received a March 4, 1998 letter from Bill C. Romig (Romig), in which Romig asserts that the Commission's September 10, 1997 order, in Docket No. RP97–369–000 *et al.*,[1] on remand from the D.C. Circuit Court of Appeals,[2] has no jurisdiction over him, because he is a royalty owner and the September 10 order pertains to first sellers who are required by that order to refund Kansas ad valorem tax reimbursements, with interest, for the period from 1983 to 1988. Romig does not believe that he has any refund liability under the September 10 order, and seeks clarification as to whether such refund liability exists. Romig attaches a letter from Northern Natural Gas Company (Northern) to Romig, dated January 21, 1998, indicating that Northern served Romig with a Statement of Refunds Due, because it paid Romig directly, rather than the unnamed first seller. Northern's January 21 letter further states that it expects Romig to refund the amounts in question. Romig's petition is on file with the Commission and open to public inspection.

Any person desiring to comment on or make any protest with respect to said petition should, on or before April 22, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–9489 Filed 4–9–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–34–000, et al.]

Florida Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

April 3, 1998.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. EC98–34–000]

Take notice that on March 27, 1998, Florida Power Corporation (Florida Power), filed an Application under Section 203 of the Federal Power Act for authorization to sell jurisdictional substation facilities to the City of Mount Dora, Florida.

Florida Power explains that it has agreed to sell the Mount Dora Distribution Substation in its entirety including all land, substation facilities and other equipment associated with the Substation and that the sale will allow the City of Mount Dora to purchase power from a number of bulk power providers which will result in savings to customers.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Origen Power Corp. and OGE Energy Corp.

[Docket No. EC98–33–000]

Take notice that on March 25, 1998, Origen Power Corp. (OPC) and OGE Energy Corp. (Energy Corp.), (together, the Applicants) submitted for filing, pursuant to Section 203 of the Federal Power Act, and Part 35 of the Commission's Regulations, an Application in connection with the acquisition of jurisdictional assets through the purchase by Energy Corp., of 100% of the ownership interests in Oklahoma Loan Acquisition Corp. (OLAC) and the change of the name of OLAC to Origen Power Corp.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company and USGen New England, Inc.

[Docket No. EC98–35–000]

Take notice that on March 26, 1998, New England Power Company and USGen New England, Inc. submitted for filing, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations, an application seeking authorization for the transfer of rights to transmission capacity under certain contracts associated with the Hydro-Quebec Phase I and Phase II interconnections.

Copies of the filing have been served on regulatory agencies in the States of Massachusetts, Rhode Island and New Hampshire.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. EL98–34–000]

Take notice that on March 18, 1998, Southern California Edison Company (Edison), tendered for filing with the Federal Energy Regulatory Commission a Petition for Declaratory Order. The petition asks the Commission to declare that Sacramento Municipal Utility District may not unilaterally abrogate or refuse to perform its obligations under its 1990 and 1994 system power sale agreements with Edison on the basis of

Edison's divestiture or the California Public Utilities Commission's buy-sell requirements.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company and Vermont Electric Power Company, Inc. Complainants v. New England Power Pool and ISO New England Inc. Respondents

[Docket No. EL98–37–000]

Take notice that on March 30, 1998, Boston Edison Company (Boston Edison) and Vermont Electric Power Company, Inc. (VELCO) filed a complaint against New England Power Pool (NEPOOL) and ISO New England Inc. (ISO New England). As Participants in NEPOOL, Boston Edison and VELCO ask the Commission to order NEPOOL and ISO New England to correct computational errors made in Schedule 11 of the open access tariff filed by NEPOOL on December 31, 1996 in Docket Nos. OA97–237–000 and ER97–1079–000.

Schedule 11 pertains to transition payments made to and received from NEPOOL by various Participants. Boston Edison and VELCO state that NEPOOL and ISO New England have refused to correct the computational errors as of March 30, 1998. Boston Edison and VELCO have also requested that the Commission consolidate the complaint proceeding with Docket Nos. OA97–237-000 and ER97–1079–000. Boston Edison and VELCO state they have served the complaint upon the Respondents.

Comment date: May 4, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be due on or before May 4, 1998.

6. Texas-New Mexico Power Company

[Docket No. ER98–1687–000]

Take notice that on March 31, 1998, Texas-New Mexico

Power Company (TNMP), tendered for filing an amendment of TNMP's filing in this docket in compliance with a Commission deficiency notice.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Baltimore Gas and Electric Company

[Docket No. ER98–1724–000]

Take notice that on March 31, 1998, Baltimore Gas and Electric Company (BGE), submitted in accordance with Section 205 of the Federal Power Act and Part 35 of the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 35 and as directed by the Commission, an amended Service Agreement between BGE and Constellation Power Source, Inc., (CPS) under which BGE may engage in sales of capacity and energy to its power marketing affiliate, CPS.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER98–2318–000]

Take notice that on March 26, 1998, Southern California Edison Company (Edison) tendered for filing the Authorized Representatives' Procedures For Post-Restructuring Operations And Accounting (Procedures), and a Notice of Cancellation of various rate schedules with the City of Riverside. The Procedures address issues relating to the operation of the Independent System Operator (ISO) and Power Exchange.

To the extent necessary, Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign to the Procedures an effective date concurrent with the date the ISO assumes operational control of Edison's transmission facilities, which is expected to be April 1, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER98–2319–000]

Take notice that on March 26, 1998, Southern California Edison Company (Edison), tendered for filing Loss Accounting Procedures for Existing Contracts (Procedures) between Edison and the City of Riverside (Riverside), California.

The Procedures allow Edison and Riverside to account for differences between losses pursuant to the Independent System Operator's applicable loss methodology and losses pursuant to existing transmission contracts, as required in the Edison-Riverside 1997 Restructuring Agreement (Restructuring Agreement). Edison is requesting that the Procedures become effective on the date the ISO assumes operational control of Edison's transmission facilities, which is concurrent with the effective date of the Restructuring Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER98–2322–000]

Take notice that on March 26, 1998, Southern California Edison Company (Edison), tendered for filing a revised Transmission Owners Tariff (TO Tariff).

The revised TO Tariff reflects changes to the pro forma TO Tariff filed on August 15, 1997 in Docket Nos. EC96–19–003 and ER96–1663–003, complies with the Commission's October 30, 1997, order in Docket Nos. EC96–19–001 *et al.*, conforms the TO Tariff to the ISO Tariff, and clarifies and corrects language contained in the TO Tariff.

Edison is requesting an effective date concurrent with the date the California Independent System Operator begins operations.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER98–2332–000]

Take notice that on March 27, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing two executed service agreements with LILCO—The Energy Exchange Group for point-to-point service under the PJM Open Access Transmission Tariff.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER98–2360–000]

Take notice that on March 31, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing an Interconnection and Operating Agreement between Entergy Gulf States and Tenaska Frontier Partners, Ltd.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER98–2361–000]

Take notice that on March 31, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy

Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Duke Energy Power Services, Inc.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Company

[Docket No. ER98–2365–000]

Take notice that on March 31, 1998, Southern California Edison Company (Edison), tendered for filing executed Service Agreements for Wholesale Distribution Service with Southern California Edison Company—Generation Business Unit, and Southern California Edison Company—QF Resources under Edison's Wholesale Distribution Access Tariff (Tariff).

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. ERI Enterprises, L.L.C.

[Docket No. ER98–2367–000]

Take notice that on March 31, 1998, ERI Enterprises, L.L.C. (ERIE), 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 May 29, 1998.

ERIE intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ERIE sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. ERIE is not in the business of generating, transmitting, or distributing electric power.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PP&L, Inc.

[Docket No. ER98–2362–000]

Take notice that on March 31, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 20, 1998, with CMS Marketing, Services and Trading (CMS), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds CMS as an eligible customer under the Tariff.

PP&L requests an effective date of March 31, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to CMS and to the Pennsylvania Public Utility Commission.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. West Texas Utilities Company

[Docket No. ER98–2363–000]

Take notice that on March 31, 1998, West Texas Utilities Company (WTU), submitted for filing Amendment No. 1 to the Power Supply Agreement between WTU and the City of Hearne, Texas (Hearne). Amendment No. 1 delays the date that WTU will initiate service to Hearne until April 18, 1998 or a mutually agreeable later date.

WTU seeks an effective date of April 1, 1998, for Amendment No. 1 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on Hearne and the Public Utility Commission of Texas.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company

[Docket No. ER98–2366–000]

Take notice that on March 31, 1998, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU), (collectively, the Companies), tendered for filing eight Service Agreements establishing Rayburn Country Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., as customers under the terms of each Company's CSRT–1 Tariff.

The Companies request an effective date of March 2, 1998, for each of the service agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of this filing were served on the two customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Duke Energy Corporation

[Docket No. ER98–2368–000]

Take notice that on March 31, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Market Rate Service Agreement (the MRSA), between Duke and PP&L, Inc., dated as of March 2, 1998, and between Duke and Tenaska Power Services Company, dated as of March 2, 1998. The parties have not engaged in any transactions under the MRSA's as of the date of filing. Duke requests that the MRSA be made effective as of March 2, 1998.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Southern California Edison Company

[Docket No. ER98–2369–000]

Take notice that on March 31, 1998, Southern California Edison Company (Edison), tendered for filing an unexecuted copy of Amendment No. IV (Amendment) to the Operating Procedures for the Power Contract (Operating Procedures), with the Department of Water Resources of the State of California (CDWR).

The Amendment modifies the Operating Procedures to allow Edison to be CDWR's Scheduling Coordinator for an interim period until CDWR is able to begin acting as its own Scheduling Coordinator. Edison is requesting an effective date concurrent with the date the Independent System Operator begins operations.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Energy Corporation

[Docket No. ER98–2370–000]

Take notice that on March 31, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing Transmission Service Agreements between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Williams Energy Services, Company.

The parties have not engaged in any transactions under the TSAs prior to thirty (30) days of this filing. Duke requests that the TSAs be made effective as rate schedules as of March 2, 1998.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. San Diego Gas & Electric Company

[Docket No. ER98–2371–000]

Take notice that on March 26, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing certain revisions to the non-rate terms and conditions of its Transmission Owner Tariff as filed in Docket No. ER97–2364–000 on March 31, 1997. SDG&E requests that the revisions be made effective as of March 31, 1998.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Tampa Electric Company

[Docket No. ER98–2372–000]

Take notice that on March 31, 1998, Tampa Electric Company (Tampa Electric), tendered for filing a Contract for the Purchase and Sale of Power and Energy (Contract), between Tampa Electric and Southern Company Energy Marketing, L.P., (SCEM). The Contract provides for the negotiation of individual transactions in which Tampa Electric will sell power and energy to SCEM.

Tampa Electric proposes an effective date of April 1, 1998, for the Contract, or if the Commission's notice requirement cannot be waived, the earlier of May 30, 1998 or the date the Contract is accepted for filing.

Copies of the filing have been served on SCEM and the Florida Public Service Commission.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Northeast Utilities Service Company

[Docket No. ER98–2373–000]

Take notice that on March 31, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, on behalf of The Connecticut Light and Power Company (CL&P), a Second Amendment to Interruptible Power Supply Service Agreement, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations.

NUSCO requests that the rate schedule become effective on April 1, 1998. NUSCO states that copies of the rate schedule have been mailed to the parties to the Agreement.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Public Service Company of New Mexico

[Docket No. ER98–2374–000]

Take notice that on March 31, 1998, Public Service Company of New Mexico (PNM), submitted for filing an executed Industrial Incentive Demand Tariff Sheet between PNM and the City of Gallup, New Mexico (Gallup), under Service Schedule C of the existing Contract for Electric Service between PNM and Gallup. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. San Diego Gas & Electric Company

[Docket No. ER98–2375–000]

Take notice that on March 31, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing Revised Original Sheet No. 53 and Original Sheet 53A of the Transmission Owner Tariff. These sheets would supersede Original Sheet No. 53 that it filed in Docket No. ER97–2364–000 on March 31, 1997 and that it subsequently amended by filing dated January 30, 1998, in Docket No. ER98–1682–000. SDG&E states that the proposed revisions correct a computational error in the rate for certain transmission services. SDG&E requests that the revised rates be made effective as of March 31, 1998.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. UtiliCorp United Inc.

[Docket No. ER98–2376–000]

Take notice that on March 31, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Amoco Energy Trading Corporation. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Amoco Energy Trading Corporation pursuant to the tariff, and for the sale of capacity and energy by Amoco Energy Trading Corporation to WestPlains Energy-Kansas pursuant to Amoco Energy Trading Corporation's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Amoco Energy Trading Corporation.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. UtiliCorp United Inc.

[Docket No. ER98–2377–000]

Take notice that on March 31, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Amoco Energy Trading Corporation. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Amoco Energy Trading Corporation pursuant to the tariff, and for the sale of capacity and energy by Amoco Energy Trading Corporation to Missouri Public Service pursuant to Amoco Energy Trading Corporation's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Amoco Energy Trading Corporation.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. UtiliCorp United Inc.

[Docket No. ER98–2378–000]

Take notice that on March 31, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Amoco Energy Trading Corporation. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Amoco Energy Trading Corporation pursuant to the tariff, and for the sale of capacity and energy by Amoco Energy Trading Corporation to WestPlains Energy-Colorado pursuant to Amoco Energy Trading Corporation's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Amoco Energy Trading Corporation.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ER98–2379–000]

Take notice that on March 31, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Amoco Energy Trading Corporation for service under its Non-Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ER98–2380–000]

Take notice that on March 31, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Amoco Energy Trading Corporation for service under its Short-Term Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. The Montana Power Company

[Docket No. ER98–2382–000]

Take notice that on March 31, 1998, The Montana Power Company (MPC or Company), tendered for filing its proposed Rate Schedule REC–1, applicable for sales to Central Montana Electric Power Cooperative, Inc., and Big Horn Electric Cooperative, Inc., and proposed adjustments to its Open Access Transmission Tariff and its Control Area Services Tariff.

MPC states that based on Period II 1998 data, proposed Rate Schedule REC–1 would have provided the Company with increased revenues of $2,262,266 from sales to Central Montana and Big Horn. MPC states that the rate increase has become necessary as a result of increasing costs being incurred in providing service to these customers.

MPC states that, so far as practical, its cost-of-service study and proposed rate design for sales to Central Montana and Big Horn are consistent with the cost-of-service study and rate design most recently submitted to the Montana Public Service Commission.

MPC has proposed that Rate Schedule REC–1 become effective on June 1, 1998.

MPC further states that based upon Period II 1998 data, MPC is proposing to update the costs for electric transmission services under the Open Access Tariff and the Control Area Services Tariff and to modify terms and conditions of MPC's Open Access Transmission Tariff.

MPC has proposed that the changes to its Transmission Tariffs, Second Revised Volume No. 5 and First Revised Volume No. 4, become effective on June 1, 1998.

Copies of the filing were served upon Central Montana, Big Horn, the Montana Public Service Commission, Montana Consumer Counsel, parties affected by MPC's Open Access Transmission Tariff and the Control Area Services Tariff, and each party who has intervened in MPC's retail restructuring case, Docket No. D97.7.90.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Southern California Edison Company

[Docket No. ER98–2384–000]

Take notice that on March 31, 1998, Southern California Edison Company (Edison), tendered for filing Procedures For The Scheduling Of Anaheim's Entitlement In The San Onofre Nuclear Generating Station And Anaheim's Satisfaction Of Its Auxiliary Power Obligations (SONGS Procedures), between Edison and the City of Anaheim (Anaheim), California.

The SONGS Procedures provide for (i) the scheduling of Anaheim's ownership share of San Onofre Nuclear Generating Station (SONGS); (ii) exchanges of information related to the availability of SONGS; and (iii) Anaheim's satisfaction of its auxiliary power obligations pursuant to the Second Amended San Onofre Operating Agreement.

Edison is requesting an effective date concurrent with the date the Independent System Operator assumes operational control of Edison's transmission facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Southern California Edison Company

[Docket No. ER98–2385–000]

Take notice that on March 31, 1998, Southern California Edison Company (Edison), tendered for filing Amendment No. 1 (Amendment No. 1) to the Edison-Vernon 1997 Restructuring Agreement between Edison and the City of Vernon, California (Vernon). Included in Amendment No. 1 as Attachment Nos. 1, 2, and 3 are: Amendment No. 2 to the Edison-Vernon Firm Transmission Service Agreement, Amendment No. 3 to the Edison-Vernon Mead Firm Transmission Service Agreement, and Amendment No. 2 to the Edison-Vernon Victorville-Lugo Firm Transmission Service Agreement.

Amendment No. 1 converts the transmission loss methodology under existing transmission contracts to the Independent System Operator (ISO) Tariff loss methodology. Edison is requesting an effective date concurrent with the date the ISO begins operations.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. New York State Electric & Gas Corporation

[Docket No. ER98–2388–000]

Take notice that on March 31, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing a short-term, firm point-to-point transmission service agreement between NYSEG and the New York Power Authority (NYPA) at the rates described in NYSEG's filing for transmission of NYPA power under a State-mandated Power For Jobs Program (PFJ Program), for a limited number of PFJ Program customers located within NYSEG's franchise area.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of April 1, 1998, for the transmission service agreement. NYSEG has served copies of the filing on the NYPSC and NYPA. NYSEG has also mailed copies of the filing to the PFJ Program customers currently approved by the New York State Economic Development Power Allocation Board.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Western Resources, Inc.

[Docket No. ER98–2389–000]

Take notice that on March 31, 1998, Western Resources, Inc. (Western Resources) tendered for filing a proposed change in its Rate Schedule FERC No. 264 and to Kansas Gas and Electric's (KGE) Rate Schedule FERC No. 183. Western Resources states that the change is in accordance with its Electric Power, Transmission and Service Contract with Kansas Electric Power Cooperative (KEPCo), and further that the proposed change for KGE is in accordance with the Electric Power, Transmission and Service contract between KGE and KEPCo. Revised Exhibits B set forth Nominated Capacities for transmission, distribution and dispatch service for the contract year beginning June 1, 1998 and for the four subsequent contract years, pursuant to Article IV, Section 4.1 of Rate Schedule FERC Nos. 264 and 183. Revised Exhibits C set forth KEPCO's Nominated Capacities for the Points of Interconnection, pursuant to Article IV, Section 4.1 of Rate Schedule FERC Nos. 264 and 183. Revised Exhibits D set forth KEPCo's load forecast and KEPCo's Capacity Resources intended to provide

power and energy to meet the forecast requirements for ten years into the future, pursuant to Article V, Section 5.1 of Rate Schedule FERC Nos. 264 and 183.

Copies of the filing were served upon Kansas Electric Power Cooperative, Inc., and the Kansas Corporation Commission.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Illinois Power Company

[Docket No. ER98–2390–000]

Take notice that on March 31, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which El Paso Energy Marketing Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1998.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Wisconsin Power and Light Company

[Docket No. ER98–2391–000]

Take notice that on March 31, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing executed Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service, establishing Engage Energy US, L.P., as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of February 26, 1998, 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: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Southwestern Electric Power Company

[Docket No. ER98–2392–000]

Take notice that on March 31, 1998, Southwestern Electric Power Company (SWEPCO), tendered for filing an estimated return on common equity (Estimated ROE), to be used in establishing estimated formula rates for wholesale service in Contract Year 1998 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., and East Texas Electric Cooperative, Inc. SWEPCO provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

Copies of the filing were served upon the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: April 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Rochester Gas and Electric Corporation

[Docket No. ES98–25–000]

Take notice that on March 26, 1998, Rochester Gas and Electric Corporation submitted an application under Section 204 of the Federal Power Act for authorization to issue short-term debt in an aggregate principal amount of not more than $200 million from June 1, 1988 through May 31, 2000.

Comment date: April 27, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–9473 Filed 4–9–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–494–002, et al.]

Wolverine Power Supply Cooperative Inc., et al.; Electric Rate and Corporate Regulation Filings

April 2, 1998.

Take notice that the following filings have been made with the Commission:

1. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–494–002]

Take notice that on March 30, 1998, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered a filing in Compliance with the Commission's December 23, 1997, Final Order requiring Wolverine to revise an agreement entitled the Lansing Board of Water and Light and MCP Members Coordination Agreement, dated July 12, 1976 (Lansing Agreement). Enclosed is a fully executed contract, effective as of December 31, 1997, terminating the Lansing Agreement.

Copies of the filing were served upon the Lansing Board of Water and Light, the Traverse City Light and Power Board, Grand Haven Board of Light and Power, and the Public Utility Commission of Michigan.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Co.

[Docket No. ER98–1665–000]

Take notice that on March 30, 1998, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies), submitted for filing a revised attachment to the Firm Point-to-Point Transmission Service agreement with Tex-La Electric Cooperative of Texas, Inc.

The CSW Operating Companies state that a copy of the filing has been served on Tex-La and on all parties to Docket No. ER98-1665–000.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Energy Clearinghouse Corporation

[Docket No. ER98–2020–000]

Take notice that on March 30, 1998, Energy Clearinghouse Corporation

(ECC), petitioned the Commission for acceptance of ECC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

ECC intends to engage in wholesale electric power and energy purchases and sales as a marketer as well as selling and marketing the same at retail, aggregating and brokering. ECC is not in the business of generating or transmitting electric power. ECC is wholly-owned by Harold E. Scherz.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Madison Gas and Electric Company

[Docket No. ER98–2055–000]

Take notice that March 30, 1998, Madison Gas and Electric Company (MGE), tendered for filing with the Federal Energy Regulatory Commission revised tariff sheets from its Original Volume No. 2 (Power Sales Tariff).

MGE states that a copy of the filing has been provided to the Public Service Commission of Wisconsin and all customers taking service under the Power Sales Tariff.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Peoples Utility Corporation

[Docket No. ER98–2232–000]

Take notice that on March 30, 1998, Peoples Utility Corporation tendered for filing an amendment application filed in the above-referenced docket.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER98–2339–000]

Take notice that on March 30, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Griffin Energy Marketing (Griffin).

Cinergy and Griffin are requesting an effective date of March 2, 1998.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98–2344–000]

Take notice that on March 30, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Griffin Energy Marketing (Griffin).

Cinergy and Griffin are requesting an effective date of March 2, 1998.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–2345–000]

Take notice that on March 30, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Merchant Energy Group of the Americas, Inc., (MEGA).

Cinergy and MEGA are requesting an effective date of March 15, 1998.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER98–2346–000]

Take notice that on March 30, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Merchant Energy Group of the Americas, Inc. (MEGA).

Cinergy and MEGA are requesting an effective date of March 15, 1998.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Pool

[Docket No. ER98–2347–000]

Take notice that on March 30, 1998, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by CSW Energy Services, Inc. (CSW). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of CSW's signature page would permit NEPOOL to expand its membership to include CSW. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make CSW a member in NEPOOL. NEPOOL requests an effective date of June 1, 1998, for commencement of participation in NEPOOL by CSW.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota Company)

[Docket No. ER98–2349–000]

Take notice that on March 30, 1998, Northern States Power Company (NSP), tendered the Electrical Services Agreement between NSP and the City of Granite Falls, MN. NSP requests an effective date of May 1, 1998.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas And Electric Company

[Docket No. ER98–2353–000]

Take notice that on March 30, 1998 Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and OGE Energy Resources, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas And Electric Company

[Docket No. ER98–2354–000]

Take notice that on March 30, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Service Agreement between LG&E and PP&L, Inc., under LG&E's Rate Schedule GSS.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas And Electric Company

[Docket No. ER98–2355–000]

Take notice that on March 30, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an Unexecuted Sales Agreement between LG&E and Virginia Power under LG&E's Rate Schedule GSS.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas And Electric Company

[Docket No. ER98–2356–000]

Take notice that on March 30, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an unexecuted Purchase and Sales Agreement between LG&E and Eastern Power Distribution, Inc., under LG&E's Rate Schedule GSS.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Interstate Power Company

[Docket No. ER98–2357–000]

Take notice that on March 30, 1998, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and ConAgra Energy Services, Inc. (ConAgra). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to ConAgra.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Madison Gas and Electric Company

[Docket No. ER98–2358–000]

Take notice that on March 30, 1998, Madison Gas and Electric Company (MGE), tendered for filing a service agreement under MGE's Power Sales Tariff.

MGE requests an effective date of February 24, 1998, which is the date the agreement was signed.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. American Electric Power Service Corporation

[Docket No. ER98–2364–000]

Take notice that on March 30, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Network Integration Transmission Service Agreement under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT 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 1, 1998.

A copy of the filing was served upon Commonwealth Edison Company and the City of Dowagiac, Michigan and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: April 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Carolina Power & Light Company, Central Louisiana Electric Company, Inc., Central Power and Light Co., Public Service Company of Oklahoma, Southwestern Electric Power Co., West Texas Utilities Company, The Detroit Edison Company, Duquesne Light Company, Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Kansas City Power & Light Co., Public Service Company of New Mexico, Sierra Pacific Power Company, and UtiliCorp United, Inc.

[Docket Nos. OA97–105–001, OA97–432–001, OA97–287–001, OA97–184–001, OA97–407–001, OA97–458–001, OA97–280–002, OA97–433–001, OA97–720–001, OA97–464–001, and OA97–446–001]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct [1] under Order Nos. 889 *et seq.*[2]

Comment date: April 17, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–9472 Filed 4–9–98; 8:45 am]

BILLING CODE 6717–01–P

[1] The revised standards of conduct were submitted between March 20 and March 30, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,035 (April 24, 1996); Order N. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997) (Order No. 889–A); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5994–8; Docket No. A–97–05]

Source Category Listing for Section 112(d)(2) Rulemaking Pursuant to Section 112(c)(6) Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This action provides a list of source categories for regulation under section 112(d) of the Clean Air Act (Act). A draft listing of this action was posted in the **Federal Register** on June 20, 1997 (62 FR 33625) and public comment was taken on that draft. A document summarizing comments and responses is available on the Internet site (www.epa.gov/ttn/uatw/112c6fac.html) and in the project docket. This action is being taken pursuant to section 112(c)(6) of the Act, as amended in 1990, and a consent decree entered in *Sierra Club* v. *Browner*, Civ. No. 95–1747 (D.D.C. 1995) (consolidated with *Sierra Club* v. *Browner*, Civ. No. 96–436 (D.D.C. 1996)). Draft and final lists were required under the amended consent decree to be completed and made available by EPA by June 11, 1997 and April 3, 1998, respectively.

This listing, under section 112(c)(6) is to identify source categories for which additional standards under section 112(d)(2) or (d)(4) can be developed, but by itself does not automatically result in regulation or control of emissions from sources within these source categories. Based on this list, EPA will perform further analyses on emissions and control methods for the listed source categories. The regulatory development analysis will determine any ultimate regulatory requirements.

DATES: Draft and final lists were required under the amended consent decree to be completed and made available by EPA by June 11, 1997 and April 3, 1998 respectively.

ADDRESSES: A docket containing information relating to the EPA's development of this notice (Docket No. A–97–05) is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, in the Air and Radiation Docket and Information Center (MC–6102), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Laurel Driver, Office of Air Quality Planning and Standards (MD–15), U.S.

Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2859, electronic mail address: driver.laurel@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this list of categories for sources for section 112(c)(6). The principal purpose of this docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's notice. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, which is listed in the addresses section of this notice.

The information in this notice is organized as follows:

I. Introduction
A. Statutory Requirements
B. Schedule
II. Background
A. Overview of Regulatory Authority
B. General Procedure
III. Changes Made From Draft Listing
A. Response to Comments
1. Comments on Emissions Inventories
2. Comments on EPA Policy
B. Other Significant Changes
IV. Listing Determination Process
A. Sources Excluded from Section 112(c)(6) Analysis
1. Exclusions Identified in Draft Listing Notices
2. Cigarette Smoke
3. Utility Emissions
4. Consumer Products
5. Refueling Emissions at Gasoline Dispensing Facilities
B. Defining ''Subject to Standards''
1. Section 112(d)(2)
2. Section 112(d)(4)
3. Section 129
C. Regulatory Coverage for Section 112(c)(6) Pollutants
V. Sources Categories that Require Listing as a Result of the Section 112(c)(6) Analysis
VI. Regulatory Requirements
A. General
B. Executive Order 12866 and Office of Management and Budget (OMB) Review
Table 1. Summary of 1990 Emission Inventory Data for Section 112(c)(6) Pollutants (TONS/YRS)
Table 2. 1990 Anthropogenic Stationary Source Category Percentage Contributions and Associated Regulations
Table 3. Cross-Reference Between the Section 112(c)(6) Inventory of Sources and Applicable Regulations
Figure 1. Percentage Contributions Of Total Emissions—Included from Regulatory Analysis

I. Introduction

A. Statutory Requirements

Section 112(c)(6) of the Act prescribes the following program for seven specific pollutants:

> With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall, not later than 5 years after November 15, 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section. Such standards shall be promulgated not later than 10 years after November 15, 1990. This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.

B. Schedule

The EPA has entered into a consent decree with the Sierra Club Legal Defense Fund, Inc., in response to *Sierra Club* v. *Browner,* Civ. No. 95–1747 (D.D.C. 1995) (consolidated with *Sierra Club* v. *Browner,* Civ. No. 96–436 (D.D.C. 1996)). These actions concern performance of certain duties under Act sections 112(c)(3), (c)(6), (k), and 202(l). The consent decree, as amended, required, among other actions, that EPA complete a draft of the list described in section 112(c)(6) no later than June 11, 1997, and make a final list available no later than April 3, 1998.

II. Background

A. Overview of Regulatory Authority

Section 112 of the Act, as amended in 1990, contains the EPA's authorities for reducing emissions of hazardous air pollutants (HAP). Section 112(b)(1) contains an initial list of 189 HAP (revised to contain 188 HAP, 61 FR 30816, June 18, 1996). Section 112(c)(1) requires the Administrator to publish a list of all categories and subcategories of major sources and area sources of the air pollutants listed in or pursuant to section 112(b). Section 112(d) requires the Administrator to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAP listed in section 112(c). Section 112(d)(2) specifies that emission standards promulgated under the section shall require the maximum degree of reductions in emissions of the HAP subject to section 112 that are deemed achievable, i.e., the maximum achievable control technology (MACT). These regulations are often termed ''technology-based'' standards because they are based on the degree of emissions control achievable through the application of technologies that the best performing sources in the particular source category are using. These technologies may include equipment or process design, chemical substitution, collection and treatment of emissions, work practices, and other measures.

Section 112(d)(4) provides for consideration of health thresholds with an ample margin of safety. Certain other sections of section 112 require EPA, in addition to technology-based standards, to evaluate risk to public health and the environment in determining whether other control measures are appropriate.

Section 112(c)(6) names seven specific HAP that EPA must evaluate to assure that certain sources of these HAP have been identified and subjected to standards.

B. General Procedure

In order to determine the sources of the seven HAP named in section 112(c)(6), EPA developed a 1990 base-year emissions inventory of known sources to the atmosphere of each HAP (refer to the inventory document or the draft listing notice for a discussion of the base year selection). This inventory of all sources (whether or not the emissions are considered further in the section 112(c)(6) analysis) is summarized in Table 1.

Once these sources of the total emissions were identified, only the stationary, anthropogenic source categories which fall within the scope of section 112 (or the equivalent section 129) were evaluated to determine action necessary under section 112(c)(6). (More discussion of source categories excluded from the section 112(c)(6) analysis follows in section IV.A.)

Once the list of source categories was revised, the remaining pool of source categories was evaluated to determine whether 90 percent of those emissions are subject to standards. A summary of source categories included in the section 112(c)(6) analysis and their percent contributions are contained in Table 2. The majority of the source categories were found to be already subject to either section 112(d)(2) or section 129 standards (see section IV.B.3. regarding section 112(c)(6) credit for section 129 standards) or listed for such regulation. The EPA reviewed the coverage of source categories to determine whether additional source categories are needed to assure that not less than 90 per centum of the aggregate emissions of each pollutant are subject to standards.

The EPA published a draft listing of source categories accounting for the section 112(c)(6) HAP emissions and the source categories needed to meet the 90 percent requirement in the **Federal Register** on June 20, 1997 (62 FR 33625). The notice and the base year inventory document contain detailed information about emissions inventory development methodology and its review process. In response to comments on this draft and to new data that have been collected in conjunction with concurrent EPA projects, EPA has made significant changes to the inventory since the draft package. These changes are discussed in section III.

Additionally, EPA has prepared Table 3, which provides a cross-reference between the inventory prepared for section 112(c)(6) and the list of categories under section 112(c)(1) for section 112(d) standards. This table does not change any of the category definitions or listing actions, but is provided solely for the convenience of the public.

While this assessment uses the best available emissions data currently available for 1990, EPA cannot, at this time, assure that this calculation of the 90 percent will remain constant for two reasons: (1) EPA has not completed the process of developing section 112(d)(2) standards and, therefore, cannot guarantee the outcome of those standards; and (2) the emissions inventory estimates, and the estimates for emissions allocations to major and area sources, for any given source category are likely to change as more source category specific information is collected in the process of developing standards. Congress required this listing activity to be undertaken before completion of many regulatory analyses, and EPA believes this notice represents the best estimate of emissions of section 112(c)(6) pollutants and their regulatory coverage possible at this time.

III. Changes Made From Draft Listing

The EPA posted the draft section 112(c)(6) listing in the **Federal Register** on June 20, 1997. The EPA posted the notice, the 1990 base year inventory, and an explanatory fact sheet on the EPA's Internet web site (www.epa.gov/ttn/uatw/112c6fac.html). The EPA also notified trade associations, environmental groups, regulatory agencies, and other parties who had expressed interest or supplied data to alert them of the availability of the section 112(c)(6) package. The EPA accepted comments on the draft listing and base year inventory over a 30-day comment period. A comment summary document is posted on the web site and is available in the docket. A discussion of substantive changes in the listing action resulting from comments and from data collected through related EPA projects follows.

A. Response to Comments

A total of 27 separate comment letters were received regarding the June 20, 1997 **Federal Register** package. Several of the comments pertained to the accompanying 1990 base year emissions inventory supporting the section 112(c)(6) listing process. Within the 27 individual comment letters, approximately 50 separate comment issues were identified. These comments pertained to both technical and policy issues. The EPA has prepared a document, ''Summary of Public Comments on the section 112(c)(6) Draft Listing Notice,'' that summarizes all technical and policy comments received on the July 20, 1997 section 112(c)(6) **Federal Register** package. Similarly focused comments have been aggregated and summarized in the document, along with the EPA responses to the comments. The responses indicate how a technical or policy issue is being addressed in the final **Federal Register** listing notice for section 112(c)(6) or in the final supporting emissions inventory. The comment summary/response document can be found in the docket for the section 112(c)(6) project and on the EPA air toxics web page (http://www.epa.gov/ttn/uatw/112c6fac.html).

1. Comments on Emissions Inventories

The majority of the technical comments regarded items relating to some aspect of an emissions inventory estimate for a source category. Most of these comments questioned the use of a particular emission rate or factor or the use of an activity rate for a source category. The EPA evaluated the technical data submitted and revised several emissions estimates based on these comments. Any changes made in emissions estimates based on these comments are reflected in the base-year inventory document, Tables 1 and 2, and Figure 1 at the end of this notice.

2. Comments on EPA Policy

The policy-oriented comments predominantly addressed what regulatory programs could be counted as fulfilling the section 112(c)(6) ''subject to standards'' requirement, what portion of total source category emissions can be credited as being ''subject to standards'' for the section 112(c)(6) 90 percent requirement, what source categories should be included in the 90 percent ''subject to standards'' analysis, and what are appropriate definitions for the polycyclic organic matter (POM) and dioxin/furan pollutants. Comments also stated that EPA should do more to communicate the emissions reductions that industries have done for section 112(c)(6) pollutants since 1990 and that current emissions are significantly below 1990 levels; and that the aviation gasoline distribution category should not be included in the listing since there is currently no viable substitute for leaded aviation fuels and recent discussions between the industry and the Federal Aviation Administration (FAA) indicated no regulatory programs would be pursued for leaded aviation fuels. The most substantive of these comments and EPA responses are summarized below:

Comment: Several commenters were concerned that EPA consider aviation safety and performance standards when considering ''Gasoline Distribution (Aviation)'' as a source category under section 112(c)(6).

Response: The EPA will consider such safety standards. Section 112(d)(2) standards require using the technology and practices of the best performers within an industry to set the standard for the rest of the industry.

Comment: One commenter stated that credits for stage II gasoline distribution regulations under sections 182(b)(3) and 202(a)(6) are only appropriate if they are protective of human health.

Response: Section 112(c)(6) does not require EPA to determine an emissions level ''protective of human health.'' In any case, EPA is not including stage II gasoline distribution emissions in the section 112(c)(6) analysis for the reasons described in IV.A.5. below.

Comment: One commenter stated that in its section 112(c)(6) proposal, EPA improperly and illegally counts emissions as ''subject to standards'' that are not yet subject to standards, that are subject to standards other than MACT, or that are only partially subject to standards. Only emissions that are subject to standards under section 112(d)(2) and 112 (d)(4) can be counted toward the 90 percent goal contained in section 112(c)(6).

Response: The EPA made changes in the final listing action in response to this comment. First, HAP emissions from electric utility steam generating units were removed from the analysis. Section 112(c)(6) provides that, ''This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.'' Furthermore, section 112(n)(1)(A) requires EPA to perform a study of the public health hazards posed by HAP

emissions from electric utility steam generating units and to regulate those sources if ''appropriate and necessary after considering the results of the study.'' The EPA believes that those provisions give the Agency discretion to exclude utility emissions from listing and regulation under section 112(c)(6). Congress enacted section 112(n)(1)(A) to establish the mechanism for determining whether regulation of utility HAP emissions under section 112 was ''appropriate and necessary'' and section 112(c)(6) specifically acknowledges that function. The EPA believes that the language used in section 112(c)(6) reflects Congress' determination that the mechanism established by section 112(c)(6) is not appropriate for the regulation of utility HAP emissions. Therefore, EPA has removed utility HAP emissions from this analysis.

Second, EPA has added information on whether each Industrial Combustion Coordinated Rulemaking (ICCR) category will be subject to section 112 or section 129 standards. (EPA has found section 112(d)(2) and 129 standards to be substantively the same, as discussed in the draft listing **Federal Register** notice.)

Comment: One commenter stated that in determining source categories subject to standards and counting emissions toward the section 112(c)(6) 90 percent goal, EPA has assumed that 100 percent of all emissions for each MACT category are major source emissions. Therefore, all emissions from a category for which there is a MACT are covered, even if there are actually area sources that may not be subject to the MACT.

Response: The EPA has made a significant effort to characterize emissions from each of the section 112(c)(6) emissions source categories. These area and major source emissions allocations are detailed in the draft and final emissions inventory documents which have been made available with the draft and final listing notices. Information on these area/major allocations comes primarily from work conducted in association with MACT standard development or derived from definitions of facilities. The EPA finds the MACT data to be of generally higher quality than the facility definition data, which are expected to improve as MACT standards are developed for these categories.

For the section 112(c)(6) analysis, in cases where a regulation for a given source category has been promulgated, the percent of emissions subject to the standard has been credited. For example, in the source category gasoline distribution stage I, only 10 percent of the emissions are from major sources subject to the standard and have been counted toward the 90 percent goal. For source categories with regulations that have not yet been promulgated, EPA will subject each significant area source category to standards as directed by section 112(c)(6). When the regulations for each of those categories are developed, EPA will analyze the data specific to those sources and determine, under section 112(d), in what manner requirements will be established. Some area categories may be negligible contributors to the 90 percent goal, and as such pose unwarranted burdens for subjecting to standards. These trivial source categories will be removed from the listing as they are evaluated since they will not contribute significantly to the 90 percent goal.

Comment: One commenter stated that EPA's treatment of emissions in the proposed notice implies that the Agency believes it has identified all source categories of section 112(c)(6) pollutant emissions and, therefore, has accounted for 100 percent of emissions. The EPA should document the basis for this assumption. If this cannot be documented, the EPA should not assume that 90 percent of the emissions reported in the proposal notice equal 90 percent of the total amount of section 112(c)(6) pollutant emissions.

Response: The EPA has documented all sources for which emissions data could be found and has indicated all source categories for which emissions are suspected but no data to estimate emissions could be found. The methodology for developing the emissions inventory estimates is described in detail within the base year inventory document. Any supported additional data that have been submitted by reviewers have also been incorporated. The EPA believes it has sufficiently supported its emissions estimates and has been as inclusive as possible of all relevant data. The EPA further notes that the commenter has supplied no information which would contradict or refute EPA's belief that all source categories have been identified.

Comment: One commenter stated that the only MACT standards that are countable toward the section 112(c)(6) 90 percent requirement are those standards that specifically establish requirements for section 112(c)(6) HAP (i.e., EPA cannot claim credit for a MACT for benzene as subjecting the source to standards for dioxin), and that a section 112(d)(2) standard for which EPA claims credit for section 112(c)(6) purposes must specifically regulate the emissions of the section 112(c)(6) pollutant.

Similarly, another comment asserted that Congress intended for EPA to reduce section 112(c)(6) HAP emissions by even more than they would be reduced by any other section 112(d)(2) standard means, and that this is why they imposed especially stringent emissions targets. The commenter asserted that this interpretation is supported by the legislative history of the Act.

Another commenter stated it is not appropriate for EPA to have claimed section 112(c)(6) credit for section 112(d)(2) applicability and MACT emission reductions when the subject standard does not reduce nor require any reductions for the section 112(c)(6) HAP. If EPA evaluates this situation for a category and determines that no real reductions are possible under a given MACT, the commenter stated that they should report this finding to Congress. The commenter further argued that claiming these credits for standards that do nothing in terms of real emission reductions is not appropriate.

Response: The EPA responds that section 112(c)(6) and 112(d) does not require a specific quantitative reduction in emissions for any particular HAP. Section 112(c)(6) calls for EPA to assure that certain sources ''are subject to standards under subsection 112 (d)(2) or (d)(4).'' The relevant sources are selected on the basis of whether they emit the seven listed HAP. Section 112(c)(6) does not, however, require that EPA achieve a specific amount of reductions of those seven listed HAP. Today's action satisfies section 112(c)(6) by assuring that source categories accounting for 90 percent of the emissions are subject to standards under section 112 (d)(2) or (d)(4).

Section 112 (d)(2) and (d)(4), in turn, define the mechanism for setting standards. That mechanism establishes a minimum level of performance. Like section 112(c)(6), it does not mandate any particular percentage reduction in emissions of any particular HAP. However, standards under section 112(d)(2) will be reevaluated for ''residual risk'' under section 112(f). Under this provision, EPA can impose additional standards, if necessary, ''to provide an ample margin of safety to protect public health * * * or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.''

Comment: Some commenters emphasized the point that in order for area sources within the source categories listed in the section 112(c)(6) inventory to be regulated or for the area sources within the applicable MACT to

be regulated, EPA must first make a determination that the sources pose an adverse threat to human health or the environment pursuant to section 112(c)(3) requirements. The EPA cannot impose MACT or any other control requirements on area sources without making such a determination first.

Similarly, a commenter did not believe that section 112(c)(6) mandates the control of area sources within a listed source category. The commenter went on to say that the proposal notice was unclear on whether area sources were presumed to be affected by the credited MACT, but that whether they were or were not, area sources within the Portland cement industry are not presumed to be regulated by the industry MACT standards as a result of their inclusion in the section 112(c)(6) source list.

Response: The EPA responds that section 112(c)(6) requires that sources accounting for at least 90 percent of emissions of the specified pollutants be subject to section 112(d)(2) standards or section 112(d)(4). Unlike section 112(c)(3), this requirement does not call for, nor does EPA believe it permits, a finding of health or environmental threat from area sources to determine if such sources need to be included to meet the 90 percent requirement. However, EPA will determine whether specific regulation of the area source component of a source category is appropriate, or necessary to meet the 90 percent goal, based on more source category-specific data collected as part of the regulatory process.

Comment: Another commenter challenged that EPA should not, in its listing for section 112(c)(6), split the Portland cement category into two categories, one for sources combusting hazardous waste fuel and one for sources not combusting hazardous waste fuel.

Response: Section 112(c) generally authorizes EPA to establish source categories or subcategories for regulation as appropriate. The EPA chose to split hazardous and non-hazardous waste-burning source categories in order to reflect the distinctions made in MACT standards currently under development within EPA's Office of Air Quality Planning and Standards (OAQPS) and the Office of Solid Waste (OSW). The OAQPS rule, which is not yet proposed, applies to cement kilns that do not burn hazardous waste and to other HAP-emitting sources at a cement plant, regardless of whether or not the cement kiln burns hazardous waste. Cement kilns that burn hazardous waste will be covered by the hazardous waste combustor rule which was proposed April 19, 1996 (61 FR 17358). Approximately 40 out of the 210 cement kilns in the U.S. burn hazardous waste as a fuel. The sources burning hazardous and nonhazardous fuel are being regulated under separate actions due to their different emissions characteristics, different air pollution controls, and separate classification by virtue of section 3004 (q) of the Resource Conservation and Recovery Act.

Comment: Several commenters responded to EPA's request for input on the most appropriate definition of POM for use in this action. While many comments provided information that will improve the emissions estimates for the various source categories emitting these compounds, EPA did not receive information which would favor the selection of one surrogate approach over another as a basis to make listing determinations for all categories associated with emissions of section 112(c)(6) HAP.

Response: POM is defined in section 112(b) to ''[i]nclude[ ] organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.'' The complex mixture of POM consists of literally thousands of organic compounds, and no standardized method exists at this time to measure these emissions. There are, however, some valid surrogates for POM that provide sufficient emissions inventory data for this analysis: (1) Extractable organic matter (EOM), which is composed of the solvent-extractable fraction of particulate matter, (2) the sum of the seven polynuclear aromatic hydrocarbon compounds that are probable carcinogens (7–PAH), and (3) the sum of the sixteen PAHs measured in EPA test method 610 (16–PAH). (For a more complete discussion of POM surrogates, refer to the section 112(c)(6) emissions inventory document.) The EPA and others are engaged in further efforts to better characterize the constituents of POM that are most significant in evaluating health and environmental effects.

Rather than circumventing that effort by selecting one surrogate, EPA collected and used data for all three approaches in the section 112(c)(6) assessment. As a result, the Agency did not discard any of the possible surrogates for POM; the section 112(c)(6) listing reflects an analysis that satisfies the 90 percent requirement using each one of the three approaches.

Comment: One commenter argued that use of toxic equivalency (TEQ) is inappropriate as a surrogate for 2,3,7,8-TCDD. While 2,3,7,8-TCDD is a single compound, TEQs sum emissions of various dioxins and furans based on toxic equivalency (see inventory document for more discussion of this issue).

Response: As explained in the draft listing **Federal Register** notice, EPA chose to use the TEQ surrogate for evaluating 2,3,7,8-TCDD because data on 2,3,7,8-TCDD emissions were not available for analysis. Both EPA's MACT program and the ongoing Office of Research and Development's Dioxin Reassessment Study predominantly report emission estimates on a 2,3,7,8-TCDD TEQ basis. Therefore, to maximize the number of source categories for which national estimates could be determined on a common basis and best carry out the objectives of section 112(c)(6), EPA chose to use the TEQ method for inventorying 2,3,7,8-TCDD and 2,3,7,8-TCDF as specified under section 112(c)(6).

B. Other Significant Changes

In addition to data supplied via the comments on the draft listing package, EPA also incorporated significant changes to the section 112(c)(6) base year emissions inventory based on information gathered through another EPA program. The urban area source program (section 112(c)(3) and 112(k)) requires an inventory information collection effort which includes some of the section 112(c)(6) pollutants. This emissions inventory effort has been under way concurrently with the development of the section 112(c)(6) analysis, with public comment on that inventory ending in November 1997. The data collected from that program have been incorporated into the section 112(c)(6) inventory and are reflected in the base year inventory document and the tables and figures included in this notice.

IV. Listing Determination Process

As described before, early in the analysis, source categories that are not considered appropriate for section 112 regulation (i.e., nonstationary, nonanthropogenic sources) were identified and excluded from further evaluation for regulation under section 112(c)(6). From this revised inventory list, source categories currently considered to be subject to section 112(d)(2) and (d)(4) standards were identified, along with source categories that are subject to section 129 standards which substantively meet equivalent requirements.

The emission contributions from these source categories were tallied for each pollutant to determine whether the sources of 90 percent of emissions are

already subject to standards or listed for such standards, as required by section 112(c)(6). Those pollutants that do not have 90 percent coverage require listing of additional source categories under section 112(c)(6) to attain the 90 percent level.

A. Sources Excluded From Section 112(c)(6) Analysis

Certain sources of section 112(c)(6) pollutants, although included in the 1990 base year emissions inventory documentation, are not included in the analysis of source categories subject to section 112(c)(6). For example, section 112 applies to stationary sources, therefore mobile source emissions were excluded.

1. Exclusions Identified in the Draft Listing Notice

In addition to mobile source emissions, emissions from wild and prescribed fires, residential fuel combustion, and pesticide application were also excluded. The rationale for these exclusions was discussed in the draft listing notice. In this notice, EPA has also excluded cigarette smoke, utility boilers emissions, consumer products emissions, and refueling emissions at gasoline dispensing facilities. A discussion of each of these excluded source categories follows.

2. Cigarette Smoke

Although the section 112(c)(6) emissions inventory includes estimates of emissions from cigarette smoke, EPA does not deem this to be a source category intended for regulation as a stationary source under section 112. Section 112(a)(3) defines ''stationary source'' by referring to section 111(a), which provides that a stationary source is ''any building, structure, facility, or installation which emits or may emit any air pollutant.'' Cigarette smoke does not fall within that definition because it is not emitted by a fixed edifice such as a ''building, structure, facility, or installation.'' Therefore, this source category was excluded from the inventory of emission sources that are potentially subject to standards under section 112(c)(6).

3. Utility Emissions

The language in section 112(c)(6) states that the ''paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.'' The EPA believes this statement gives the Agency discretion about whether EPA is required to include utility emissions in the section 112(c)(6) analysis. In section 112(n)(1)(A), EPA is required to assess the HAP emissions from electric utility steam generating units and to regulate if ''appropriate and necessary.'' More information about the utility study can be obtained from the Clean Air Act Amendments bulletin board of the EPA's electronic Technology Transfer Network (TTN) under ''Recently Signed Rules,'' (http://ttnwww.rtpnc.epa.gov).

The EPA believes that section 112(n)(1)(A) is the appropriate authority for evaluating utility emissions and determining the necessity of regulation for this source category. In the draft section 112(c)(6) listing notice, EPA proposed to credit the emissions of section 112(c)(6) pollutants from utilities as subject to standards through section 112(n)(1)(A). This interpretation was challenged by commenters. Therefore, as discussed above, EPA has determined it to be more appropriate to exclude utility emissions from those considered for the section 112(c)(6) analysis and to address them under section 112(n)(1)(A).

4. Consumer Products

Consumer products, such as surface coatings, metal cleaning solvents, personal care products, and household cleaning products contribute significantly to emissions of POM, as defined in the 16-polyaromatic hydrocarbon (PAH) definition. These emissions are composed primarily of naphthalene. These emissions come primarily from the use, consumption, storage, disposal, destruction, or decomposition of such products, and as such, do not fit the definition of ''stationary source'' provided in sections 111(a)(3) and 112(a)(3). These emissions were not quantified in the draft section 112(c)(6) emissions inventory or draft listing **Federal Register** notice. The emissions estimates are a result of inventory-development work on a concurrent EPA project related to emissions in urban areas (section 112(c)(3) and 112(k)). The EPA believes it is important that the emissions from consumer products be identified and the public informed of their potential significance. Although these emissions account for a significant fraction of total 16-PAH emissions, EPA does not consider them appropriate for regulation under section 112 and believes instead that they should be addressed through other means.

Regulations for consumer products have been proposed for control of volatile organic compounds (VOC) pursuant to section 183(e) of the Act and are expected to result in significant reductions in VOC. Naphthalene is a VOC. This provision requires EPA to account for sources of 80 percent of total VOC emissions from consumer products in ozone nonattainment areas and subject these sources to best available controls.

The proposed rule would affect approximately 220 consumer product manufacturers and importers nationwide. Many of these companies are already taking steps to reformulate their products to emit less VOC. The EPA worked closely with these companies in developing the proposed rule.

More information on the proposed rule for consumer products can be downloaded from the Clean Air Act Amendments bulletin board (under ''Recently Signed Rules'') of EPA's electronic Technology Transfer Network (TTN), or by calling (919) 541–5742.

5. Refueling Emissions at Gasoline Dispensing Facilities

Refueling emissions at gasoline dispensing facilities (gas stations) occur when vapors are displaced from a motor vehicle's fuel tank during the refueling process. Refueling accounts for 374 tons of the 16-PAH emissions (naphthalene) in the 1990 base year inventory. The EPA recognizes the importance of controlling these emissions but believes that they are not appropriately the subject of regulation under section 112.

Promulgation of a section 112 standard to control emissions from refueling would frustrate Congress' intent to regulate those emissions through sections 182(b)(3) and 202(a)(6). Rather than treating refueling emissions in the same manner that they treated other HAP emissions, Congress elected to provide a special, comprehensive program specifically tailored to refueling.

The first step of the program, in section 182(b)(3), sets forth a short-term solution. It requires the installation of controls on fuel pumps to recover refueling emissions (''stage II'') and includes a schedule which calls for prompt compliance with its requirements. Stage II was initially required for gasoline dispensing facilities which sell more than 10,000 gallons of gasoline per month (or 50,000 gallons per month, in the case of independent small business marketers) in all areas that are ''moderate'' or worse nonattainment areas for ozone. In addition, section 184(b)(2) of the Act requires all areas in the ozone transport region (OTR) to adopt stage II controls or control measures capable of achieving comparable emissions reductions.

The second step, in section 202(a)(6), mandates the use of vehicle-based vapor

recovery systems in all new light-duty vehicles (''onboard''). The schedule provided in section 202(a)(6) allows for a lengthier compliance process that imposes onboard controls after the installation of Stage II. Upon promulgation of EPA's onboard regulations, the section 182(b)(3) Stage II requirements no longer applied to ''moderate'' ozone nonattainment areas, although States were free to leave stage II controls in place. For instance, some States concluded that stage II was necessary for them to meet reasonable further progress or attainment and maintenance requirements under title I of the Act. Moreover, States are free under section 116 of the Act to apply Stage II requirements more stringently than is federally required. Once EPA determines by rule that those onboard controls are in widespread use throughout the motor vehicle fleet, the Stage II controls may be scaled back in ''serious'' or worse ozone nonattainment areas, while areas in the OTR will remain subject to the requirements of section 184(b)(2) to apply Stage II or comparable measures.

Enactment of sections 182(b)(3) and 202(a)(6) was preceded by lengthy, detailed debate about the all aspects of Stage II and onboard systems (e.g., S. Rep. No. 231, 100th Cong., 1st Sess. 404–407 (1987)), including the safety of the systems (e.g., Environmental and Natural Resources Policy Division, Library of Congress, 103d Cong., 1st Sess., A Legislative History of the Clean Air Act Amendments of 1990, at 10729–33 (Comm. Print 1993) (statement of Sen. Coats)), the relationship between the requirements (e.g., H.R. Rep. No. 490, 101st Cong., 2d Sess., pt. 1, at 303–304 (1990)), and the costs imposed by the controls (e.g., Legislative History, *supra*, at 4837, 4843 (statement of Sen. Chafee)). Moreover, Congress recognized that the Stage II and onboard requirements of sections 182(b)(3) and 202(a)(6) would produce substantial toxics benefits:

> Both Stage II and onboard are designed to capture emissions from refueling of mobile sources. They capture emissions of benzene, a known carcinogen, and other toxic pollutants (S. Rep. No. 231, at 23).
>
> Two other benefits attributable to Stage II systems are reduced human exposure to toxics compounds and increased safety (S. Rep. No. 228, 101st Cong., 1st Sess. 40 (1989)).
>
> Onboard systems also reduce human exposure to toxic pollution (S. Rep. No. 228, at 94).

See also Legislative History, *supra*, at 5617–18 (statement of Sen. Baucus); S. Rep. 231, at 137, 460.

Congress' intent to comprehensively address refueling emissions from gasoline dispensing stations through stage II and onboard requirements is clearly illustrated by the focused regulatory scheme provided in those provisions, by the prolonged and detailed debate on the issue, and by the recognition that sections 182(b)(3) and 202(a)(6) control toxics. Imposition of a section 112 standard upon that unique arrangement would frustrate Congress' intent to control emissions from refueling through the comprehensive regulatory structure anticipated by sections 182(b)(3) and 202(a)(6).

To be sure, other types of emission sources are subject to regulation under more than one provision of the Act. For example, an industrial facility may have both section 110 State implementation plan requirements and section 112 air toxics standards. In those situations, sources become subject to multiple requirements because Congress constructed those parts of the Act to allow for overlapping coverage. Sections 110 and 112 are intended to apply broadly to a wide range of sources without excluding the application of other general requirements. In the case of evaporative losses from vehicle refueling, however, Congress required stage II and onboard as controls specifically focused on regulating the emissions from a single type of emission point after significant and lengthy discussion and after recognizing that those controls accomplish the goals of section 112. The unique structure and history of sections 182(b)(3) and 202(a)(6) indicate Congress' intent to strike a balance between burdens on gasoline station owners and refiners and to achieve a uniform, comprehensive regulatory approach to control of refueling emissions. By contrast, the remainder of the Act contemplates the application of multiple provisions to sources.

Recognition of Congress' plan to control refueling emissions through stage II and onboard, rather than through MACT, does not affect the public health. As mentioned above, Congress understood that the emission reductions achieved by sections 182(b)(3) and 202(a)(6) will be comparable to those achieved by a standard under section 112. The onboard controls yield a 95 percent emissions reduction over uncontrolled levels. Due to fleet turnover, 90 percent of light duty vehicles are expected to be equipped with onboard controls by 2015. Once it is fully phased in, onboard will achieve that level of control for 97 percent of new vehicles and 94 percent of refueling emissions. That will lead to reductions of VOC and HAP emissions of 300,000 to 400,000 tons per year. Imposition of a section 112 standard on refueling would not be likely to achieve greater reductions.

More information about stage II and onboard can be obtained at EPA's Internet web site (http://www.epa.gov/OMSWWW/gopher/Regs/LD-hwy/Onboard/orvrq&a.txt).

B. Defining ''Subject to Standards''

The focus of the regulations under section 112(d) has been to initially develop standards for emissions of air toxics based on the MACT available for each industry source category emitting HAP. Section 112(c)(6) specifically states that sources that account for 90 percent of emissions of section 112(c)(6) specific pollutants be subject to standards under section 112(d)(2) or 112(d)(4). It is important to recognize that in making sources ''subject to standards,'' the language of section 112(c)(6) does not specify either a particular degree of emissions control or a reduction in these specific pollutants' emissions to be achieved by such regulations. Rather, specific control requirements are set as referenced in section 112(d)(2) and (d)(4).

In the next phase of section 112 programs (under section 112(f)), EPA will evaluate the necessity of further emissions reductions in order ''to provide an ample margin of safety to protect public health . . . or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.'' These latter determinations will rely on information required by the 1990 Amendments to the Act or gathered since they were passed. For example, the Dioxin Reassessment Study, the Great Waters Report to Congress, and the Mercury Report to Congress, represent extensive assessments of the health effects and the potential exposure of humans and the environment to the pollutants identified in section 112(c)(6). This information will be used in future decisions regarding the imposition of health-based emission reductions.

1. Section 112(d)(2)

Section 112(d)(2) standards are based on the maximum level of control, defined in section 112(d)(3) as the ''maximum degree of reduction in emissions that is deemed achievable'' (i.e., MACT), as determined by the best-performing 12 percent of sources within the source category for existing sources. Section 112(d)(2) provides for measures that (a) reduce the volume or eliminate emissions of HAP through process

changes, substitution of materials or modifications; (b) enclose systems or processes to eliminate HAP emissions; (c) collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; (d) are design, equipment, work practice, or operational standards (including requirements for operator training or certification); or (e) are a combination of the above.

Many source categories, which have been identified as ones that account for the emissions of the various section 112(c)(6) pollutants, have previously been listed for section 112(d)(2) regulation and appear on the source category list promulgated for section 112(c)(1) (57 FR 31576, July 16, 1992; 61 FR 28197, June 4, 1996). These standards are at varying phases of completion, and, for many, analysis has not yet been initiated. In developing the basis for today's action, EPA relied on the best available information. However, as EPA recognizes, and many commenters have noted, many uncertainties remain concerning the accuracy of its identification of source categories and estimates of emissions. As the Agency proceeds to develop appropriate emission standards, it will necessarily develop improved source category-specific information, which may affect the estimates of total emissions, the percentage of emissions subject to standards, allocation of emissions within a source category to major and area sources, and source categories for which standards need to be developed. As it proceeds to develop these standards and associated information, EPA intends to further evaluate this information against its obligation to assure that sources accounting for not less than 90 percent of emissions are subject to standards. In accordance with section 112(c)(6), EPA is ultimately responsible for adopting regulations to meet the 90 percent requirement.

In cases where regulatory development has proceeded to a point such that data are sufficient to estimate the portion of the emissions from a given source category that will be subject to the regulation, such an estimate was made. For instance, if a section 112(d)(2) standard will apply only to sources determined to be major as defined in section 112(a), then only the fraction of the total source category emissions that are estimated from major sources would be counted as subject to standards. For example, the section 112(d)(2) standard for stage I gasoline distribution (40 CFR part 63, subpart R, promulgated December 14, 1994) only regulates major sources, which account for 10 percent of emissions from that source category. As a result, the section 112(c)(6) analysis only credits 10 percent of the emissions (refer to Table 2).

2. Section 112(d)(4)

Congress provided in section 112(d)(4) that EPA could, at its discretion, develop risk-based standards for HAP ''for which a health threshold has been established,'' provided that the standard achieves an ''ample margin of safety.'' The full text of the provision reads:

> With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

A determination that a threshold exists has not been made for alkylated lead, POM, hexachlorobenzene (HCB), polychlorinated biphenyls (PCB's), 2,3,7,8-TCDF, or 2,3,7,8-TCDD. Therefore, section 112(d)(4) authority has not been, and cannot yet be, used to regulate the emissions of any of these pollutants.

The EPA has established a reference dose (RfD) for methyl mercury and a reference concentration (RfC) for inorganic mercury, but section 112(d)(4) has not been used in regulating the emissions of these mercury compounds. Regulation based on these mercury thresholds is difficult because EPA lacks a method to link deposition or ambient concentrations to exposure concentrations for these pollutants. (A more detailed discussion of section 112(d)(4) appears in the draft listing **Federal Register** notice.)

3. Section 129

Some source categories identified as contributors to the estimates of emissions of section 112(c)(6) pollutants are not currently listed for regulation under section 112(d)(2), but are subject to section 129 standards.

Because section 129 provides for a substantively equivalent level of control as section 112(d)(2) and because section 129(h)(2) prohibits subjecting solid waste incinerators to both section 129 and section 112(d) standards, the Agency believes that it is appropriate to include section 129 as a regulatory instrument equivalent to section 112(d)(2). The EPA further believes that listing source categories for section 112(c)(6) that are already covered under section 129 would lead to a redundant regulatory effort and would produce no additional environmental benefit. The EPA is, therefore, crediting the emissions of section 112(c)(6) pollutants from section 129 source categories as subject to standards under section 112(c)(6). A more complete discussion of section 129 standards and comparison to section 112(d)(2) standards is provided in the draft listing **Federal Register** notice.

Some section 129 standards are being developed as part of the ICCR. The ICCR is based on the authority of sections 112 and 129. Each of the ICCR source categories will be subject to either section 112 or 129 authority (as noted in Table 2) depending on the materials the source category burns (a conventional fuel or a waste product). This project was discussed in detail in the draft listing notice. Source categories previously identified in the draft notice as ICCR standards have been modified to identify whether they will be subject to section 112 or section 129 in conjunction with the ICCR. These identifications of section 112 and 129 standards may change as EPA determines whether combustion devices used at these sources burn ''fuel'' or ''waste.'' Additional information about the ICCR is available on the EPA TTN or at the ICCR Main Menu on the Internet (http://ttnwww.rtpnc.epa.gov). When accessing the World Wide Web site, select ''TTN BBS Web'' from the first menu, then select ''Gateway to Technical Areas'' from the second menu, and, finally, select ''ICCR-Industrial Combustion Coordinated Rulemaking'' from the third menu.

C. Regulatory Coverage for Section 112(c)(6) Pollutants

Table 2 provides a summary of the source categories that emit section 112(c)(6) HAP and the percentage of emissions attributable to each category. Note that as described in section IV.A., only the sources that EPA believes are appropriate for regulation under section 112 are included in this analysis. Table 1 shows the full emissions inventory.

In Table 2, the percent contributions of source categories that are eligible for section 112(d) standards (and, therefore, included in the section 112(c)(6) analysis) are summed for each pollutant in order to identify those section 112(c)(6) pollutants that do not have at least 90 percent of emissions subject to standards. Those section 112(c)(6) pollutants at or above the 90 percent level are: POM (as defined by EOM), 2,3,7,8-TCDD, mercury, PCB's, and HCB. These pollutants do not appear, at this time, to require the listing of any additional source categories for future rulemaking.

Based on the 1990 baseline emissions inventory, the 90 percent subject to standards requirement is not met for the

following pollutants: POM (as defined by 7-PAH), POM (as defined by 16-PAH), and alkylated lead. For these pollutants, additional source categories will have to be identified to attain the 90 percent level. These additional source categories are being listed under section 112(c)(6) for section 112(d)(2) or (d)(4) standards development. As noted earlier, these listings, as presented now, are based on the best information that is currently available. Given the above mentioned uncertainties, however, EPA recognizes that the list may be subject to change. Hence, the EPA anticipates that it may, in the future, amend the list of source categories published in today's notice, in order to fulfill the requirement to subject sources accounting for 90 percent of the emissions of the section 112(c)(6) HAP to standards. For example, as EPA evaluates a particular source category, it may find that area sources contribute insignificantly to the emissions of POM and regulation would not be necessary to attain the 90 percent requirement. In such a situation, EPA may find it appropriate to take credit for regulation of the major sources only. As better estimates of emissions are developed during the MACT development process, EPA intends to evaluate this information against its obligation to assure that sources accounting for 90 percent of emissions are subject to standards. Any future evaluation of the 90 percent requirement would have to be based on 1990 emissions in order to maintain consistency.

V. Source Categories That Require Listing as a Result of the Section 112(c)(6) Analysis

A review of the available data indicates that a substantial majority of source categories emitting section 112(c)(6) pollutants have already been listed for regulation under section 112(d)(2) or are subject to regulation under equivalent authorities. Based on EPA's current information, in order to meet the section 112(c)(6) requirement to assure that the sources of at least 90 percent of the aggregate emissions of each specific HAP are subject to standards, the following source categories require such listing: Open burning of scrap tires and gasoline distribution, leaded aviation fuel. The source category, wood treatment and preservation, had appeared in the draft listing **Federal Register** notice, but has been removed from consideration for this list. Comments were submitted that significantly reduced the emissions estimates for this source category, as well as changes that affected estimates of other source category emissions, resulting in a lower percent contribution from this source category and in its removal from this listing.

This listing under section 112(c)(6) identifies source categories for which standards under section 112(d)(2) or (d)(4) will be developed, but by itself does not automatically result in regulation or control of emissions from sources within these source categories. The EPA will perform further analyses on emissions and control methods for the listed source categories. This regulatory development analysis will determine any ultimate regulatory requirements.

A summary of the reasons for each of the above source category's inclusion follows.

—Open burning of scrap tires: Although data submitted in response to the draft listing package resulted in a significant reduction in the emissions estimate for this source category, it still accounts for a significant portion of POM emissions in the section 112(c)(6) analysis (14.3 percent defined as 7–PAH, and 3.4 percent defined as 16–PAH). Subjecting emissions from this source to standards will bring the percentage of 7–PAH emissions that are subject to standards up to the level of 99.3 percent, and 16–PAH emissions up to the level of 90.2 percent.

The EPA realizes that scrap tires are not routinely burned in the open as part of agricultural or industrial processes and that these sources are different from facilities designed for the incineration of scrap tires. There are numerous storage piles of scrap tires across the country created through legal and illegal practices. These storage piles are often set on fire by arson, accident, or natural causes (lightning). Some states and organizations have created rules and guidelines designed to reduce and eventually eliminate the fire threat posed by stockpiled tires. The EPA will consider these efforts in developing a section 112(d)(2) standard for this source category. These emissions involve inadvertent and incidental releases of emissions rather than discharges as a direct result of process operations; as such it is analogous to the incidental but significant release of emissions through process leaks or from solvent-laden cleaning rags. The EPA believes it can subject these sources to standards in a fashion similar to its approach to other sources from which significant emissions could result from unsafe or ineffective work management practices.

—Gasoline distribution, aviation fuel: This category, consists of evaporative losses from the transfer and storage of leaded aviation fuel, and aircraft refueling and associated spillage. Note that these emissions are associated with fuel containing alkylated lead, commonly referred to as aviation gas, and used primarily in general aviation aircraft. This is not the same as commercial jet fuel. This source category accounts for 81.3 percent of the 1990 base year inventory. However, since leaded gasoline has been banned for use in motor vehicles since the 1990 inventory estimate, this source category accounts for the only known remaining emissions of alkylated lead. Thus listing this source category will subject 100 percent of current alkylated lead emissions to standards.

VI. Regulatory Requirements

A. General

Today's notice is not a rule; it is essentially a housekeeping or maintenance activity which does not impose regulatory requirements or costs on any sources, including small businesses. Therefore, the EPA has not prepared an economic impact analysis pursuant to section 317 of the Act, nor a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980), nor a budgetary impact statement pursuant to 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, 44 U.S.C. 3501 *et seq.*

B. Executive Order 12866 and Office of Management and Budget (OMB) Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may either: (1) Have an annual effect on this 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; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or

the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, this is not a ''significant regulatory action'' within the meaning of the Executive Order. This notice was submitted to OMB for review. Any written comments from OMB and written EPA responses are available in the docket.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Today's action is not a rule subject to notice-and-comment requirements and is thus not subject to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, as mentioned above, this notice merely lists categories of sources and does not impose any regulatory requirements. Consequently, this notice will not have any economic impact on small entities.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

Dated: April 3, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—SUMMARY OF 1990 EMISSION INVENTORY DATA FOR SECTION 112(C)(6) POLLUTANTS (TONS/YR)

Source category	POM			2,3,7,8-TCDD TEQ	Mercury	PCB	HCB	Alkylated lead
	7–PAH	16–PAH	EOM					
Abrasive Grain (Media) Manufacturing	.....	2.48e+01	.....	.....	.....	.....	.....	.....
Adhesives and Sealants (SICs combined)	.....	4.18e+00	.....	.....	.....	.....	.....	.....
Aerospace Industry (Surface Coating)	.....	1.64e+03	.....	.....	4.00e+00	.....	.....	.....
Agricultural Chemicals	.....	9.03e+00	.....	.....	.....	.....	.....	.....
Asphalt Hot-Mix Production	9.40e−02	4.37e+01	.....	.....	.....	.....	.....	.....
Asphalt Roofing Production	1.68e+00	4.36e+01	.....	.....	.....	.....	.....	.....
Battery Production	.....	.....	.....	.....	2.00e−02	.....	.....	.....
Blast Furnace and Steel Mills	.....	4.99e+02	.....	.....	2.50e−01	.....	.....	.....
Carbamate Insecticides Production	.....	4.08e+00	.....	.....	.....	.....	.....	.....
Carbon Black Production	4.50e−01	4.33e+00	.....	.....	2.50e−01	.....	.....	.....
Carbon Reactivation Furnaces	.....	.....	.....	1.25e−07	.....	.....	.....	.....
Chemical Manufacturing: Cyclic Crude and Intermediate Production	.....	1.04e+02	.....	.....	.....	.....	.....	.....
Chemical Preparations (SICs combined)	.....	6.79e+00	.....	.....	.....	.....	.....	.....
Chloralkali Production	.....	4.52e+00	.....	.....	9.80e+00	.....	.....	.....
Chlorinated Solvents Production	.....	.....	.....	.....	.....	.....	5.81e−01	.....
Chromium Plating: Chromic Anodizing	.....	.....	.....	.....	2.50e−03	.....	.....	.....
Cigarette Smoke	5.20e−01	3.45e+00	.....	.....	.....	.....	.....	.....
Clay Refractories	.....	5.00e−01	.....	.....	.....	.....	.....	.....
Cleaning Products (SICs combined)	.....	1.38e+00	.....	.....	.....	.....	.....	.....
Coke Ovens: By-Product Recovery Plants	.....	7.78e+01	.....	.....	.....	.....	.....	.....
Coke Ovens: Charging, Topside & Door Leaks	7.18e+01	5.39e+02	6.79e+02	.....	.....	.....	.....	.....
Coke Ovens: Pushing, Quenching & Battery Stacks	3.01e+01	5.17e+02	.....	.....	.....	.....	.....	.....
Commercial Coal Combustion	3.60e+01	1.73e+02	2.74e+03	.....	7.77e−01	.....	.....	.....
Commercial Natural Gas Combustion	.....	3.00e−02	1.92e+03	.....	.....	.....	.....	.....
Commercial Oil Combustion	3.16e−02	5.33e+01	1.32e+03	.....	2.00e−01	.....	.....	.....
Commercial Printing, Gravure	.....	2.89e+01	.....	.....	.....	.....	.....	.....
Commercial Printing, Letterpress and Screen	.....	1.04e+01	.....	.....	.....	.....	.....	.....
Commercial Wood/Wood Residue Combustion	1.01e+00	3.58e+01	1.95e+03	.....	8.00e−03	.....	.....	.....
Consumer Products Usage	.....	5.73e+03	.....	.....	.....	.....	.....	.....
Crematories	1.42e−08	8.33e−06	.....	9.15e−12	3.77e−04	.....	.....	.....
Custom Compound Purchased Resins Manufacture	.....	.....	.....	.....	1.28e−01	.....	.....	.....
Dental Preparation and Use	.....	.....	.....	8.00e−01	.....	.....	.....	.....
Drum and Barrel Reclamation	1.27e−06	8.19e−05	.....	2.51e−07	.....	.....	.....	.....
Electronic and Other Electric Equipment Manufacturing (SICs combined)	.....	3.05e+01	.....	.....	8.83e−01	.....	.....	.....
Fabricated Metal Products	.....	1.43e+02	.....	.....	.....	.....	.....	.....
Fabricated Rubber Products	.....	1.48e+02	.....	.....	.....	.....	.....	.....
Ferroalloy Manufacture	2.60e−01	5.60e−01	.....	.....	.....	.....	.....	.....
Fiber Cans, Drums, and Similar Products	.....	5.06e+00	.....	.....	.....	.....	.....	.....
Fluorescent Lamp Recycling	.....	.....	.....	.....	.....	6.00e−03	.....	.....
Food Products (SICs combined)	.....	3.54e+00	.....	.....	.....	.....	.....	.....
Gasoline Distribution (Aviation)	.....	.....	.....	.....	.....	.....	.....	3.75e−01
Gasoline Distribution (Stage I)	.....	3.55e+02	.....	.....	.....	.....	.....	8.64e−02
Gasoline Distribution (Stage II)	.....	3.74e+02	.....	.....	.....	.....	.....	1.92e−02
General Laboratory Activities	.....	.....	.....	.....	8.00e−01	.....	.....	.....
Geothermal Power	.....	.....	.....	.....	1.30e+00	.....	.....	.....
Gum and Wood Chemical	.....	5.00e−01	.....	.....	.....	.....	.....	.....
Hazardous Waste Incineration	2.09e−02	1.75e−01	.....	3.30e−05	3.20e+00	2.78e−02	.....	.....
Industrial Coal Combustion	3.09e+00	1.57e+02	2.41e+03	.....	2.20e+01	.....	.....	.....
Industrial Gases Manufacturing	.....	9.43e+00	.....	.....	.....	.....	.....	.....
Industrial Inorganic Chemicals Manufacturing	.....	1.57e+01	.....	.....	1.00e+00	.....	.....	.....
Industrial Machinery and Electrical Equipment (SICs combined)	.....	2.77e+00	.....	.....	.....	.....	.....	.....
Industrial Natural Gas Combustion	.....	2.00e−02	9.28e+02	.....	.....	.....	.....	.....
Industrial Oil Combustion	3.07e−02	5.09e+01	4.94e+02	.....	5.80e+00	4.97e−05	.....	.....
Industrial Organic Chemicals Manufacturing	.....	2.27e+02	.....	.....	2.00e−02	.....	.....	.....
Industrial Stationary IC Engines—Diesel	8.93e−02	5.02e+00	1.93e+03	.....	.....	.....	.....	.....
Industrial Stationary IC Engines—Natural Gas	1.03e+00	4.76e+01	.....	.....	4.47e+00	.....	.....	.....
Industrial Turbines—Diesel Fired	.....	1.55e−02	1.73e+03	.....	9.00e−02	.....	.....	.....
Industrial Turbines: Natural Gas Fired	.....	1.38e+01	7.39e+02	.....	1.61e+00	.....	.....	.....
Industrial Waste Oil Combustion	1.34e+00	7.82e+00	.....	.....	.....	.....	.....	.....
Industrial Wood/Wood Residue Combustion	1.21e+00	6.88e+01	4.42e+04	5.07e−05	2.03e−01	.....	.....	.....

TABLE 1.—SUMMARY OF 1990 EMISSION INVENTORY DATA FOR SECTION 112(C)(6) POLLUTANTS (TONS/YR)—Continued

Source category	POM			2,3,7,8-TCDD TEQ	Mercury	PCB	HCB	Alkylated lead
	7–PAH	16–PAH	EOM					
Inorganic Pigments Manufacturing					5.00e – 03			
Instrument Manufacturing					5.00e – 01			
Iron and Steel Foundries	6.00e – 02	1.90e – 01		1.15e – 05				
Lamp Breakage					1.50e+00			
Landfill (Gas) Flares	1.05e – 03	4.45e – 01						
Lightweight Aggegate Kilns				3.60e – 06	3.10e – 01			
Lime Manufacturing					7.00e – 01			
Lubricating Oils and Grease		6.00e – 02						
Medical Waste Incineration		8.00e – 01	1.50e+01	6.60e – 04	5.00e+01	4.03e – 02		
Metal Household Furniture		2.50e – 03						
Miscellaneous Manufacturing		6.58e+00						
Miscellaneous Plastics Products		5.76e+00						
Municipal Waste Combustion		9.67e – 02	1.82e+02	3.65e – 03	5.50e+01	8.01e – 02		
Naphthalene—Miscellaneous Uses		1.25e+00						
Naphthalene Production		6.46e+01						
Naphthalene Sulfonates Production		6.53e+00						
Non-Road Vehicles and Equipment (NRVE)—Aircraft	9.00e – 02	4.79e+00						
Nonmetallic Mineral Products		2.50e–03			5.00e–03			
NRVE—Other	2.40e+01	4.70e+01	2.51e+04					1.66e – 01
Office Furniture, Except Wood Manufacturing		6.45e+00						
On-Road Vehicles	3.44e+01	7.59e+01	5.62e+04	9.50e – 05				
Open Burning of Scrap Tires	5.25e+01	2.94e+02						
Other Biological Incineration			1.05e+00	1.60e – 04		2.49e – 03		
Other Miscellaneous (SICs combined)		1.45e+00			2.50e – 01			
Other Secondary Nonferrous Metals Recovery					2.50e – 01			
Other Structural Clay Products		5.60e – 01			1.10e – 01			
Paints and Allied Products		3.07e+01			7.50e – 03			
Paper Coated and Laminated, Packaging		5.54e+01						
Partitions and Fixtures		4.35e+00						
Pesticides Application							1.46e – 01	
Pesticides Manufacture							4.58e – 01	
Petroleum Refining: All Processes	1.64e+01	1.10e+03			4.35e – 02			
Pharmaceutical Preparations and Manufacturing (SICs combined)		7.66e – 01						
Phthalic Anhydride Production		2.62e+01						
Plastic Foam Products Manufacturing		1.10e+02						
Plastics Material and Resins Manufacturing		8.55e+00			4.00e – 03			
Porcelain Electrical Supplies		2.08e+00						
Portland Cement Manufacture: Hazardous Waste Kilns	2.08e+00	1.26e+01		4.75e – 04	2.75e+00			
Portland Cement Manufacture: Non-Hazardous Waste Kilns	2.60e+00	4.79e+01		4.29e-05	4.13e+00			
Primary Aluminum Production	1.41e+02	6.62e+02	3.88e+03					
Primary Copper Production					7.40e-01			
Primary Lead Smelting					1.30e+00			
Primary Metal Products Manufacturing (SICs combined)		2.69e+01						
Public Building and Related Furniture	1.16e+01							
Pulp and Paper—Kraft Recovery Furnaces	3.74e+00	6.49e+02	3.42e – 07	1.90e+00				
Pulp and Paper—Lime Kilns	2.50e-01	1.83e+02						
Pulp and Paper—Sulfite Recovery Furnaces	6.17e+00							
Residential Coal Combustion	3.19e+01	1.03e+02	2.34e – 04	6.00e – 01				
Residential Natural Gas Combustion	8.02e – 02	5.10e+00	4.14e+03					
Residential Oil Combustion	1.70e+00	2.10e+01	1.47e+03	3.78e – 06	3.00e+00			
Residential Wood Combustion	5.72e+02	8.86e+03	2.36e+05	3.38e – 05				
Scrap or Waste Tire Combustion	2.17e – 05	5.18e – 03	3.00e – 07	1.04e – 03				
Secondary Aluminum Smelting	1.90e – 04							
Secondary Copper Smelting			6.80e – 06					
Secondary Lead Smelting	1.90e – 02	6.99e+01	4.25e – 06	1.13e – 02				
Secondary Mercury Production			7.52e – 01					
Sewage Sludge Incineration	8.67e – 03	1.64e+00	2.65e – 05	1.80e+00	5.12e – 03			
Ship Building and Repair (Surface Coating)	1.44e+01							
Surface Active Agents Manufacturing	7.41e+00							
Textiles (SICs Combined)	9.68e+00							
Tire Manufacturing	7.00e+00						4.35e – 01	
Transportation Equipment Manufacturing (SICs combined)	5.16e+01							
Utility Coal Combustion	2.10e – 01	7.55e+00	3.86e+04	1.10e – 04	5.10e+01	6.80e – 01		
Utility Natural Gas Combustion	6.90e – 01	1.00e+03	1.60e – 03					
Utility Oil Combustion	5.00e – 02	5.70e – 01	5.31e+02	7.00e – 06	2.50e – 01	1.49e – 04		
Utility Turbines—Diesel Fired	3.00e – 02							
Wildfires and Prescribed Burning	9.64e+02	2.54e+03	9.50e – 05					
Wood Household Furniture Manufacturing	1.13e+01							
Wood Treatment/Wood Preserving	9.04e+01	3.80e – 0						
Total Emissions (tons/yr)	1995.80	26476.54	428035.05	0.0059	234.59	0.16	2.30	0.65

TABLE 2.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY PERCENTAGE CONTRIBUTIONS AND ASSOCIATED REGULATIONS

Source category	POM			2,3,7,8-TCDD TEQ	Mercury	PCB	HCB	Alkylated lead	Applicable regulation
	7–PAH	16–PAH	EOM						
Source Categories Subject to Regulation	**Percent contribution**								
Aerospace Industry (Surface Coating) {Subject to regulations is 100% of total values}.		18.838	.....	.....	2.226	.....	.....	.....	Sec. 112(d)(2).
Asphalt Hot-Mix Production	0.026	0.502	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Asphalt Roofing Production	0.458	0.501	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Blast Furnace and Steel Mills	.....	5.732	.....	.....	0.139	.....	.....	.....	Sec. 112(d)(2).
Chemical Manufacturing: Cyclic Crude and Intermediate Production.	.....	1.195	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Chloralkali Production	.....	0.052	.....	.....	5.453	.....	.....	.....	Sec. 112(d)(2).
Chlorinated Solvents Production	.....	.....	.....	.....	.....	.....	39.417	.....	Sec. 112(d)(2).
Chromium Plating: Chromic Anodizing {Subject to Regulation is 100% of total values}.	.....	.....	.....	.....	0.001	.....	.....	.....	Sec. 112(d)(2).
Coke Ovens: By-Product Recovery Plants.	.....	0.894	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Coke Ovens: Charging, Topside & Door Leaks.	19.570	6.191	1.043	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Coke Ovens: Pushing, Quenching & Battery Stacks.	8.204	5.934	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Commercial Printing, Gravure {Subject to Regulation is 99.35% of total values}.	.....	0.330	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Fabricated Metal Products	.....	1.643	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Gasoline Distribution (Stage I) {Subject to Regulation is 10% of total values}.	.....	0.408	.....	.....	.....	.....	.....	1.873	Sec. 112(d)(2).
Hazardous Waste Incineration	0.006	0.002	.....	0.616	1.781	17.721	.....	.....	Sec. 112(d)(2).
Industrial Organic Chemicals Manufacturing {Subject to Regulation is 98.91% of total values}.	.....	2.579	.....	.....	0.011	.....	.....	.....	Sec. 112(d)(2).
Lightweight Aggregate Kilns	.....	.....	.....	0.067	0.173	.....	.....	.....	Sec. 112(d)(2).
Naphthalene Production	.....	0.742	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Paints and Allied Products	.....	0.353	.....	.....	0.004	.....	.....	.....	Sec. 112(d)(2).
Paper Coated and Laminated, Packaging.	.....	0.636	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Pesticides Manufacture	.....	.....	.....	.....	.....	.....	31.072	.....	Sec. 112(d)(2).
Petroleum Refining: All Processes {Subject to Regulation is 97.55% of total values}.	4.360	12.326	.....	.....	0.024	.....	.....	.....	Sec. 112(d)(2).
Phthalic Anhydride Production	.....	0.301	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Plastic Foam Products Manufacturing.	.....	1.264	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Portland Cement Manufacture: Hazardous Waste Kilns.	0.567	0.145	.....	8.873	1.530	.....	.....	.....	Sec. 112(d)(2).
Portland Cement Manufacture: Non-Hazardous Waste Kilns.	0.709	0.550	.....	0.801	2.297	.....	.....	.....	Sec. 112(d)(2).
Primary Aluminum Production	38.431	7.604	5.953	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Pulp and Paper—Kraft Recovery Furnaces.	1.019	7.455	.....	0.006	1.057	.....	.....	.....	Sec. 112(d)(2).
Pulp and Paper—Lime Kilns	0.068	2.102	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Secondary Aluminum Smelting	.....	.....	.....	3.549	.....	.....	.....	.....	Sec. 112(d)(2).
Secondary Lead Smelting	0.005	0.803	.....	0.079	0.006	.....	.....	.....	Sec. 112(d)(2).
Ship Building and Repair (Surface Coating) {Subject to Regulation is 94.41% of total values}.	.....	0.156	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Tire Manufacturing	.....	0.080	.....	.....	.....	.....	29.512	.....	Sec. 112(d)(2).
Transportation Equipment Manufacturing (SICs combined).	.....	0.593	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Wood Household Furniture Manufacturing {Subject to Regulation is 97.9% of total values}.	.....	0.127	.....	.....	.....	.....	.....	.....	Sec. 112(d)(2).
Medical Waste Incineration	.....	0.009	0.023	12.329	27.824	25.689	.....	.....	Sec. 129.
Municipal Waste Combustion	.....	0.001	0.280	68.183	30.606	51.042	.....	.....	Sec. 129.
Commercial Coal Combustion	9.812	1.984	4.214	.....	0.432	.....	.....	.....	Sec. 112 (ICCR).
Commercial Oil Combustion	0.009	0.612	2.020	.....	0.111	.....	.....	.....	Sec. 112 (ICCR).
Commercial Wood/Wood Residue Combustion [b].	0.275	0.411	2.989	.....	0.004	.....	.....	.....	Sec. 112 (ICCR).
Industrial Coal Combustion	0.842	1.803	3.704	.....	12.253	.....	.....	.....	Sec. 112 (ICCR).
Industrial Oil Combustion	0.008	0.584	0.759	.....	3.228	0.032	.....	.....	Sec. 112 (ICCR).
Industrial Stationary IC Engines—Diesel.	0.024	0.058	2.963	.....	.....	.....	.....	.....	Sec. 112 (ICCR).
Industrial Stationary IC Engines—Natural Gas.	0.281	0.547	.....	.....	2.487	.....	.....	.....	Sec. 112 (ICCR).

TABLE 2.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY PERCENTAGE CONTRIBUTIONS AND ASSOCIATED REGULATIONS—Continued

Source category	POM			2,3,7,8-TCDD TEQ	Mercury	PCB	HCB	Alkylated lead	Applicable regulation
	7–PAH	16–PAH	EOM						
Industrial Wood/Wood Residue Combustion [b].	0.330	0.790	67.883	0.947	0.113	.....	.....	.....	Sec. 112 (ICCR).
Total % Contribution for Sources Subject to Regulation.	85.003	86.834	91.829	95.452	91.762	94.484	100.000	1.873	
112(c)(6) Source Categories for Listing	**Percent contribution**								
Gasoline Distribution (Aviation)	.....	.....	.....	.....	.....	.....	.....	81.266	
Open Burning of Scrap Tires	14.309	3.377	.....	.....	.....	.....	.....	.....	
Total % Contribution for 112(c)(6) Source Categories for Listing.	14.309	3.377	0.000	0.000	0.000	0.000	0.000	81.266	
Cumulative % Contribution Total	99.313	90.211	91.829	95.452	91.762	94.484	100.000	83.140	
Other Source Categories that Are Candidates for Listing	**Percent contribution**								
Abrasive Grain (Media) Manufacturing.	.....	0.285	.....	.....	.....	.....	.....	.....	
Adhesives and Sealants (SICs combined) [a].	.....	0.048	.....	.....	.....	.....	.....	.....	
Agricultural Chemicals [a]	.....	0.104	.....	.....	.....	.....	.....	.....	
Battery Production	.....	.....	.....	.....	0.011	.....	.....	.....	
Carbamate Insecticides Production [a]	.....	0.047	.....	.....	.....	.....	.....	.....	
Carbon Black Production [a]	0.123	0.050	.....	.....	0.139	.....	.....	.....	
Carbon Reactivation Furnaces	.....	.....	.....	0.002	.....	.....	.....	.....	
Chemical Preparations (SICs combined).	.....	0.078	.....	.....	.....	.....	.....	.....	
Clay Refractories [a]	.....	0.006	.....	.....	.....	.....	.....	.....	
Cleaning Products (SICs combined)	.....	0.016	.....	.....	.....	.....	.....	.....	
Commercial Natural Gas Combustion [a].	.....	<0.001	2.950	.....	.....	.....	.....	.....	
Commercial Printing, Gravure {Not Subject to Regulation is 0.65% of total values}.	.....	0.002	.....	.....	.....	.....	.....	.....	
Commercial Printing, Letterpress [a] ...	.....	0.119	.....	.....	.....	.....	.....	.....	
Crematories [a]	<0.001	<0.001	.....	<0.001	<0.001	.....	.....	.....	
Custom Compound Purchased Resins Manufacture.	.....	.....	.....	.....	0.071	.....	.....	.....	
Dental Preparation and Use	.....	.....	.....	.....	0.445	.....	.....	.....	
Drum and Barrel Reclamation	<0.001	<0.001	.....	0.005	.....	.....	.....	.....	
Electronic and Other Electric Equipment Manufacturing (SICs combined).	.....	0.350	.....	.....	0.491	.....	.....	.....	
Fabricated Rubber Products	.....	1.700	.....	.....	.....	.....	.....	.....	
Ferroalloy Manufacture [a]	0.071	0.006	.....	.....	.....	.....	.....	.....	
Fiber Cans, Drums, and Similar Products.	.....	0.058	.....	.....	.....	.....	.....	.....	
Fluorescent Lamp Recycling	.....	.....	.....	.....	0.003	.....	.....	.....	
Food Products (SICs combined) [a]	.....	0.041	.....	.....	.....	.....	.....	.....	
Gasoline Distribution (Stage I) {Not Subject to Regulation is 90% of total value}.	.....	3.670	.....	.....	.....	.....	.....	16.86	
General Laboratory Activities	.....	.....	.....	.....	0.445	.....	.....	.....	
Geothermal Power	.....	.....	.....	.....	0.723	.....	.....	.....	
Gum and Wood Chemical [a]	.....	0.006	.....	.....	.....	.....	.....	.....	
Industrial Gases Manufacturing	.....	0.108	.....	.....	.....	.....	.....	.....	
Industrial Inorganic Chemicals Manufacturing.	.....	0.180	.....	.....	0.556	.....	.....	.....	
Industrial Machinery and Electrical Equipment (SICs combined) [a].	.....	0.032	.....	.....	.....	.....	.....	.....	
Industrial Natural Gas Combustion [a]	.....	<0.001	1.425	.....	.....	.....	.....	.....	
Industrial Organic Chemicals Manufacturing {Not Subject to Regulation is 1.19% of total values}.	.....	0.028	.....	.....	<0.001	.....	.....	.....	
Industrial Turbines—Diesel Fired [a] ...	.....	<0.001	2.658	.....	0.050	.....	.....	.....	
Industrial Turbines—Natural Gas Fired [a].	.....	0.159	1.135	.....	0.896	.....	.....	.....	
Industrial Waste Oil Combustion [a]	0.365	0.090	.....	.....	.....	.....	.....	.....	
Inorganic Pigments Manufacturing ..	.....	.....	.....	.....	0.003	.....	.....	.....	
Instrument Manufacturing	.....	.....	.....	.....	0.278	.....	.....	.....	
Iron Foundries [a]	0.016	0.002	.....	0.215	.....	.....	.....	.....	
Lamp Breakage	.....	.....	.....	.....	0.835	.....	.....	.....	
Landfill (Gas) Flares [a]	<0.001	0.005	.....	.....	.....	.....	.....	.....	
Lime Manufacturing [a]	.....	.....	.....	.....	0.390	.....	.....	.....	
Lubricating Oils and Grease [a]	.....	0.001	.....	.....	.....	.....	.....	.....	
Metal Household Furniture [a]	.....	<0.001	.....	.....	.....	.....	.....	.....	
Miscellaneous Manufacturing	.....	0.076	.....	.....	.....	.....	.....	.....	

TABLE 2.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY PERCENTAGE CONTRIBUTIONS AND ASSOCIATED REGULATIONS—Continued

Source category	POM			2,3,7,8-TCDD TEQ	Mercury	PCB	HCB	Alkylated lead	Applicable regulation
	7–PAH	16–PAH	EOM						
Miscellaneous Plastics Products [a]	.....	0.066	.....	.....	.....	.....	.....	.....	
Naphthalene—Miscellaneous Uses [a]	.....	0.014	.....	.....	.....	.....	.....	.....	
Naphthalene Sulfonates Production [a]	.....	0.075	.....	.....	.....	.....	.....	.....	
Nonmetallic Mineral Products	.....	<0.001	.....	.....	0.003	.....	.....	.....	
Office Furniture, Except Wood Manufacturing [a].	.....	0.074	.....	.....	.....	.....	.....	.....	
Other Biological Incineration [a]	.....	.....	0.002	2.989	.....	1.585	.....	.....	
Other Miscellaneous (SICs combined).	.....	0.017	.....	.....	0.139	.....	.....	.....	
Other Secondary Nonferrous Metals Recovery.	.....	.....	.....	.....	0.139	.....	.....	.....	
Other Structural Clay Products [a]	.....	0.006	.....	.....	0.061	.....	.....	.....	
Partitions and Fixtures [a]	.....	0.050	.....	.....	.....	.....	.....	.....	
Petroleum Refining: All Processes {Not Subject to Regulation is 2.45% of total value}.	0.110	0.310	.....	.....	0.001	.....	.....	.....	
Pharmaceutical Preparations and Manufacturing (SICs combined) [a].	.....	0.009	.....	.....	.....	.....	.....	.....	
Plastics Material and Resins Manufacturing [a].	.....	0.098	.....	.....	0.002	.....	.....	.....	
Porcelain Electrical Supplies	.....	0.024	.....	.....	.....	.....	.....	.....	
Primary Copper Production [a]	.....	.....	.....	.....	0.412	.....	.....	.....	
Primary Lead Smelting [a]	.....	.....	.....	.....	0.723	.....	.....	.....	
Primary Metal Products Manufacturing (SICs combined).	.....	0.309	.....	.....	.....	.....	.....	.....	
Public Building and Related Furniture [a].	.....	0.133	.....	.....	.....	.....	.....	.....	
Pulp and Paper—Sulfite Recovery Furnaces [a].	.....	0.071	.....	.....	.....	.....	.....	.....	
Scrap or Waste Tire Incineration [a]	<0.001	<0.001	.....	0.006	.....	0.666	.....	.....	
Secondary Copper Smelting	.....	.....	.....	0.127	.....	.....	.....	.....	
Secondary Mercury Production	.....	.....	.....	.....	0.418	.....	.....	.....	
Sewage Sludge Incineration [a]	0.002	0.019	.....	0.495	1.002	3.265	.....	.....	
Ship Building and Repair (Surface Coating) {Not Subject to Regulation is 5.59% of total value}.	.....	0.009	.....	.....	.....	.....	.....	.....	
Surface Active Agents Manufacturing [a].	.....	0.085	.....	.....	.....	.....	.....	.....	
Textiles (SICs Combined) [a]	.....	0.111	.....	.....	.....	.....	.....	.....	
Wood Household Furniture Manufacturing {Not Subject to Regulation is 2.1% of total value}.	.....	0.003	.....	.....	.....	.....	.....	.....	
Wood Treatment/Wood Preserving	.....	1.038	.....	0.710	.....	.....	.....	.....	
Total % Contribution for Other Source Categories that are Candidates for Listing.	0.687	9.789	8.171	4.548	8.238	5.516	0.000	16.860	

[a] Source categories for which major sources are listed for regulation under section 112(c)(1), but for which the EPA is not counting emissions toward the section 112(c)(6) 90 percent goal. These source categories emit minor amounts of 112(c)(6) HAPs, and, as such, although the major sources in the source category will be regulated under section 112(d)(2), as already planned, the area sources will not.

[b] At this time, it is unclear as to whether this source category will be regulated as section 112 or section 129 authority.

TABLE 3.—CROSS-REFERENCE BETWEEN SECTION 112(c)(6) INVENTORY OF SOURCES AND APPLICABLE REGULATIONS

112(c)(6) Category	Applicable regulation	112 Source Category Names [a]
Adhesives and Sealants	Sec. 112(d)(2)	Manufacture of Paints, Coatings, and Adhesives.[b]
Aerospace Industry (Surface Coating).	Sec. 112(d)(2)	Aerospace Industries.
Agricultural Chemicals	Sec. 112(d)(2)	4-Chloro-2-Methylphenoxyacetic Acid Production, 2,4-D Salts and Esters Production, 4,6-Dinitro-o-Cresol Production, Butadiene-Furfural Cotrimer Production, Captafol Production, Captan Production, Chloroneb Production, Chlorothalonil Production, Dacthal (tm) Production, Sodium Pentachlorophenate Production, Tordon (tm) Acid Production.[b]
Asphalt Hot-Mix Production	Sec. 112(d)(2)	Asphalt Concrete Manufacturing.
Asphalt Roofing Production	Sec. 112(d)(2)	Asphalt Roofing Manufacturing.
Blast Furnace and Steel Mills	Sec. 112(d)(2)	Integrated Iron and Steel Manufacture.
Carbamate Insecticides Production.	Sec. 112(d)(2)	4-Chloro-2-Methylphenoxyacetic Acid Production, 2,4-D Salts and Esters Production, 4,6-Dinitro-o-Cresol Production, Butadiene-Furfural Cotrimer Production, Captafol Production, Captan Production, Chloroneb Production, Chlorothalonil Production, Dacthal (tm) Production, Sodium Pentachlorophenate Production, Tordon (tm) Acid Production.
Carbon Black Production	Sec. 112(d)(2)	Carbon Black Production.

TABLE 3.—CROSS-REFERENCE BETWEEN SECTION 112(c)(6) INVENTORY OF SOURCES AND APPLICABLE REGULATIONS—Continued

112(c)(6) Category	Applicable regulation	112 Source Category Names [a]
Chemical Manufacturing: Cyclic Crude and Intermediate Production.	Sec. 112(d)(2)	Synthetic Organic Chemical Manufacturing.
Chloralkali Production	Sec. 112(d)(2)	Chlorine Production.
Chlorinated Solvents Production.	Sec. 112(d)(2)	Synthetic Organic Chemical Manufacturing.
Chromium Plating: Chromic Anodizing.	Sec. 112(d)(2)	Chromic Acid Anodizing.
Clay Refractories	Sec. 112(d)(2)	Chromium Refractory Production.[c]
Coke Ovens: By-Product Recovery Plants.	Sec. 112(d)(2)	Coke By-Product Plants.
Coke Ovens: Charging, Topside & Door Leaks.	Sec. 112(d)(2)	Coke Ovens: Charging, Top Side, and Door Leaks.
Coke Ovens: Pushing, Quenching & Battery Stacks.	Sec. 112(d)(2)	Coke Ovens: Pushing, Quenching, and Battery Stacks.
Commercial Printing, Gravure	Sec. 112(d)(2)	Printing/Publishing (Surface Coating).
Commercial Printing, Letterpress and Screen.	Sec. 112(d)(2)	Printing/Publishing (Surface Coating).
Fabricated Metal Products	Sec. 112(d)(2)	Miscellaneous Metal Parts and Products (Surface Coating), Halogenated Solvent Cleaning.
Ferroalloy Manufacture	Sec. 112(d)(2)	Ferroalloys Production.
Food Products	Sec. 112(d)(2)	Vegetable Oil Production.
Gasoline Distribution (Stage I).	Sec. 112(d)(2)	Gasoline Distribution (Stage 1).
Gum and Wood Chemical	Sec. 112(d)(2)	Synthetic Organic Chemical Manufacturing.
Hazardous Waste Incineration.	Sec. 112(d)(2)	Hazardous Waste Incineration.
Industrial Machinery and Electrical Equipment.	Sec. 112(d)(2)	Miscellaneous Metal Parts and Products (Surface Coating), Semiconductor Manufacturing, Halogenated Solvent Cleaning.
Industrial Organic Chemicals Manufacturing.	Sec. 112(d)(2)	Synthetic Organic Chemical Manufacturing.
Iron Foundries	Sec. 112(d)(2)	Iron Foundries.
Lightweight Aggregate Kilns	Sec. 112(d)(2)	Hazardous Waste Incineration.
Lime Manufacturing	Sec. 112(d)(2)	Lime Manufacturing.
Lubricating Oils and Grease	Sec. 112(d)(2)	Organic Liquids Distribution (Non-Gasoline), Petroleum Refineries.
Metal Household Furniture	Sec. 112(d)(2)	Metal Furniture (Surface Coating), Halogenated Solvent Cleaners.
Miscellaneous Plastics Products.	Sec. 112(d)(2)	Plastic Parts and Products (Surface Coating).
Naphthalene—Miscellaneous Uses.	Sec. 112(d)(2)	Synthetic Organic Chemical Manufacturing.
Naphthalene Production	Sec. 112(d)(2)	Synthetic Organic Chemical Manufacturing.
Naphthalene Sulfonates Production.	Sec. 112(d)(2)	Synthetic Organic Chemical Manufacturing.
Office Furniture, Except Wood Manufacturing.	Sec. 112(d)(2)	Metal Furniture (Surface Coating), Halogenated Solvent Cleaners.
Other Structural Clay Products.	Sec. 112(d)(2)	Clay Products Manufacturing.
Paints and Allied Products	Sec. 112(d)(2)	Manufacture of Paints, Coatings, and Adhesives.[b]
Paper Coated and Laminated, Packaging.	Sec. 112(d)(2)	Printing/Publishing (Surface Coating), Paper and Other Webs (Surface Coating).
Partitions and Fixtures	Sec. 112(d)(2)	Metal Furniture (Surface Coating), Wood Furniture (Surface Coating), Halogenated Solvent Cleaners, Flat Wood Paneling, Miscellaneous Metal Parts and Products (Surface Coating), Plastic Parts and Products (Surface Coating).
Pesticides Manufacture	Sec. 112(d)(2)	4-Chloro-2-Methylphenoxyacetic Acid Production, 2,4-D Salts and Esters Production, 4,6-Dinitro-o-Cresol Production, Butadiene-Furfural Cotrimer Production, Captafol Production, Captan Production, Chloroneb Production, Chlorothalonil Production, Dacthal (tm) Production, Sodium Pentachlorophenate Production, Tordon (tm) Acid Production.
Petroleum Refining: All Processes.	Sec. 112(d)(2)	Petroleum Refineries—Other Sources Not Distinctly Listed, Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units.
Pharmaceutical Preparations and Manufacturing.	Sec. 112(d)(2)	Pharmaceuticals Production.
Phthalic Anhydride Production.	Sec. 112(d)(2)	Synthetic Organic Chemical Manufacturing.
Plastic Foam Products Manufacturing.	Sec. 112(d)(2)	Flexible Polyurethane Foam Production.

TABLE 3.—CROSS-REFERENCE BETWEEN SECTION 112(c)(6) INVENTORY OF SOURCES AND APPLICABLE REGULATIONS—Continued

112(c)(6) Category	Applicable regulation	112 Source Category Names [a]
Plastics Material and Resins Manufacturing.	Sec. 112(d)(2)	Acetal Resins Production, Alkyd Resins Production, Amino Resins Production, Boat Manufacturing, Carboxymethylcellulose Production, Cellophane Production, Cellulose Ethers Production, Maleic Anhydride Copolymers Production, Methylcellulose Production, Phenolic Resins Production, Polyester Resins Production, Polymerized Vinylidene Chloride Production, Polymethyl Methacrylate Resins Production, Polyvinyl Acetate Emulsions Production, Polyvinyl Alcohol Production, Polyvinyl Butyral Production, Polyvinyl Chloride and Copolymers Production, Reinforced Plastic Composites Production, Epoxy Resins Production and Non-Nylon Polyamides Production, Polyether Polyols Production, Group I Polymers and Resins, Group IV Polymers and Resins: acrylonitrile butadiene styrene resin (ABS), styrene acrylonitrile resin (SAN), methyl methacrylate acrylonitrile butadiene styrene resin (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene resin, poly (ethylene terephthalate) resin (PET), and nitrile resin.[b]
Portland Cement Manufacture: Hazardous Waste Kilns.	Sec. 112(d)(2)	Hazardous Waste Incineration.
Portland Cement Manufacture: Non-Hazardous Waste Kilns.	Sec. 112(d)(2)	Portland Cement Manufacturing.
Primary Aluminum Production	Sec. 112(d)(2)	Primary Aluminum Production.
Primary Copper Production ...	Sec. 112(d)(2)	Primary Copper Smelting.
Primary Lead Smelting	Sec. 112(d)(2)	Primary Lead Smelting.
Public Building and Related Furniture.	Sec. 112(d)(2)	Metal Furniture (Surface Coating), Halogenated Solvent Cleaners, Wood Furniture (Surface Coating).
Pulp and Paper—Kraft Recovery Furnaces.	Sec. 112(d)(2)	Pulp and Paper Production.
Pulp and Paper—Lime Kilns	Sec. 112(d)(2)	Pulp and Paper Production.
Pulp and Paper—Sulfite Recovery Furnaces.	Sec. 112(d)(2)	Pulp and Paper Production.
Secondary Aluminum Smelting.	Sec. 112(d)(2)	Secondary Aluminum Production.
Secondary Lead Smelting	Sec. 112(d)(2)	Secondary Lead Smelting.
Sewage Sludge Incineration	Sec. 112(d)(2)	Sewage Sludge Incineration.
Ship Building and Repair (Surface Coating).	Sec. 112(d)(2)	Shipbuilding and Ship Repair (Surface Coating).
Surface Active Agents Manufacturing.	Sec. 112(d)(2)	Synthetic Organic Chemical Manufacturing.
Textiles	Sec. 112(d)(2)	Printing, Coating, and Dyeing of Fabrics.
Tire Manufacturing	Sec. 112(d)(2)	Tire Production.
Transportation Equipment Manufacturing.	Sec. 112(d)(2)	Miscellaneous Metal Parts and Products (Surface Coating), Auto and Light Duty Truck (Surface Coating), Shipbuilding and Ship Repair (Surface Coating), Boat Manufacturing, Halogenated Solvent Cleaners.
Wood Household Furniture Manufacturing.	Sec. 112(d)(2)	Wood Furniture (Surface Coating).
Medical Waste Incineration ...	Sec. 129	Medical Waste Incineration.
Municipal Waste Combustion	Sec. 129	Municipal Waste Combustion.
Commercial Coal Combustion.	Sec. 112 (ICCR)	Institutional/Commercial Boilers.[d]
Commercial Natural Gas Combustion.	Sec. 112 (ICCR).	Institutional/Commercial Boilers.[d]
Commercial Oil Combustion	Sec. 112 (ICCR).	Institutional/Commercial Boilers.[d]
Commercial Wood/Wood Residue Combustion.	Sec. 112 (ICCR).	Institutional/Commercial Boilers.[d]
Industrial Coal Combustion ...	Sec. 112 (ICCR).	Industrial Boilers.[d]
Industrial Natural Gas Combustion.	Sec. 112 (ICCR).	Industrial Boilers.[d]
Industrial Oil Combustion	Sec. 112 (ICCR).	Industrial Boilers.[d]
Industrial Stationary IC Engines—Diesel.	Sec. 112 (ICCR)	Stationary Internal Combustion Engines.[d]
Industrial Stationary IC Engines—Natural Gas.	Sec. 112 (ICCR)	Stationary Internal Combustion Engines.[d]
Industrial Turbines—Diesel Fired.	Sec. 112 (ICCR)	Stationary Turbines.[d]
Industrial Turbines: Natural Gas Fired.	Sec. 112 (ICCR)	Stationary Turbines.[d]
Industrial Waste Oil Combustion.	Sec. 112 (ICCR).	Industrial Boilers.[d]
Industrial Wood/Wood Residue Combustion.	Sec. 112 (ICCR)	Industrial Boilers.[d]
Landfill (Gas) Flares	Sec. 112 (ICCR).	Municipal Landfills.[d]

TABLE 3.—CROSS-REFERENCE BETWEEN SECTION 112(c)(6) INVENTORY OF SOURCES AND APPLICABLE REGULATIONS—Continued

112(c)(6) Category	Applicable regulation	112 Source Category Names [a]
Crematories	Sec. 129 (ICCR)	Crematories.[d]
Other Biological Incineration	Sec. 129 (ICCR)	Other Biological Incineration.[d]
Scrap or Waste Tire Incineration.	Sec. 129 (ICCR)	Scrap or Waste Tire Incineration.[d]

[a] 112 Source Category Names were from the National Emission Standard for Hazardous Air Pollutants; Revision of List of Categories of Sources and Schedule for Standards Under Section 112 of the Clean Air Act, Federal Register Notice, February 12, 1998 pages 7155–7166.

[b] The reader is referred to a November 7, 1996 Federal Register Notice (61 FR 57602) which concerns the anticipated listing action involving the subsumption of a number of source categories into one source category, called the Miscellaneous Organic Chemical Processes source category. Each of the anticipated subsumed categories are scheduled for standards promulgation no later than November 15, 2000; thus, the new source category would be also scheduled for that regulatory time frame.

[c] Source category ''chromium refractory production'' will be expanded to become ''refractories production.''

[d] The Industrial Combustion Coordinated Rulemaking (ICCR) is to regulate various combustion sources by consolidating authorities under sections 112 and 129. The section 112 categories are: combustion turbines, reciprocating internal combustion engines, process heaters, institutional/commercial boilers, and industrial boilers; while the section 129 categories are: industrial/commercial incinerators and other solid waste incinerators.

BILLING CODE 6560–50–P

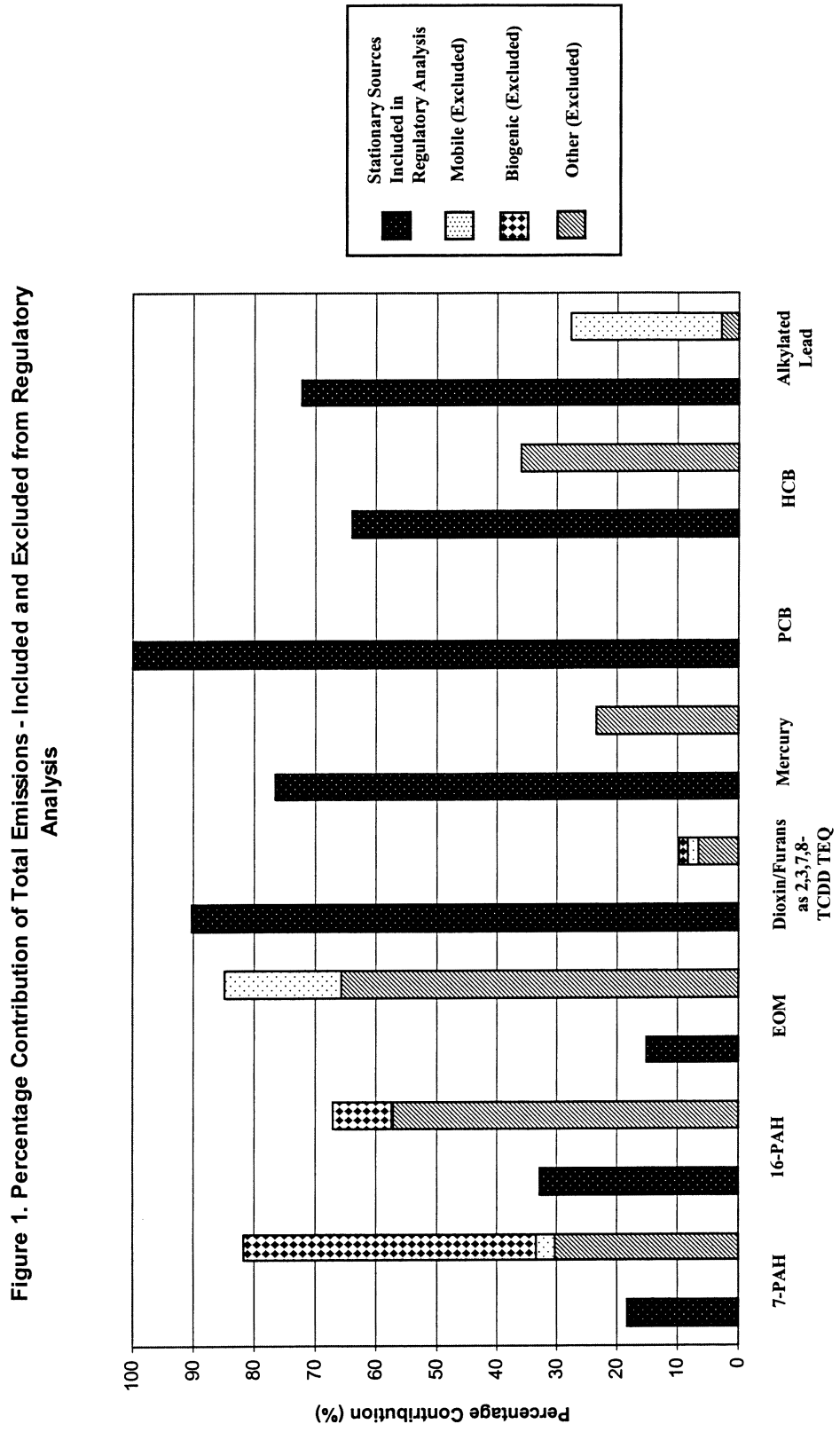


Figure 1. Percentage Contribution of Total Emissions - Included and Excluded from Regulatory Analysis

[FR Doc. 98–9557 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5490–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 16, 1998 through March 20, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the office of Federal Activities at (202) 564–7167.

Summary of Rating Definitions Environmental Impact of the Action LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environmment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D–FTA–E40774–FL Rating EC2, Central Florida Light Rail Transit System Transportation Improvement to the North/South Corridor Project, Locally Preferred Alternative (LPA) and Minimum Operable Segment (MOS), Orange and Seminole Counties, FL.

Summary: EPA conceptually concurs with the selection of a light rail system because of the expected air quality benefits. EPA concerns, however, include environmental justice impacts associated with Alternative 3, neighborhood travel disruptions, potential impact to historic districts, and some urban wetland impacts.

ERP No. D–NSF–A81164–00 Rating EC2, Amundsen-Scott South Pole Station, Proposal to Modernize through Reconstruction and Replacement of Key Facilities, Antarctica.

Summary: EPA believes that since monitoring of ambient air quality at the station is not feasible, the EIS should identify measures to be carried out on a periodic basis to ensure that air emissions from sources at the station continue to be in line with the emission factors as specified for such equipment. EPA also, identified a number of points which should be clarified in the EIS to better inform the final decision regarding the proposed action.

Final EISs

ERP No. F–FHW–D40284–PA, US 202 Section 700 Corridor, Improvements, from PA 63 in Montgomeryville to the PA–611 Bypass in Doylestown Township, COE Section 404 Permit and Right-of-Way, Montgomery and Bucks Counties, PA.

Summary: EPA continued to express concerns that the proposed 8 mile highway will negatively impact water quality of the Neshaminy Creek, a tributary to the Delaware River. EPA does not oppose issuance of a Section 404 permit for the project provided all appropriate measures are taken to mitigate adverse impacts to water quality, wetlands and terrestrial ecosystems.

Regulations

ERP No. PR–AFS–A65164–00, 36 CFR Part 212 Administration of the Forest Development Transportation System: Management Regulations Revision and Temporary Suspension of Road Construction in Roadless Areas; Proposed Rules.

Summary: EPA supports the Forest Service's effort to revise its existing transportation policy and an 18 month road moratorium in designated roadless areas. EPA believes this is a good start to protecting the environmental and cultural values associated with the roadless and low-density roaded areas as well as the other Forest Service lands. EPA expects to work closely with the Forest Service as it develops its rules to ensure that adverse impacts to water quality are avoided or mitigated.

Dated: April 7, 1998.

Ken Mittelholtz,

Environmental Protection Specialist Office of Federal Activities.

[FR Doc. 98–9567 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5490–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed March 30, 1998 Through April 03, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980106, DRAFT EIS, NPS, MI, Isle Royale National Park General Management Plan, Implementation, Keweenaw County, MI, Due: May 26, 1998, Contact: Douglas A. Barnard (906) 482–0984.

EIS No. 980107, DRAFT EIS, DOE, UT, Spanish Fork Canyon—Nephi Irrigation System (SFN) System, Construction and Operation, Bonneville Unit, Central Utah Project, Central Utah Water Conservancy District, Utah, Salt Lake and Juab Counties, UT, Due: June 15, 1998, Contact: Sheldon H. Talbot (801) 226–7105.

EIS No. 980108, DRAFT EIS, FHW, AR, MI, US–71 Transportation Improvements, from south of Bella Vista to Pineville, Benton County, AR and McDonald County, MI, Due: June 05, 1998, Contact: Elizabeth A. Romero (501) 324–5625.

EIS No. 980109, FINAL SUPPLEMENT, COE, AL, FL, GA, Lake Seminole Hydrilla Action Plan Updated Information to the Lake Seminole and Jim Woodruff Lock and Dam, Operation and Maintenance Project, Implementation, Gadsden and Jackson Counties, FL; Decatur and Seminole Counties, GA; and Houston County, AL, Due: May 11, 1998, Contact: Mike Eubanks (334) 694–3861.

EIS No. 980110, FINAL EIS, COE, CA, Upper Guadalupe River Feasibility Study, Flood Control Protection, Construction, National Economic Development Plan (NED), Santa Clara Valley Water District, City of San Jose, Santa Clara County, CA, Due: May 11, 1998, Contact: William Dejager (415) 977–8670.

EIS No. 980111, DRAFT EIS, USN, HI, Pacific Missile Range Facility Enhanced Capabilities, To Accommodate Theater Ballistic Missile Defense (TBMD) Training & Testing and Theater Missile Defense (TMD) Testing, NPDES Permit, several counties, HI, Due: May 26, 1998, Contact: Vida Mossman (808) 335–4740.

EIS No. 980112, DRAFT EIS, GSA, VA, U.S. Patent and Trademark Office (PTO) Consolidation, Acquisition of 2.4 million Rentable Square Feet with a 20-year Lease Term, Three Possible Sites: Crystal City, Carlyle and Eisenhower Avenue, VA, Due: May 26, 1998, Contact: Carl Winters (202) 401–1025.

EIS No. 980113, DRAFT EIS, COE, NJ, Brigantine Inlet to Great Egg Harbor Inlet Feasibility Study, Storm Damage Reduction Project, New Jersey Shore Protection, City of Brigantine, Brigantine Island, Along the Atlantic Coast, NJ, Due: May 26, 1998, Contact: Beth Brandreth (215) 656–6558.

EIS No. 980114, FINAL EIS, USN, CA, Long Beach Complex Disposal and Reuse, Implementation, COE Section 10 and 404 Permits, NPDES Permit, in the City of Long Beach and Los Angeles County, CA, Due: May 11, 1998, Contact: Melanie Ault (619) 532–4744.

EIS No. 980115, FINAL EIS, FHW, MN, MN-Trunk-Highway-371 (MN–TH–371) Relocation Project, New Construction, North of the entrance to the Crow Wing State Park to the existing Intersection of MN–TH–371 and MN–TH–210 in the City of Baxter, Funding and US Army COE Section 10 Permit Issuance, Crow Wing Township, Crow Wing County, MN (Tier 2 FEIS), Due: May 11, 1998, Contact: Cheryle Martin (612) 291–6120.

Dated: April 7, 1998.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 98–9568 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5995–2]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on May 18th and 19th, 1998. The meeting will take place at the River Inn, 924 Twenty-Fifth Street, NW, Washington, DC from 9:00 am to 5:00 pm on Monday, May 18th and Tuesday, May 19th. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education and Media Relations (OCEMR) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Office of Environmental Education (1707), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or call (202) 260–4129.

Dated: March 25, 1998.

Ginger Keho,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 98–9550 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5994–9]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the Annual meeting of the Ozone Transport Commission to be held on May 22, 1998.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on May 22, 1998 from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at: Hawthorne Hotel, On the Common, Salem, MA 01970, (978) 744–4080.

FOR FURTHER INFORMATION CONTACT:

EPA: Susan Studlien, U.S. Environmental Protection Agency—Region 1, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3800.

THE STATE CONTACT:

Host Agency: Sonia Hamel, Executive Office of Environmental Affairs, 100 Cambridge Street, Boston, MA 02202, (617) 727–9800.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 638, Washington, DC 20001, (202) 508–3840, e-mail: ozone@sso.org

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with ground level oxone formation, transport, and control within the transport region.

The purpose of this notice is to announce that this Commission will meet on May 22, 1998. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the Ozone Transport Commission are not subject to the provisions of the Federal Advisory Commission Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 (or by e-mail: ozone@sso.org) on Friday, May 15, 1998. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, including actions by EPA under Sections 110 and 126 of the Clean Air Act to evaluate the potential for additional emission reductions through new motor vehicle emission standards, and to discuss market-based programs to reduce pollutants that cause ozone. The OTC will also elect its new Vice Chair.

Dated: April 3, 1998.

John DeVillars,

Regional Administrator, EPA Region 1.

[FR Doc. 98–9551 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5995–6]

Proposed CERCLA Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; City of Toledo, Toledo, OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(I) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(I), notice is hereby given of a proposed administrative settlement by consent (AOC), pursuant to CERCLA sections 106(a), 107(a) and 122(h), 42 U.S.C. 9606(a), 9607 and 9622, concerning the XXKem Site in Toledo, Ohio. The City of Toledo is the Respondent to the proposed AOC.

The settlement requires that the City of Toledo design, construct, and demonstrate the performance of a leachate extraction system at the XXKem facility in Toledo. Operation and maintenance of the system will be performed by other parties. The work to be performed is necessary to address the potential threat to human health and the environment posed by the release of hazardous substances at or from the central portion of the XXKem facility.

The proposed settlement includes U.S. EPA's covenant not to sue or take administrative action against the City of Toledo pursuant to sections 106(a) and 107(a) of CERCLA, 42 U.S.C. 9606(a) and 9607(a), for the work to be performed, and for the recovery of U.S. EPA's past response costs, oversight costs, the Stickney-related work at the XXKem Site, and future work and future response costs at the central portion of the XXKem facility. Contribution protection under the order is co-extensive with the covenant not to sue. The U.S. EPA's authority to enter into this administrative settlement agreement was conditioned upon the approval of the Attorney General of the United States (or her delegatee); this approval has been obtained.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the 7th Floor Records Center, (for address, see below).

DATES: Comments must be submitted on or before May 11, 1998.

ADDRESSES: The proposed Administrative Order by Consent (''AOC''), embodying the settlement agreement, and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region 5, Superfund Division Records Center, 77 West Jackson Boulevard, 7th Floor, Chicago, Illinois 60604. A copy of the proposed AOC may be obtained from Sherry L. Estes (for address, see below). Comments should be sent to Ms. Estes and should reference the City of Toledo AOC for the XXKem facility, Toledo, Ohio.

FOR FURTHER INFORMATION CONTACT: Sherry L. Estes, Office of Regional Counsel, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, or (312) 886–7164.

SUPPLEMENTARY INFORMATION:

A. Background

The central portion of the XXKem facility, comprised of 5.5 acres, is located at 3903–05 Stickney Avenue and is bordered on the north by the Stickney Avenue Landfill, in Lucas County, Toledo, Ohio. XXKem was formerly occupied by companies which performed waste solvent and waste oil fuel blending operations. The City of Toledo also disposed of wastewater treatment plant sludge within the facility's disposal lagoon. The disposal lagoon was closed pursuant to a 1981 Consent Decree between the State of Ohio and the then-site operator. However, the sludge at the bottom of the lagoon was left on site. In 1994, part of the sampling conducted during the Engineering Evaluation/Cost Analysis (EE/CA) for the Stickney Avenue Landfill analyzed non-aqueous phase liquid beneath the Stickney site and immediately adjacent to the central portion of the XXKem facility. These results revealed hazardous substances had migrated in groundwater from the closed lagoon to Stickney, with the ultimate discharge point being the Ottawa River. Under a cooperative agreement with U.S. EPA, the Ohio Environmental Protection Agency (OEPA) conducted an Expanded Site Inspection (ESI) and a Supplemental ESI of the XXKem Site in 1994 and 1995, respectively. As part of the Supplemental ESI, subsurface soil and

groundwater samples were collected. The analytical results revealed the presence of high concentrations of hazardous substances, including volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), pesticides, and metals in soils and groundwater at the central portion of the XXKem facility.

The Enforcement Action Memorandum for the Stickney Avenue Landfill (Stickney EAM), dated January 22, 1996, also included a response action decision for the central portion of the XXKem facility. The Stickney EAM calls for the construction of a multi-layer landfill cover system, compliant with the functional requirements of the Ohio Solid Waste regulations, over the closed lagoon area, and a landfill gas collection system, with passive venting to the atmosphere. Upon review of the soil and groundwater data from the Supplemental ESI and consultation with OEPA, both U.S. EPA and OEPA do not now believe that the extension of the Stickney cover system over the former waste disposal lagoon alone will adequately address the potential impact of contamination in the former lagoon at the XXKem facility on the Stickney Site and the Ottawa River.

These data, and U.S. EPA's proposed response to the potential environmental threat resulting from the contamination found in the closed lagoon area, are set forth in a document entitled, ''A Summary of Response Alternatives for the XXKem Site,'' (XXKem Summary) which was released for public comment between February 7 and March 9, 1998. On April 8, 1998, U.S. EPA issued an Enforcement Action Memorandum for the XXKem Site (XXKem EAM). Responses to the substantive comments received during the public comment period on the XXKem Summary are set forth in the Responsiveness Summary of the XXKem EAM.

B. Settling Parties

Proposed settling party: The City of Toledo, a municipal corporation.

C. Description of Settlement

In exchange for the U.S. EPA's covenant not to sue, the Respondent City of Toledo agrees to design, construct and demonstrate the performance of a leachate extraction system at the central portion of XXKem facility. However, the City of Toledo's obligation to conduct the performance demonstration of the system terminates once the City has expended $375,000 total on the work required by the AOC. U.S. EPA estimates that all of the work required by the AOC can be completed for $375,000, and that the work requirements of the AOC are commensurate with the City's responsibility for the contamination at XXKem. It should be noted that the City is responsible for the installation of the leachate extraction system without regard to the $375,000 limit. U.S. EPA also considered Toledo's status as a Respondent to the February 27, 1998, Administrative Order by Consent for the Stickney/Tyler Sites (Stickney/Tyler AOC) and its resulting financial contribution toward the work currently underway at these sites.

The proposed settlement includes U.S. EPA's covenant not to sue or take administrative action against the City of Toledo pursuant to sections 106(a) and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607, for the work to be performed, and for the recovery of U.S. EPA's past response costs, oversight costs, SWAXS work (Stickney Work at XXKem Site), and future work and future response costs at the central portion of the XXKem facility. Contribution protection under the order is co-extensive with the covenant not to sue, to the extent provided by sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4).

In the proposed AOC, the United States reserves its rights to take further proceedings against Toledo if the total costs of response at the XXKem Site exceed $4.5 million. The settlement also contains re-opener provisions for unknown conditions and new information, which are analogous to the re-opener provisions contained in the model RD/RA consent decree.

D. Relationship of This Proposed AOC to Stickney/Tyler AOC

In accordance with the Stickney EAM, the Stickney/Tyler AOC action requires the construction of a multi-layer cover system over the central portion of the XXKem facility. The City of Toledo is a respondent under the Stickney/Tyler AOC. However, the contribution protection section of the Stickney/Tyler AOC provides that claims for the XXKem site are reserved. Thus, for the work that will be conducted at XXKem, the Stickney/Tyler AOC respondents may pursue contribution claims against each other and against non-respondents, and, correspondingly, will be vulnerable to contribution claims from non-respondents. With the successful completion of the work to be performed pursuant to the proposed Toledo AOC, the City, alone among the Stickney/Tyler respondents, will be protected from contribution claims for XXKem, unless and to the extent that total site costs at XXKem exceed the re-opener amount of $4.5 million.

Dated: April 6, 1998.

William E. Muno,

Director, Superfund Division.

[FR Doc. 98–9702 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5993–9]

Draft General NPDES Permit for Aquaculture Facilities and On-site Fish Processing Facilities in Idaho (General NPDES Permit ID–G13–0000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft general NPDES permit.

SUMMARY: The Director, Office of Water, EPA Region 10, is proposing to issue a general National Pollutant Discharge Elimination System (NPDES) permit number ID–G13–0000 for aquaculture facilities and associated, on-site fish processing facilities operating in Idaho, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The draft general NPDES permit authorizes wastewater discharges from these facilities to surface waters of the United States throughout Idaho. The aquaculture facilities authorized to discharge under this general permit raise fish—rainbow trout, steelhead trout, chinook salmon, catfish, tilapia and other fish—for market as food products and for the enhancement of salmonid populations; they discharge rearing wastewater containing fish excreta, excess fish feed, dissolved and suspended solid biological pollutants, oxygen demanding materials, nutrients, and residual disease control chemicals. The fish processing facilities authorized to discharge under this general permit butcher fish—rainbow trout, steelhead trout, chinook salmon, catfish, tilapia and other fish—for market as food products; they discharge processing wastewater containing dissolved and suspended solid biological pollutants, oxygen demanding materials, nutrients, and residual disinfectants.

The aquaculture facilities authorized to discharge pollutants under this general NPDES permit are required to develop best management practices plans supported by mass balance assessments of their operations and to restrict their discharges below specific technology-based limitations on total suspended solids and settleable solids and specific water quality-based

limitations on total phosphorus, dissolved oxygen, and pH. The fish processing facilities authorized to discharge pollutants under this general NPDES permit are required to develop best management practices plans supported by mass balance assessments of their operations and to restrict their discharges below specific technology-based limitations on total suspended solids, biochemical oxygen demand (BOD5), oil and grease, and pH and specific water quality-based limitations on total residual chlorine and pH. Discharges of hazardous materials are prohibited under this permit.

The draft general NPDES permit contains technology-based limitations based upon the same effluent guidelines as previous NPDES permits for Idaho's aquaculture industry with corrections for the numbers of samples taken during a month. Limitations are provided for single grab samples and composite samples of four or more grab samples per day. The draft general NPDES permit contains technology-based limitations based upon the same effluent guidelines as previous NPDES permits for Idaho's fish processing industry.

The draft general NPDES permit contains new water quality-based limitations and conditions which support Idaho's Water Quality Standards and respond to the polluted conditions of some of Idaho's surface water and the State's assessment of total maximum daily loads for the discharge of total phosphorus to these waters.

The draft general NPDES permit contains effluent monitoring requirements which (1) support the detailed characterization of pollutants discharges during the first year of the permit term and (2) ensure compliance with permit limitations throughout the five-year term of the permit. Pollutant parameters measured include settleable solids, total suspended solids, dissolved oxygen, BOD5, oil and grease, pH, temperature, total phosphorus, ammonia, nitrate-nitrite, Kjeldahl nitrogen, and total residual chlorine.

The draft general NPDES permit contains additional monitoring requirements for the largest facilities (producing more than one million pounds of fish per year and, collectively, discharging more than one half of the pollution produced by this industry). Monitoring of whole effluent toxicity and ambient depositions of settleable organic residues by these facilities will be used to improve the assessment of the risks of environmental impacts of aquaculture discharges and ensure the protection of Idaho Water Quality Standards.

The draft general NPDES permit contains requirements for the development of best management practices plans and annual operations reports.

The draft permit was prepared with considerable consultation with Idaho Department of Health and Welfare, Division of Environmental Quality. This collaborative effort was conducted with the Twin Falls Regional Office in the lead for IDHW–DEQ. The majority of aquaculture facilities are located in the Twin Falls Regional Office proper and are point sources identified in *The Middle Snake Watershed Management Plan, Phase 1 TMDL*. A public meeting was held in Twin Falls on June 19, 1997 to obtain input from the public on key issues. In response to this input, EPA in consultation with IDHW–DEQ has agreed, among other things, to develop a more logical and equitable classification scheme and to reduce the monitoring and data collection requirements.

PUBLIC NOTICE ISSUANCE DATE: April 10, 1998.

PUBLIC NOTICE EXPIRATION DATE: June 9, 1998.

Availability

Copies of the draft general NPDES permit and supporting fact sheet are available from the EPA Region 10 Public Environmental Resource Center at 1–800–424–4EPA (4372), the EPA Idaho Office, and Idaho Division of Environmental Quality offices throughout the state. Both can be downloaded from the Internet website of EPA Region 10's Office of Water—''Public Notices'' at www.epa.gov/r10earth/offices/water/ow.htm.

Public Comments

Interested persons may submit written comments on the draft general NPDES permit within the 60-day public comment period to the attention of Carla Fromm at the address and telephone number below. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment on the permit condition(s) and the relevant facts upon which the comment is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. Comments must be submitted to EPA on or before the expiration date of the public notice.

After the expiration date on the public notice, the Director, Office of Water, EPA Region 10, will make a final determination with respect to issuance of the general permit. The tentative requirements contained in the draft general permit will become final conditions if no substantive comments are received during the public comment period. The permit is expected to become effective by the end of September 1998.

Persons wishing to comment on the State Certification that the general NPDES permit protects Idaho Water Quality Standards should submit written comments within the 60-day public comment period to the State of Idaho, IDHW—Division of Environmental Quality, 601 Pole Line Road, Suite 2, Twin Falls, Idaho 83301–3035, attn: Mike McMasters, (telephone: 208–736–2190).

Public Hearing and Workshop

A public hearing has been scheduled for 7:00 pm on Tuesday, May 12, 1998, at the IDHW—Division of Environmental Quality office, 601 Pole Line Road, Twin Falls, Idaho, in order to receive and record verbal public comments. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated; written comments for submission to the record which reflect verbal comments are appreciated.

A public workshop has been scheduled to precede the hearing, and will be held from 1:30 pm to 5 pm, Tuesday, May 12, 1998, at the IDHW—Division of Environmental Quality office, 601 Pole Line Road, Twin Falls, Idaho, in order to provide for the presentation and discussion of issues relevant to this general NPDES permit. The workshop will consider (1) Permit Goals and Strategy, (2) Effluent Limitations, (3) Effluent Monitoring Requirements, (4) Ambient Monitoring Requirements, (5) Best Management Practices, (6) Reporting Requirements, and (7) Schedules of Compliance.

The hearing and the workshop are distinctly separate yet mutually supporting opportunities for public participation and information. The public hearing is a forum for the presentation and recording of public comments for the administrative record of this general NPDES permit; agency responses will be kept to a minimum. The public workshop is a forum of the agencies to present issues in person and with the support of audio-visual assets; public participation will be in the form of discussions grounded in question-and-answer exchanges.

Appeal of Permit

Within 120 days following the service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal the Permit in the

Federal Court of Appeal in accordance with section 509(b)(1) of the Clean Water Act. Persons affected by a general NPDES permit may not challenge the conditions of the Permit as a right of further EPA proceedings. Instead, they may either challenge the Permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual NPDES permit.

The draft permit was prepared with considerable consultation with Idaho Department of Health and Welfare, Division of Environmental Quality. This collaborative effort was conducted with the Twin Falls Regional Office in the lead for IDHW–DEQ. The majority of aquaculture facilities are located in the Twin Falls Regional Office proper and are point sources identified in *The Middle Snake Watershed Management Plan, Phase 1 TMDL.* A public meeting was held in Twin Falls on June 19, 1997 to obtain input from the public on key issues. In response to this input, EPA in consultation with IDHW–DEQ has agreed, among other things, to develop a more logical and equitable classification scheme and to reduce the monitoring and data collection requirements.

Administrative Record

The complete administrative record for the draft general NPDES permit is available for public review. Contact Carla Fromm at the address and telephone number below.

ADDRESSES: Public comments should be sent to: Environmental Protection Agency Region 10, Idaho Office, 1435 North Orchard Street, Boise, Idaho 83706, attn. Carla Fromm. A copy of the permit and fact sheet can be obtained at this office, or Idaho Division of Environmental Quality, 1410 N Hilton, Boise, Idaho 83706; IDHW–DEQ Twin Falls Regional Office, 601 Pole Line Road, Suite 2, Twin Falls, Idaho 83301; IDHW–DEQ Boise Regional Office, 1445 N. Orchard, Boise, Idaho 83706–2239; IDHW–DEQ Pocatello Regional Office, 224 S. Arthur, Pocatello, Idaho 83204; IDHW–DEQ Lewiston Regional Office, 1118 F St., Lewiston, Idaho 83501; IDHW–DEQ Coeur d'Alene Regional Office, 2110 Ironwood Pkwy, Coeur d'Alene, Idaho 83814; and IDHW–DEQ Idaho Falls Regional Office, 900 N. Skyline, Idaho Falls, Idaho 83402.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

FOR FURTHER INFORMATION CONTACT: Carla Fromm, EPA Region 10, Idaho Office, 1435 North Orchard Street, Boise, Idaho 83706; (208) 378–5755; fromm.carla@epamail.EPA.gov.

Dated: April 3, 1998.

Philip G. Millam,

Director, Office of Water, Region 10.

[FR Doc. 98–9384 Filed 4–9–98; 8:45 am]

BILLING CODE 6560–50–P

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 take this opportunity to comment on a proposed extension of 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 requests for a major disaster or an emergency declaration by the President.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (the Stafford Act), requires that all requests for a major disaster or an emergency declaration by the President must be made by the Governor of the affected State. Section 401 of the Act stipulates specific information the Government must submit with a request for any major disaster declaration. Section 501(a) of the Act stipulates specific information the Governor must submit with a request for any emergency declaration. Section 403(c) of the Act authorizes emergency assistance, without a Presidential declaration, through the utilization of Department of Defense personnel and resources. Information needed to process the request from the Governor is set forth in 44 CFR Part 206.34 and 206.45.

Collection of Information

Title. The Declaration Process: Requests for Damage Assessment, Federal Disaster Assistance, Cost Share Adjustments, and Loans of the Non-Federal Share.

Type of Information Collection. Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0113.

Form Numbers. None.

Abstract. The State Governor must submit requests for Federal disaster assistance for major disaster or emergency declarations, loans of the non-Federal share, and cost share adjustments to the President through the Federal Emergency Management Agency (FEMA). FEMA senior staff evaluates the information supporting the Governor's request for supplemental Federal disaster assistance and forwards the findings and recommendations to the Director, FEMA. The Director forwards the request to the President with a FEMA report and recommendation. The President approves/disapproves the request, and the Governor is promptly notified by the Director that an emergency or major disaster exists or that the Governor's request does not justify the use of the authorities under the Stafford Act. FEMA will also notify other Federal agencies and interested parties. If approved, a disaster or emergency declaration is made, published in the **Federal Register**, and the Governor notified of the designations of assistance and areas eligible for such assistance. The information to be submitted by the Governor is set forth in FEMA regulations 44 CFR Part 206, Subpart B—The Declaration Process. The specific sections are as follows: section 206.33, Preliminary Damage Assessment; section 206.34, Request for utilization of Department of Defense (DOD) resources; section 206–35, Requests for emergency declarations; section 206–36, Requests for major disaster declarations; section 206.44, FEMA-State Agreement; section 206.45, Loans of non-Federal share; and section 206.46, Appeals.

Affected Public: Individuals or households, Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: The number of respondents for the information collections is 58 and includes the Governors of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianna Islands, and Federal States of Micronesia, and the Republic of the Marshall Islands.

Frequency of Response: Average of 3 times per year per respondent.

Hours per Response: FEMA estimates that will take each respondent an average of 8 hours to gather data and submit a request for Federal disaster

assistance that complies with the provision of 44 CFR Part 206, Subpart B.

Estimated Total Annual Burden Hours: 1,392.

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 should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524. FEMA is particularly interested in comments on the burden hours estimated at 8 hours to gather data and submit a request for Federal disaster assistance through the Director, FEMA for approval by the President.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the collection of information contact Magdalena M. Ruiz, Acting Division Director, Federal Disaster Declaration Policy and Processing Division, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472. Telephone number (202) 646–3630. For a copy of the OMB paperwork clearance package contact Ms. Anderson at the address or telephone number provided above.

Dated: April 1, 1998.

Tom Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–9522 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of a collection of information under the emergency processing procedures in the Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting the collection of information be approved by April 6, 1998, for use through October 31, 1998.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Act, Pub. L. 93–288, as amended, authorizes training programs for emergency preparedness. The information obtained from the Emergency Management Institute (EMI) Survey will be used in responding to the Government Performance and Results Act (GPRA).

Collection of Information

Title: Emergency Management Institute Follow-up Evaluation Survey.

Type of Information Collection: New collection.

Form Number: FEMA Form 95–56.

Abstract: The purpose of this survey is to determine the extent to which the knowledge and/or skills participants obtained in EMI have been applicable to the conduct of their present position or emergency management assignment. Feedback will be used in our ongoing course review and revision process.

Affected Public: Federal Government, State, Local or Tribal Government.

Number of Responses: 4,000.

Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,000.

Estimated Cost: $1,280.

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;

(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.

ADDRESSES: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Dennis Marvich, FEMA Desk Officer, Room 10202, Washington, DC 20503 within 30 days of the date of this notice. FEMA will continue to accept written comments after the 30-day comment period closes.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: March 31, 1998.

Tom Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–9521 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Report to Submit Technical or Scientific Data to Correct Mapping Deficiencies Unrelated to Community-Wide Elevation Determinations (Amendments and revisions to National Flood Insurance Program maps).

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0147.

Abstract: The following certification forms are designed to assist requesters in gathering information that FEMA needs to determine whether a certain property is likely to be flooded during the flood event that has 1-percent

chance of being equaled or exceeded in any given year (base flood).

a. FEMA Form 81–87, Property Information—This form describes the location of the property, what is being requested, and what data are required to support the request. The hour burden is estimated to average 1.63 hours per response.

b. FEMA Form 82–87A, Elevation Information—This form indicates what the Base (100-year) Flood Elevation (BFE) for the property is, how the BFE was determined, the lowest ground elevation on the property, and/or the elevation of the lowest adjacent grade to any structures on the property. This information is required in order for FEMA to determine if the property that is being requested to be removed from the SFHA is above the BFE. The hour burden is estimated to average .63 hour per response.

c. FEMA Form 81–87B, Certification of Fill Compaction—NFIP regulations Section 44 CFR 65.5(a)(6) requires that fill placed to remove an area from the SFHA meet certain criteria. This form requires that a registered professional engineer or the community's floodplain official certify that the fill was placed in accordance with the aforementioned NFIP regulations. The hour burden is estimated to average .35 hour per response.

d. FEMA Form 81–87C, Community Acknowledgment of Requests Involving Fill NFIP regulations Section 44 CFR 65.5(a)(6) require if fill is placed to remove an area from the SFHA that the community acknowledge the request. This form ensures that this requirement is fulfilled prior to the submittal of the request to FEMA. The hour burden is estimated to average .88 hour per response.

e. FEMA Form 81–87D, Summary of Elevations—Individual Lot Breakdown—This form is to be used in conjunction with the Elevation Information Form for requests involving multiple lots or structures. It provides a table to allow the required submitted data to be presented in a manner for quick and efficient review. The hour burden is estimated to average .67 hour per response.

f. FEMA Form 81–87E, Credit Card Information—This form outlines the information required to process a request when the requester is paying by credit card. The hour burden is estimated to average 6 minutes per response.

Affected Public: Individuals or households; Businesses or other for-profit; State, Local or Tribal government.

Number of Respondents: 5,400.

Estimated Time per Respondent: 4.22 hours.

Estimated Total Annual Burden Hours: 22,788.

Frequency of Response: One time per response. Forms are submitted as needed by the respondents.

Obligation to Response: Respondents must provide the information in this collection to obtain or retain benefits.

Comments

Interested persons are invited to submit written comments on the proposed information collection to Dennis Marvich, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: April 1, 1998.

Tom Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–9523 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1212–DR]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1212–DR), dated April 1, 1998, and related determinations.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 1, 1998:

Rice County for Individual Assistance and Categories A and B under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–9520 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1211–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1211–DR), dated March 22, 1998, and related determinations.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 22, 1998:

Durham, Edgecombe, Nash, and Wake Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–9519 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference 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 teleconference meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: April 23, 1998.

Place: The FEMA Conference Operator in Washington, D.C. will arrange the teleconference. Individuals interested in participating should fax a request including their telephone number to (202) 646–4596 by April 20, 1998.

Times: 11:00 a.m. to 1:00 p.m.

Proposed Agenda: The proposed agenda is as follows:

1. Call to order.
2. Announcements.
3. Action on minutes of previous meeting in Baltimore, MD March 2–3, 1998.
4. Clarify issues to be reported in the 1998 annual report of the Council.
5. Discuss recommendations on Letter of Map Amendment procedures.
6. Discuss priorities for FEMA's Map Modernization plan.

Status: This teleconference meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street S.W., Room 421, Washington, D.C. 20472; telephone (202) 646–2756 or by fax as noted above.

Dated: April 2, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–9518 Filed 4–9–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL HOUSING FINANCE BOARD

[No. 98–N–3]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank Services.

SUMMARY: The Federal Housing Finance Board (Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to members and other eligible institutions.

EFFECTIVE DATE: April 10, 1998.

FOR FURTHER INFORMATION CONTACT: Gwen R. Grogan, Bank Examiner, Office of Supervision (202) 408–2892; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C.1431(e)) authorizes the Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. § 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Board.

Section 943.6(c) of the Board's regulations (12 CFR 943.6(c)) provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedules are for the three Banks which offer item processing services to their members and other qualified financial institutions. Most of the remaining Banks provide other Correspondence Services which may include securities safekeeping, disbursements, coin and currency, settlement, electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (1998 NOW/DDA Services) (Services Not Provided)

District 2.—Federal Home Loan Bank of New York (1998 NOW/DDA Services) (Does Not Provide Item Processing Services for Third Party Accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (1998 NOW/DDA Services)

Deposit Processing Service (DPS)

DPS Deposit Tickets	$0.6000 per deposit.
Printing of Deposit Tickets	Pass-through.

Deposit Items Processed
Pricing varies—tiered by monthly volume

For volumes of:	
1–25,000	$0.0385 per item (transit).
25,001–58,500	0.0379 per item (transit).
58,501–91,500	0.0374 per item (transit).
91,501–125,000	0.0368 per item (transit).
125,001–158,500	0.0363 per item (transit).
158,501–191,500	0.0357 per item (transit).
191,501–over	0.0352 per item (transit).

Deposit Items Encoded (West)
Pricing varies—tiered by monthly volume

For volumes of:	
1–25,000	$0.0311 per item.
25,001–58,500	0.0306 per item.

58,501–91,500	0.0301 per item.
91,501–125,000	0.0296 per item.
125,001–158,500	0.0291 per item.
158,501–191,500	0.0286 per item.
191,501–over	0.0281 per item.

Deposit Items Encoded (East)
Pricing varies—tiered by monthly volume

For volumes of:	
1–25,000	$0.0332 per item.
25,001–58,500	0.0327 per item.
58,501–91,500	0.0322 per item.
91,501–125,000	0.0317 per item.
125,001–158,500	0.0312 per item.
158,501–191,500	0.0307 per item.
191,501–over	0.0302 per item.
Deposit Items Returned	1.9000 per item.
Deposit Items Photocopied	3.7500 per photocopy.
DPS Photocopies—Subpoena	18.3500 per hour of processing time. Plus 0.2500 per photocopy.
Deposit Items Rejected	0.2300 per rejected item.

(Applicable to pre-encoded deposits only)

Canadian Item Processing	5.2500 per item.
Bond Coupon Returns	30.0000 per coupon.
Foreign Collection Fee	26.0000 per item.
Bought Foreign Collection Fee	14.0000 per item.
Bond Collection:	
Bearer	30.0000 per bond.
Registered	40.0000 per bond.
Foreign Return Check Fee	26.0000 per item.
DPS Transportation (West)	8.9000 per pickup.
DPS Transportation (East)	8.9000 per pickup.
Return Check Courier Service	130.0000 per month.

Depository Account Services

''On-Us'' Returns Deposited:	
Qualified Returns	$0.5400 per item.
Raw Returns	2.1200 per item.
Mail Deposits	5.6500 per deposit.
Bond Coupon Collection	7.0000 per envelope.
Deposit Transfer Vouchers	5.5600 per item.

Electronic Funds Transfers

Incoming Wire Transfers	$6.1800 per transfer.
Outgoing Wire Transfers (Automated/Link)	7.0000 per transfer.
Outgoing Wire Transfers (Manual)	10.3000 per transfer.
Fax of Wire Transfer Advice	3.1000 per transfer.
Internal Book Transfers (Automated/Link)	No Charge.
Internal Book Transfers (Manual)	1.0300 per transfer.
Foreign Wire Surcharge	31.0000 per transfer.
Mortgage Participation Service Fee	3.1000 per transfer.
Expected Wires Not Received	Penalty Assessed.**

Automated Clearing House

ACH Transaction Settlement (CR/DR)	$0.2750 per transaction.
ACH Origination Items (CR/DR)	0.2100 per item.
ACH Origination Record Set-Up	1.5500 per record.
ACH Origination Items Returned	5.0000 per returned item.
ACH Returns/NOCOs-Facsimile	2.2000 per transaction.
ACH Returns/NOCOs-Telephone	3.5500 per transaction.
ACH/FRB Priced Service Charges	0.2900 per transaction.

*Note: This surcharge will be added to the amount of the outgoing funds transfer to produce a single total debit to be charged to the customer's account on the date of transfer.

**Note: Standard penalty is equivalent to the amount of the wire(s) times the daily IOD rate, divided by 360. If the wire not received causes the Bank to suffer any penalty, deficiency, or monetary loss, any and all related costs will also be assessed.

Federal Reserve Settlement

FRB Statement Transaction (CR/DR)	$0.5900 per transaction.
Reserve Requirement Pass-Thru	26.5000 per month (active).
Correspondent Transaction (DR)	0.5900 per transaction.
Direct Send Settlement	148.3000 per month.
FRB Inclearing Settlement	148.3000 per month.
FRB Coin & Currency Settlements	30.0000 per month.

Demand Deposit Services

Clearing Items Processed	$0.1550 per item.
Clearing Items Fine Sorted (for return with Bank statements)	0.0770 per item.
Reconcilement Copies—Manual	0.0930 per copy.
Reconcilement Copies—Mag Tape	0.0520 per copy.
Reconcilement Mag Tape Processing	Pass-through.
Reconcilement Copies—Voided	0.0420 per copy.
Check Photocopies—Mail	3.9500 per photocopy.
Check Photocopies—Telephone/Fax	4.7500 per photocopy.
Check Photocopies—Subpoena	0.7000 per photocopy.
Stop Payment Orders	17.2500 per item.
FRB Return Items	0.5400 per item.
FRB Return Items Over $2,500	6.000 per item.
Non-Standard Check Imprinting	Pass-through.
Microfiche Copies	5.3000 per copy.
Request for Fax/Photocopy	3.1000 per document.

Image Statement Services—Proof of Deposit (POD) Service

Pricing for each of these premium services is customer-specific, based upon individual service requirements; please call your Relationship Officer at (800) 288–3400 for further information.

Check Processing (Inclearing)

Checks Processed

Pricing varies—tiered by monthly volume for volumes of

1–25,000	$0.0453 per item.
25,001–58,500	0.0427 per item.
58,501–91,500	0.0401 per item.
91,501–125,000	0.0375 per item.
125,001–158,500	0.0350 per item.
158,501–191,500	0.0324 per item.
191,501–350,000	0.0298 per item.
350,001–500,000	0.0272 per item.
500,001–over	0.0247 per item.

Full Backroom Service (Item Processing Charges)

Non-Truncated Checks

Pricing varies—tiered by monthly volume for volumes of

1–25,000	$0.0593 per item.
25,001–58,500	0.0578 per item.
58,501–91,500	0.0563 per item.
91,501–125,000	0.0548 per item.
125,001–158,500	0.0533 per item.
158,501–191,500	0.0518 per item.
191,501–350,000	0.0503 per item.
350,001–500,000	0.0473 per item.
500,001–over	0.0443 per item.

Truncated Checks

Pricing varies—tiered by monthly volume for volumes of

1–25,000	$0.0493 per item.
25,001–58,500	0.0478 per item.
58,501–91,500	0.0463 per item.
91,501–125,000	0.0448 per item.
125,001–158,500	0.0433 per item.
158,501–191,500	0.0418 per item.
191,501–350,000	0.0403 per item.
350,001–500,000	0.0373 per item.
500,001–over	0.0343 per item.

Modified Backroom Service (Item Processing Charges)

Non-Truncated Checks

Pricing varies—tiered by monthly volume for volumes of

1–25,000	$0.0493 per item.
25,001–58,500	0.0478 per item.
58,501–91,500	0.0463 per item.
91,501–125,000	0.0448 per item.
125,001–158,500	0.0433 per item.
158,501–191,500	0.0418 per item.
191,501–350,000	0.0403 per item.
350,001–500,000	0.0373 per item.
500,001–over	0.0343 per item.

Truncated Checks

Pricing varies—tiered by monthly volume for volumes of

1–25,000	$0.0393 per item.
25,001–58,500	0.0378 per item.
58,501–91,500	0.0363 per item.

91,501–125,000	0.0348 per item.
125,001–158,500	0.0333 per item.
158,501–191,500	0.0318 per item.
191,501–350,000	0.0303 per item.
350,001–500,000	0.0273 per item.
500,001–over	0.0243 per item.

Check Processing (Associated Services)

Over-The-Counter Items	$0.1900 per item.
OTC Item Transportation	10.0000 per month.
Special Cycle Sorting	0.0220 per item.
Mid-Cycle Statement (Purged)	0.5500 per item (Min $2.75).
Mid-Cycle Stmt. (Non-Purged)	2.7000 per statement.
Statement Printing	0.0300 per page.
Check (NOW) Statement Processing:	
Statements using Generic Envelopes	0.0620 per envelope.
Statements using Custom Envelopes	0.1050 per envelope.
Statements using Large Envelopes	0.5900 per envelope.
Envelope Destruction Fee	0.0300 per envelope.
Additional Stuffer Processing	0.0250 per stuffer.

(One stuffer per statement free—applicable to all additional stuffers)

Selective Stuffer Processing	0.0700 per statement.
Daily Report Postage	Pass-through.
Statement Postage	Pass-through.
Standard Return Calls	1.3500 per item.
Automated Return Calls	0.2700 per item.
Return Calls via Link	0.7700 per item.
Late Return Calls	2.6000 per item.
FRB Return Items	0.5400 per item.
FRB Return Items Over $2,500	6.0000 per item.
Suspect Item Processing	2.6000 per suspect item.
Check Photocopies—Mail	3.9500 per photocopy.
Check Photocopies—Telephone/Fax	4.7500 per photocopy.
Check Photocopies—Subpoena	0.7000 per photocopy.
Signature Verification Copies	0.8000 per copy.
Check Retrieval	1.6000 per item.
MICRSort Option (Fixed Fee)	27.8500 per month.
MICRSort Option (per item)	0.0320 per item.
Check Reconcilement Service	(See Separate Section)
MCPJ Microfiche Service	0.0022 per item.

(Min. $15.00, Max. $75.00)

Microfiche Copies	5.3000 per copy.
Microfilm Processing	5.6000 per roll.
Microfilm Duplication	11.3000 per roll.
Transportation	Pass-through.

Statement Savings Processing

Statements using Generic Envelopes	$0.1030 per envelope.
Statements using Custom Envelopes	0.1350 per envelope.
Statements using Large Envelopes	0.600 per envelope.

Check Reconcilement Service

Reconcilement Items Processed	$0.2250 per item.
Stop Payment Orders	10.0000 per item.
Microfiche Copies	3.0000 per copy.
Account Reconcilement	15.0000 per account.

Note: Individual service charges are detailed in a monthly statement provided specifically for this service. The net of these charges is posted to Check Processing and appears as a single line item on the monthly billing statement.

Coin and Currency Service: Western Service Area

Currency Orders	$0.3750 per $1,000.*
Coin Orders	2.5000 per box.
Currency Deposits	1.3200 per $1,000.*
Coin Deposits	1.9000 per standard bag.
Coin Deposits (Non-Standard)	2.9300 per non-standard bag.
Coin Deposits (Unsorted)	8.7500 per mixed bag.
Food Stamp Deposits	1.8500 per $1,000.*
Coin Shipment Surcharge	0.2600 per excess bag.**
C&C Transportation (Zone W1)	17.1000 per stop.
C&C Transportation (Zone W2)	28.9500 per stop.
C&C Transportation (Zone W3)	38.4700 per stop.
C&C Transportation (Zone W4)	Negotiable.***

Coin and Currency Service: Eastern Service Area

Currency Orders	$0.3300 per $1,000.*
Coin Orders	2.9400 per box.

Currency Deposits	1.3200 per $1,000.*
Coin Deposits	1.9000 per standard bag.
Coin Deposits (Non-Standard)	2.9300 per non-standard bag.
Coin Deposits (Unsorted)	8.7500 per mixed bag.
Food Stamp Deposits	1.8500 per $1,000.*
Coin Shipment Surcharge	0.2600 per excess bag.**
C&C Transportation (Zone E1)	25.8500 per stop.
C&C Transportation (Zone E2)	35.9000 per stop.
C&C Transportation (Zone E3)	54.9500 per stop.
C&C Transportation (Zone E4)	Negotiable. ***

*Note: Charges will be applied to each $1,000 ordered or deposited, and to any portion of a shipment not divisible by that standard unit.

**Note: A surcharge will apply to each container (box/bag) of coin in an order/delivery after the first 20 containers.

***Note: Reserved for remote locations: delivery charges will be negotiated with the courier service on an individual basis.

Account Maintenance

Demand Deposit Accounts	$21.7500 per month, per account.
Cut-Off Statements	10.3000 per statement.
Telephone Balance Inquiry	2.1000 per telephone call.
Paper Advice of Transactions (DTS)	25.0000 per account, per month.
Daily Transaction Data via Link	No Charge.

Account Overdraft Penalty

Greater of $75.00 per day and the daily interest on the amount of the overdraft. (Rate used for calculation equal to the highest posted advance rate plus 3.0%). Attention: Customers Receiving Transportation Charges Under Any Service.

Rates and charges relative to transportation vary depending on the location of the office(s) serviced. Details regarding the pricing for the transportation to/from specific institutions or individual locations will be provided upon their subscription to that service.

Surcharges may be applicable and will be applied to the customer as effective and without prior notice.

District 4.—Federal Home Loan Bank of Atlanta (1998 NOW/DDA Services) (Does Not Provide Item Processing Services for Third Party Accounts)

District 5.—Federal Home Loan Bank of Cincinnati (1998 NOW/DDA Services) (Does Not Provide Item Processing Services for Third Party Accounts)

District 6.—Federal Home Loan Bank of Indianapolis (1998 NOW/DDA Services)

3. Fee Schedules

a. Checking Account Processing

Effective January 1, 1997

I. Checking Account Service Transaction Charges

Monthly volume	Safekeeping	Turnaround (daily or cycled)	Complete	Full service image *		Limited service image *	
	Per item	Per item	Per item	Per item	Per statement	Per item	Per statement
0–5,000	$.053	$.0635	$.0875	$.06	$.40	$.02	$.40
5–10,000	.045	.0585	.0855	.06	.40	.02	.40
10–15,000	.044	.0545	.0835	.06	.40	.02	.40
15–25,000	.039	.0475	.0825	.06	.40	.02	.40
25–50,000	.038	.0435	.0805	.06	.40	.02	.40
50–75,000	.034	.0405	.0765	.06	.40	.02	.40
75–100,000	.031	.0375	.0755	.06	.40	.02	.40
100–and up	.029	.0345	.0745	.06	.40	.02	.40

II. Ancillary Service Fees

Large Dollar Signature Verification	$0.50.
Over-the-counters and Microfilm	0.035.
Return Items	2.40.
Photocopies** and Facsimiles	2.50.
Certified Checks	1.00.
Invalid Accounts	0.50.
Late Returns	0.50.
Invalid Returns	0.50.
No MICR/OTC	0.50.
Settlement Only	100.00 per month.
+Journal Entries	3.00 each.
Encoding Errors	2.75.
Fine Sort Numeric Sequence	0.02.
Access to Infoline	50.00 per month.

High Dollar Return Notification	N/C.
Debit Entries	N/C.
Credit Entries	N/C.
Standard Stmt. Stuffers (up to 2)***	N/C.

Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at no additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

**Photocopy request of 50 or more are charged at an hourly rate of $15.00.

***Each additional (over 2) will be charged at $.02 per statement.

b. Demand Deposits Accounts/ACH

Item Processing Service Fees

Cash Management Service

Demand deposits clearings will have the following service charges:

Paid Check Charge	$0.16 per item.
Stop payments	6.00 per stop.
Photocopies	2.50 per copy.
Fine Sort Numeric Sequence	.025 per item.
Collection/Return/Exception	5.00.
Daily Statement	2.00.
Maintenance	30.00 per month.
Debit Entries	N/C.
Credit Entries	N/C.
Special Cutoff	N/C.
Infoline	50.00 per month.
VRU (Voice Response)	1.00 per inquiry.
ACH Fees:	
Tape transmission	8.50 per tape.
or originations	.045 per item.
NACHA, MPX	Actual Federal Reserve charges.
ACH entries clearing through our R&T number	.25 per item.
Settlement only	65.00 per month.
ACH returns/NOC	2.50 per item.

Collected balances will earn interest at CMS daily posted rate.

Prices adjusted on existing accounts only.

c. Deposit Services

Federal Home Loan Bank of Indianapolis

Pre-encoded Items:	
City	$0.04 per item.
RCPC	.05 per item.
Other Districts	.085 per item.
Unencoded	.165 per item.
Food Stamp	.14 per item.
Photocopies*	2.50 per copy.
Adjustments on pre-encoded work	2.75 per error.
EZ Clear	.14 per item.
Coupons	8.25 per envelope.
Collections	6.00 per item.
Cash Letter	2.00 per cash letter.
Deposit Adjustments	.30 per adjustment.
Debit Entries	N/C.
Credit Entries	N/C.
Microfilming	N/C.
Mortgage Remittance (Basic Service)	.35.
Settlement only	100.00 per month.
+Journal Entries	3.00 each.
Courier**	
Indianapolis (city)	8.25 per location, per day, per pickup.
Outside Indianapolis	9.50 per location, per day, per pickup.
Other	Prices vary per location.

Photocopy requests of 50 or more are charged out at an hourly rate of $15.00*.

*Courier

**Marion county	8.25 per location.
Outside Marion county	Price varies per location.

Prices effective February 1, 1998.

District 7.—Federal Home Loan Bank of Chicago (1998 NOW/DDA Services) (Does Not Provide Item Processing Services for Third Party Accounts)

District 8.—Federal Home Loan Bank of Des Moines (1998 NOW/DDA Services) (Does Not Provide Item Processing Services for Third Party Accounts)

District 9.—Federal Home Loan Bank of Dallas (1997 NOW/DDA Services) (Does Not Provide Item Processing Services for Third Party Accounts)

District 10.—Federal Home Loan Bank of Topeka (1998 NOW/DDA Services)

Deposit/Cash Letter Processing

Deposit Processing Fees—Encoded Items

State	Local	Other local	Transit	Other transit
Colorado	$.015	$.031	$.040	$.059
Kansas	.015	.041	.040	.067
Nebraska	.015	.039	.040	.061
Oklahoma	.015	.038	.040	.057

Definitions

Local Checks: Low-cost city, RCPC and country items within the local Federal Reserve Bank (FRB) zone.

Transit Checks: Low-cost city, RCPC and country items outside of the local zone.

Other Checks: Includes city, RCPC and country items inside (local) or outside (transit) of the district requiring additional resources to clear through the payment system.

Encoding, Amount Field Only	$.029 per item.
Encoding, Amount Field Only (POD)	.030 per item.
Encoding, Multiple Fields (POD)	.035 per item.
Rejects on Encoded Items	.25 per item.
Returns/Redeposits (Oklahoma City/Omaha)	.80 per item.
Returns/Redeposits (Denver/Topeka)	1.00 per item.
Collections (plus subsequent handling fees)	10.00 per item.
Coin and Currency (additional fee may be charged for coin and strap services)	2.50 per phone call.
Courier and Armored Car	At cost.
Research/Mass Photocopy Request $12 per hour +	.15 per item.
ACH Settlement	0.50 per request.
Item Retrieval (photocopy)	2.25 per request.
Facsimile	1.75 per item.
Postage	At cost.
Starlink (electronic balance inquiry system: cash management information, availability, balance and rate reporting).	No charge.

Wire Transfers and Reserves

Incoming Wire Transfers	$3.65 per item.
Outgoing Wire Transfers	5.65 per item.
Pass-through Reserves	25 per month.

Proof of Deposit Processing

Items per month	Data capture	Archival	Cycle	Account sort
1–50,000	$.011	$.012	$.009	$.010
	*Truncated: .023	Cycled: .040		
50,001–100,000	.008	.012	.006	.010
	*Truncated: .020	Cycled: .034		
100,001–150,000	.006	.010	.004	.008
	*Truncated: .016	Cycled: .026		
150,001–250,000	.005	.010	.003	.008
	*Truncated: .015	Cycled: .024		
250,001–500,000	.004	.010	.002	.008
	*Truncated: .014	Cycled: .022		
500,001–above	.004	.009	.002	.008
	Truncated: .013	Cycled: .021		

*Truncated includes the data capture and archival categories.

Cycled includes the data capture, archival, cycle and account sort categories.

Overnight Deposits

Purchase or Redemption	$100,000 increments.
Interest Rate:	
Approximately fed funds effective rate:	
Cut-off	3:30 p.m. CST.

Items per month	Data capture	Archival	Cycle	Account sort
Item Processing—Inclearing Fees				
1–50,000	$.009	$.012	$.009	$.010
	*Truncated: .021	Cycled: .04		
50,001–100,000	.006	.012	.006	.010
	*Truncated: .018	Cycled: .034		
100,001–150,000	.004	.010	.004	.008
	*Truncated: .014	Cycled: .026		
150,001–250,000	.003	.010	.003	.008
	*Truncated: .013	Cycled: .024		
250,001–500,000	.002	.010	.002	.008
	*Truncated: .012	Cycled: .022		
500,001–above	.002	.009	.002	.008
	*Truncated: .011	Cycled: .021		

*Truncated includes the data capture and archival categories.
Cycled includes the data capture, archival, cycle and account sort categories.

State	City	RCPC	Country	Transit
Return Item Fee				
Colorado	$.19	$.29	$.35	$.73
Kansas	.25	.50	.50	.75
Nebraska	.25	.31	.37	.73
Oklahoma	.16	.20	.22	.73

Item Pull	$.86.
Item Qualification (Oklahoma City/Omaha)	.25.
Item Qualification (Denver/Topeka)	.35.
Settlement with Processing	No charge.
Settlement Only	100 per month.
Large Item Return Notification (Oklahoma City/Omaha) 2,500 and above	3.00 per item.
Large Item Return Notification (Denver/Topeka) $2,500 and above	5.65 per item.
Facsimile	1.75 per item.
Postage	At cost.
Item Retrieval (photocopy)	2.25 per item.
Mass Photocopy Requests $12 per hour+	.15 per item.
Over-the-Counter Items Microfilmed and Filed (Oklahoma City/Omaha)	.03 per item.
Over-the-Counter Items Microfilmed and Filed (Denver/Topeka)	.10 per item.

Statement Processing

Truncated Statement	.08.
Imaged Statement	.12.
Cycled Statement	.24.
EOM Statement Premium	.04.
Per Insert (first insert is free)	.01

Postage at cost.
Latex envelopes and statement stock provided by user.

Statement Printing

Imaged Check Printing (duplex):	
(24 checks per side)	$.07 per page.
Statement Data Printing	.07 per page.
Maintenance Fee	250 per month.

Customized Services

CD-ROM Archival	$45 per CD.
Multiple Account Formats	250 per month.
Report Print Back	250 per month.
Custom Programming/Conversions	120 per hour.

Demand Deposit Account*

Full Service Demand Disbursement (Includes automatic branch control reconciliation, reporting of full account activity)

Cycled	$.15 per item.
Imaged	.13 per item.
Truncated	.12 per item.

Basic Demand Disbursement (Standard summary statement, must be able to process magnetic tapes)

Cycled	$.11 per item.
Imaged	.09 per item.
Truncated	.08 per item.
Maintenance Fee (unreconciled or master accounts only)	25 per month.
Debit	.15 per item.
Credit	.15 per item.
Large Item Return Notification ($2,500 and above)	5.65 per item.

Mass Photocopy Request $12 per hour+	.15 per item.
Additional Statements	2.00.
Item Retrieval (photocopy)	2.25.
Facsimile	1.75.
Postage	At cost.

*All accounts earn interest on collected balances at 40 basis points below the overnight deposit rate.

Lockbox Processing

Items Per Month:	Fees Per Item
1–50,000	$0.130.
50,001–80,000	0.125.
80,001–120,000	0.120.
120,001–160,000	0.115.
160,000–above	0.110.
Processing Fee	100 per month.
Exception Item Review/Processing	.07 per item.
Photocopy Retrieval	2.25 per item.
Facsimile	1.75 per item.
Postage	At cost.

Safekeeping

Transaction Fees (receipt and delivery):	
Federal Reserve Book-entry Securities	$2.50.
FRB Reclaims and DKs	2.50.
PTC Depository GNMAs	8.50.
DTC Securities	4.50.
Physical Securities	40.00.
Euro/Cedel Securities	75.00.
Payment Disbursal (per cusip), Federal Reserve Payment:	
Fewer than 100 Securities	4.00.
100–200 Securities	3.50.
More than 200 Securities	3.00.
PTC, DTC, and Physical Payments:	
Fewer than 100 Securities	6.50.
100–200 Securities	6.00.
More than 200 Securities	5.50.
Segregation and Pledge Activity Fees, Joint Custody, Pledges to Third Party, Repo Pledges, Segregation and Pledge Releases.	10.00.
Monthly Account Maintenance Fees* (per cusip), Federal Reserve Book-entry Securities:	
Fewer than 100 securities	5.00.
100–200 Securities	4.75.
More than 200 Securities	4.50.
Other:	
Fewer than 100 securities	6.00.
100–200 Securities	5.75.
More than 200 Securities	5.50.
In-house	0.25.

*The monthly maintenance fee includes Starlink services, claim processing, audit verification and all daily and monthly reports at no additional costs.

District 11.—Federal Home Loan Bank of San Francisco (1998 NOW/DDA Services) (Does Not Provide Item Processing Services for Third Party Accounts)

District 12.—Federal Home Loan Bank of Seattle (1998 NOW/DDA Services) (Does Not Provide Item Processing Services for Third Party Accounts)

By the Federal Housing Finance Board.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–9467 Filed 4–9–98; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Leader Mutual Freight System Inc., 8411 S. La Cienega Blvd., Inglewood, CA 90301, Officers: Allen Cheng, President, Fanny Chung, Secretary.

Transports P. Fatton Inc., 149–23 182nd Street, Jamaica, NY 11413, Officers: M. Pierre Fatton, President, M. Guillaume Fatton, Vice President.

Dated: April 7, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–9528 Filed 4–9–98; 8:45 am]

BILLING CODE 6730–01–M

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. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The State Bancorp, Inc., Employee Stock Ownership Plan Trust, New Hyde Park, New York; to acquire additional voting shares of State Bancorp, Inc., New Hyde Park, New York, New York, and thereby indirectly acquire voting shares of State Bank of Long Island, New Hyde Park, New York, New York.

Board of Governors of the Federal Reserve System, April 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–9460 Filed 4–9–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-8733) published on page 16538 of the issue for Friday, April 3, 1998.

Under the Federal Reserve Bank of New York heading, the entry for The Fuji Bank, Limited, Tokyo, Japan, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Fuji Bank, Limited, Tokyo, Japan; to retain 16.8 percent of the voting shares of The Yasuda Trust and Banking Co., Ltd., Tokyo, Japan, and thereby indirectly retain control of its wholly owned U.S. bank subsidiary, Yasuda Bank and Trust Company (U.S.A.), New York, New York.

Comments on this application must be received by April 27, 1998.

Board of Governors of the Federal Reserve System, April 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–9458 Filed 4–9–98; 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. The application also will 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 May 4, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Juniata Valley Financial Corporation, Mifflintown, Pennsylvania; to acquire 100 percent of the voting shares of Lewistown Trust Company, Lewistown, Pennsylvania.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. MainStreet BankGroup Incorporated, Martinsville, Virginia; to acquire 100 percent of the voting shares of Ballston Bancorp, Inc., Washington, D.C., and thereby indirectly acquire Bank of Northern Virginia, Arlington, Virginia.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Charcompany, Inc., Birmingham, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Warren Bank, Warren, Michigan (in organization).

Board of Governors of the Federal Reserve System, April 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–9459 Filed 4–9–98; 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. The application also will 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 May 5, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. N.A. Corporation, Roseville, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of North American Banking Company, Roseville, Minnesota, a *de novo* bank.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Eggemeyer Advisory Corp., Castle Creek Capital L.L.C., and Castle Creek Capital Partners Fund - I, L.P., all of San Diego, California; to acquire up to 18 percent of the voting shares of State National Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire State National Bank of West Texas, Lubbock, Texas, and Sierra Bank, Truth and Consequences, New Mexico.

Board of Governors of the Federal Reserve System, April 7, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–9559 Filed 4–9–98; 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, including the companies listed below, 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. The notice also will 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 April 24, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Societe Generale, Paris, France (''SoGen''); to acquire certain assets and substantially all the liabilities of Cowen & Co. and Cowen Incorporated, both of New York, New York, and thereby engage worldwide in certain nonbanking activities. SoGen proposes to engage in a number of activities, including the following: (a) underwriting and dealing to a limited extent in all types of equity and debt securities that a state member bank may not underwrite and deal in (''bank-ineligible securities''), except ownership interests in open-end investment companies, *see Canadian Imperial Bank of Commerce*, 76 Fed. Res. Bull. 158 (1990) and *J.P. Morgan & Co., Inc.*, 75 Fed. Res. Bull. 192 (1989); (b) making loans or other extensions of credit, pursuant to § 225.28(b)(1) of the Board's Regulation Y; (c) activities related to extending credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y; (d) providing fiduciary services, pursuant to § 225.28(b)(5) of the Board's Regulation Y; (e) providing financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; (f) providing securities brokerage, riskless principal, private placement, futures commission merchant, and other agency transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; (g) underwriting and dealing in government obligations and money market instruments (''bank-eligible securities''), pursuant to § 225.28(b)(8)(i) of the Board's Regulation Y; (h) investing and trading activities, pursuant to § 225.28(b)(8)(ii) of the Board's Regulation Y; and (i) providing cash management services, *see Sovran Financial Corporation*, 73 Fed. Res. Bull. 225 (1987).

In addition, SoGen proposes to provide certain administrative services for open-end investment companies, *see, e.g., J.P. Morgan & Co., Inc.*, 84 Fed. Res. Bull. 113 (1998). SoGen also proposes to control certain private investment limited partnerships (''Partnerships''), for which SoGen would serve as general partner and provide administrative and investment advisory services. SoGen has stated that all investments of the Partnerships would be made in accordance with the limitations in the BHC Act and the Board's decisions and interpretations thereunder within two years of consummation of the proposal.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Norwest Investment Services, Inc., Minneapolis, Minnesota, in underwriting and dealing in, to a limited extent, all types of debt securities; *see, J.P. Morgan & Co., Inc.; The Chase Manhattan Corp.; Bankers Trust New York Corp.; Citicorp; and Security Pacific Corp.*, 75 Fed. Res. Bull. 192 (1989).

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Giltner Investment Partnership II, Ltd., Omaha, Nebraska; to acquire Avoca Company, Avoca, Nebraska, and thereby engage in the sale of general insurance in small towns, pursuant to § 225.28(b)(11)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–9461 Filed 4–9–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, April 15, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 8, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–9639 Filed 4–8–98; 10:42 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR, Tuesday, March 17, 1998, Page No. 13049.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., Monday, April 6, 1998.

CHANGES IN THE AGENDA: The Federal Trade Commission has cancelled its previously scheduled Oral Argument meeting for April 6, 1998, at 2:00 p.m.

[FR Doc. 98–9635 Filed 4–8–98; 11:22 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Exposure to Volatile Organic Compounds and Childhood Leukemia Incidence at Camp Lejeune, North Carolina—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. There is limited evidence that in utero exposure to volatile organic compounds (VOCs) such as trichloroethylene and tetrachloroethylene (PCE) in drinking water may be strongly associated with childhood leukemia (CL). In 1982, VOC contamination was identified in certain groundwater supply wells which supplied drinking water to housing units at U.S. Marine Corps Base Camp Lejeune in Jacksonville, North Carolina. During this phase of the proposed study, an attempt will be made to locate as many of the children born to base residents between 1968 and 1985 as well as offspring from pregnancies that occurred during this time period but were not delivered at Camp Lejeune.

The purpose of the proposed nested case-control study is to investigate the potential relationship between exposure to VOCs in drinking water and incidence of CL at Camp Lejeune. A secondary objective of the proposed study is to investigate the potential relationship between VOCs in drinking water and birth defects in this population. A brief screening questionnaire will be interviewer-administered to identify potential cancer and birth defect cases. Some of the data to be collected by the questionnaire includes: confirmation of the name(s) of children and date(s) of birth; dates and location of residence on base during the pregnancy and/or at the time of delivery; current vital status of each child; the determination of diagnosis with cancer or birth defects before age 20. This request is for a 3-year OMB approval.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Parent/Child born at Camp Lejeune; 1968–1985	9,650	1	0.15	1,447.50
Pregnancy at Camp Lejeune, delivery elsewhere; 1968–1985	3,350	1	0.15	502.50
Total				1,750

2. Prevention of HIV Infection in Youth at Risk: Developing Community-Level Intervention Strategies that Work—New—The National Center for HIV, STD, and TB Prevention purpose of this survey is to evaluate the effectiveness of an intervention to reduce risk behaviors associated with HIV infection or transmission among young men of various race/ethnic groups. Across 10 cities, data will be collected in the intervention and comparison areas, and it will be used to assess risk behaviors associated with HIV acquisition and transmission, determinants of those behaviors, and to monitor awareness and contact with the intervention. It is hoped that this intervention study will result in lowering HIV risk behaviors among young men in the target audiences, and strengthening HIV prevention programs in these local communities.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Young men aged 15–25 who are in the target population and surveyed before or at end of intervention	6,000	1	0.5	3,000

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Young men aged 15–25 who are in the target population and surveyed during the intervention	2,400	1	0.167	400
Total				3,400

3. Antivirals Usage in Nursing Homes. The Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, is proposing a study to determine how often rapid testing and antivirals are used to control influenza A outbreaks in nursing homes. Outbreaks of influenza A in nursing homes may result in the hospitalization of up to 25% of ill residents and the death of up to 30% of those who are hospitalized. The rapid diagnosis of influenza A and the timely administration of currently available antiviral medications, amantadine and rimantadine, can lessen the impact of these outbreaks. However, it is unknown how often laboratory tests for the rapid diagnosis of influenza A are utilized and how frequently antivirals are used to control nursing home outbreaks of influenza A.

For this study, a sample of nursing homes will be selected randomly from one state within each of nine influenza surveillance regions. The survey will be mailed to infection control personnel in the randomly selected nursing homes. The results will be used to identify where educational efforts should be directed to lessen the impact of influenza A on elderly institutionalized persons.

4. Evaluation of NCIPC recommendations on bicycle helmet use—New—The National Center for Injury Prevention and Control's (NCIPC) Division of Unintentional Injury Prevention (DUIP) intends to conduct a survey of 1,300 persons from its mailing lists and lists of recipients of recommendations on the use of bicycle helmets in preventing head injuries that was published in the Morbidity and Mortality Weekly Report of February 17, 1995.

The purpose of this survey is to determine:

I. The penetration of the recommendations distribution,

II. The usefulness of the bicycle helmet recommendations,

III. How to improve the recommendation's content and format,

IV. Potential future DUIP bicycle helmet promotional activities,

V. Information needs and access points of DUIP's ''customers''

Results from this research will be used to (1) assist DUIP in producing an updated version of the helmet recommendations; (2) identify new helmet promotion programmatic directions; and (3) develop future materials that meet the needs of DUIP ''customers.''

The study will be done by telephone. The estimate of burden is as follows: The total cost to respondents is $0.00.

Respondent	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Individual	1,300	1	.33	429

Dated: April 6, 1998.

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–9475 Filed 4–9–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Summary Data Component (SDC) of the National Child Abuse and Neglect Data System (NCANDS).

OMB No.: 0980–0229.

Description: This information collection implements the provision of the Child [Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et seq.*), as amended by Public Law 104–235, requiring that State agencies receiving the State child abuse and neglect grant annually provide, elements include the number of children reported for child abuse and substantiated, unsubstantiated or determined to be false; the number of deaths resulting from child abuse or neglect; the number of children responsible for child protective service (CPS) functions. The new voluntary Summary Data Component of the National Child Abuse and Neglect Data System. The information collect will be used to understand better the experiences of children and families served by CPS agencies, and to help guide policy and program development at the National, State and local levels. etc.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SDC	56	1	60	3,360

Estimated Total Annual Burden Hours: 3,360.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Laura Oliven.

Dated: April 6, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–9536 Filed 4–9–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1728]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report and Supporting Regulations in 42 CFR 413.20, 413.24 and 413.106; *Form No.:* HCFA–1728 (OMB No. 0938–0022); *Use:* The HCFA 1728 is the form used by Home Health Agencies to report their health care costs to determine the amount reimbursable for services furnished to Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Business or other for profit, Not for profit institutions, and State, Local or Tribal Gov.; *Number of Respondents:* 8,950; *Total Annual Responses:* 8,950; *Total Annual Hours Requested:* 1,575,200.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 1, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–9455 Filed 4–9–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2088, HCFA–2540, and HCFA–2552]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Outpatient Rehabilitation Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24 *Form No.:* HCFA–2088 (0938–0037); *Use:* This form is used by Outpatient Rehabilitation Facilities to report their health care costs to determine the amount reimbursable for services furnished to Medicare beneficiaries. In addition, the

fiscal intermediary uses the cost report to make settlement with the provider for the cost reporting period. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 4,298; *Total Annual Responses:* 4,298; *Total Annual Hours:* 429,800.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility (SNF) and Skilled Nursing Facility Health Care Complex Cost Report, 42 CFR 413.20 and 413.24; *Form No.:* HCFA–2540 (0938–0463); *Use:* The Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report is used by freestanding SNFs to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. In addition, the fiscal intermediary uses the cost report to make settlement with the provider for the fiscal year. *Frequency:* Annually; *Affected Public:* Business or other for profit, Not for profit institutions, and State, Local, or Tribal government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 1,372,000.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report, 42 CFR 413.20 and 413.24; *Form No.:* HCFA–2552–96 (OMB No. 0938–0050); *Use:* This form is required by statute and regulation for participation in the Medicare program. It is used to determine final payment for Medicare. Hospitals and related complexes are the main users. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for profit institutions, and State, Local or Tribal government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 4,599,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 2, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–9456 Filed 4–9–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–SP–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Post-Eligibility Preprint and Supporting Regulations in 42 CFR 435.310; *Form No.:* HCFA–SP–0001 (OMB# 0938–0673); *Use:* The post-eligibility preprint is part of the comprehensive statement that a State submits to show that it is meeting the requirements for Federal funding of its Medicaid program. It comprises part of each State's Plan which outlines the mandatory and optional aspects of a State's Medicaid program. Accurate submission of this information is necessary in order for States to receive federal funding; *Frequency:* On occasion; *Affected Public:* State, local or tribal government and Federal Government; *Number of Respondents:* 56; *Total Annual Responses:* 56; Total *Annual Hours:* 280.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 23, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–9457 Filed 4–9–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4355–N–02]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request

AGENCY: Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should

refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the Notice of Funding Availability (NOFA) for the Local Lead Hazard Awareness Campaign.

Justification for Emergency Processing: This notice should be considered for emergency processing because it is a component of the HUD SuperNOFA process, which was published in the **Federal Register** on March 31, 1998, under the direction of Secretary Andrew Cuomo, with the objective of improving customer service and providing the necessary tools for revitalizing communities and improving the lives of people within those communities. HUD will publish three SuperNOFAs in 1998 which coordinate program funding for 39 programs and cut across traditional program lines. In addition to the three SuperNOFAs, HUD also will publish a single NOFA for three national competitions, one of which is the National Lead Hazard Awareness Campaign. HUD anticipates publishing this national competition NOFA before May 1, 1998.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Local Lead Hazard Awareness Campaign.

OMB Control Number, if applicable: To be requested.

Description of the need for the information and proposed use: This information collection is required in connection with the upcoming issuance of a NOFA announcing the availability of approximately $7,000,000 for grants and/or cooperative agreements for a Local campaign to promote lead hazard awareness. These grants are authorized under Title X, The Residential Lead-Based Paint Hazard Reduction Act of 1992 of the Housing and Community Development Act 1992, Pub. L. 102–550, Section 1011(g).

Agency form numbers, if applicable: None.

Members of affected public: Potential applicants include non-profit, for-profit organizations, institutions of higher learning, State and local governments, Federally recognized Indian Tribes and Professional Organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	10	1	50	500
Quarterly Reports	5	8	4	160

Total Estimated Burden Hours: 660.

Status of the proposed information collection: New request.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 6, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 98–9441 Filed 4–9–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4355–N–03]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request

AGENCY: Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the Notice of Funding Availability (NOFA) for the National Lead Hazard Awareness Campaign.

Justification for Emergency Processing: This notice should be considered for emergency processing because it is a component of the HUD SuperNOFA process, which was published in the Federal Register on

March 31, 1998, under the direction of Secretary Andrew Cuomo, with the objective of improving customer service and providing the necessary tools for revitalizing communities and improving the lives of people within those communities. HUD will publish three SuperNOFAs in 1998 which coordinate program funding for 39 programs and cut across traditional program lines. In addition to the three SuperNOFAs, HUD also will publish a single NOFA for three national competitions, one of which is the National Lead Hazard Awareness Campaign. HUD anticipates publishing this national competition NOFA before May 1, 1998.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the National Lead Hazard Awareness Campaign.

OMB Control Number, if applicable: To be requested.

Description of the need for the information and proposed use: This information collection is required in connection with the upcoming issuance of a NOFA announcing the availability of approximately $1 million for grants and/or cooperative agreements for a National media campaign to promote lead hazard awareness. These grants are authorized under Title X, The Residential Lead-Based Paint Hazard Reduction Act of 1992 of the Housing and Community Development Act 1992, Pub. L. 102–550, Section 1011(g).

Agency form numbers, if applicable: None.

Members of affected public: Potential applicants include non-profit, for-profit organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of re-sponses	Hours per response	Burden hours
Application Development	2	1	100	200
Quarterly Reports	2	8	4	32

Total Estimated Burden Hours: 232.

Status of the proposed information collection: New request.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 6, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 98–9442 Filed 4–9–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–05]

Federal Property Suitable as Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: April 2, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Note. Property Nos. 779810002–779810006 at Naval Station, Pearl Harbor, HI were published inadvertently on April 3, 1998.

Title V, Federal Surplus Property Program Federal Register Report for 04/10/98

Suitable/Available Properties

Buildings (by State)

New Jersey

Gibbsboro Air Force Station
Gibbsboro Co: Camden, NJ
Landholding Agency: GSA
Property Number: 549810018
Status: Excess
Comment: 19 acres w//24 structures including 1344 sq. ft. office bldg., 5652 sq. ft. storage bldg., bowling center and support facilities
GSA Number: 1–D–NJ–603B.

Rhode Island

Bldg. 1921
Coddington Point
Naval Education & Training Center
Newport, RI 02841–1711
Landholding Agency: Navy
Property Number: 779810258
Status: Unutilized
Comment: 4000 sq. ft., presence of asbestos/lead paint, most recent use—painting operations, off-site use only.

Bldg. 342
Coddington Point
Naval Education & Training Center
Newport, RI 02841–1711
Landholding Agency: Navy
Property Number: 779810259
Status: Unutilized
Comment: 646 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 340
Coddington Point
Naval Education & Training Center
Newport, RI 02841–1711
Landholding Agency: Navy
Property Number: 779810260
Status: Unutilized
Comment: 96 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—heating plant bldg., off-site use only.

Bldg. 697
Coddington Cove
Naval Education & Training Center
Newport, RI 02841–1711
Landholding Agency: Navy
Property Number: 779810262
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use—self help shop, off-site use only.

Bldg. 696
Coddington Cove
Naval Education & Training Center
Newport, RI 02841–1711
Landholding Agency: Navy
Property Number: 779810263
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use—elec/comm maint. shop, off-site use only.

Bldg. 35
Coddington Cove
Naval Education & Training Center
Newport, RI 02841–1711
Landholding Agency: Navy
Property Number: 779810264
Status: Unutilized
Comment: 2880 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—auto storage, off-site use only.

Unsuitable Properties

Buildings (by State)

New Hampshire

Bldg. 233
Portsmouth Naval Shipyard
Portsmouth NY 03804–5000
Landholding Agency: Navy
Property Number: 779810222
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
Comment: published in the Federal Register incorrectly on 4/3/98.

North Carolina

Bldg. M509
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779810223
Status: Unutilized
Reason: Secured Area.

Puerto Rico

Bldg. T2–3
Naval Base Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779820224
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 56
Naval Base Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779810225
Status: Unutilized
Reason: Extensive deterioration.

Structure 96
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810226
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 121
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810227
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 197
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810228
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 201
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810229
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 231
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810230
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 232
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810231
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 247
Naval Base Roosevelt Roads

Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810232
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 410
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810233
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 411
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810234
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 418
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810235
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 422
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810236
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 424
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810237
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 532
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810238
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 536
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810239
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 538
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810240
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 630
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810241
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 645
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810242
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 779
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810243
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 783
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810244
Status: Unutilized
Reason: Extensive deterioration.

Structure 794
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810245
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1660
Naval Base Roosevelt Roads
Perimeter Fence
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810246
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1729
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810247
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1738
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810248
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1741
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810249
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1979
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810250
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2201
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810251
Status: Unutilized
Reason: Extensive deterioration.

Concrete Slab
Naval Base Roosevelt Roads
Perimeter Fence
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810253
Status: Unutilized
Reason: Extensive deterioration.

Concrete Slab
Naval Base Roosevelt Roads
By Bldg. 885/887
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810254
Status: Unutilized
Reason: Extensive deterioration.

Concrete Slab
Naval Base Roosevelt Roads
Boxer Dr.
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810255
Status: Unutilized
Reason: Extensive deterioration.

Stairs/Sidewalks
Naval Base Roosevelt Roads
By Bldg. 56
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810256
Status: Unutilized
Reason: Extensive deterioration.

Stairs/Sidewalks
Naval Base Roosevelt Roads
By Chapel Cir.
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810257
Status: Unutilized
Reason: Extensive deterioration.

Rhode Island

Bldg. W–31
Coddington Point
Naval Education & Training Center
Newport, RI 02841–1711
Landholding Agency: Navy
Property Number: 779810261
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 121
Coasters Harbor Island
Naval Education & Training Center
Newport, RI 02841–1711
Landholding Agency: Navy
Property Number: 779810265
Status: Unutilized
Reason: Extensive deterioration.

Land (by State)

Puerto Rico

Asphalt Road near Airfield
Naval Base Roosevelt Roads
Ceiba, PR 00735–
Landholding Agency: Navy
Property Number: 779810252
Status: Unutilized
Reason: Secured Area.

[FR Doc. 98–9111 Filed 4–9–98; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Revised Procedures for Selecting and Funding Federal Aid in Sport Fish and Wildlife Restoration Administrative Projects

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service is announcing procedures for obtaining funding for Federal Aid administrative projects and availability of an estimated $2,000,000 for Wildlife Restoration projects and $2,000,000 for Sport Fish projects. This year's program incorporates changes to the documentation, focus areas and submission requirements.

DATES: Applications/proposals must be received by June 1, 1998.

ADDRESSES: Proposals must be submitted to: U.S. Fish and Wildlife Service, Chief, Division of Federal Aid, MS 140 ARLSQ, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Lange, Jr., Chief, Division of Federal Aid, U.S. Fish and Wildlife Service; (703) 358–2156.

SUPPLEMENTARY INFORMATION: The Service publishes a notice in the **Federal Register** each year announcing the deadline for project proposals, the amount of money available for Sport Fish and Wildlife Restoration projects, and the focus areas identified for the year. Focus areas are used to promote and encourage efforts that address priority needs of the State fish and wildlife agencies.

The focus areas contained in this notice were developed in cooperation with the Grants-in-Aid Committee of the International Association of Fish and Wildlife Agencies and represent that group's assessment of priority projects. The focus areas are provided as a guide so that applicants will know the types of projects that will likely score higher in the rankings.

Changes made since last year's program include revised focus areas, the requirement that the entire amount of funds requested for multi-year projects must be obligated in the fiscal year the grant is approved and that all proposals must be accompanied by a floppy disk containing the project narrative.

States, local governments, charitable and educational institutions, and other authorized recipients are authorized to apply for grants according to these procedures.The Department of the Interior has promulgated rules (43 CFR part 12) adopting common rules developed by the Office of Management and Budget as required by OMB Circulars A–102 and A–110 that contain administrative requirements that apply to these grants. This annual grant program does not contain information collection requirements for which approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995, as specified in 43 CFR part 12.4, are required. Any additional information collection requirements for this grant program are those necessary to comply with 43 CFR part 12, which include (a) project narrative: and (b) compliance with Federal laws, regulations, and policies. Record keeping includes the tracking of costs and accomplishments, monitoring progress and evaluating accomplishments, and reporting requirements. The Application for Federal Assistance (the Standard Form 424 series) prescribed by OMB Circulars A–102 and A–110 and required as part of this application process have the OMB clearance number 0348–0043.

Dated: April 6, 1998.

Jamie Rappaport Clark,

Director.

Procedures for Selecting and Funding Federal Aid in Sport Fish and Wildlife Restoration Administrative Projects

A. Purpose

This statement establishes procedures for selecting administrative projects to be funded by the Federal Aid in Sport Fish Restoration and Federal Aid in Wildlife Restoration programs. These projects are funded by grants to States, local governments, charitable and educational institutions, or other authorized recipients to accomplish public purposes relating to administering the Sport Fish and Wildlife Restoration Programs and to facilitate the efforts of the States in implementing these programs.

B. Background

The mission of the two grant programs is to strengthen the ability of State and Territorial fish and wildlife agencies to meet effectively the consumptive and nonconsumptive needs of the public for fish and wildlife resources. The Federal Aid in Sport Fish Restoration Act and the Federal Aid in Wildlife Restoration Act authorize the Secretary of the Interior to cooperate with the States and to use administrative funds for carrying out the purposes of the Acts. The Fish and Wildlife Coordination Act (16 U.S.C. 661) provides the authority to provide financial assistance to Federal, State, and public or private parties to facilitate fish and wildlife programs. Administrative funds are deducted each year from the total amounts of funds available under the Federal Aid in Sport Fish Restoration Act and the Federal Aid in Wildlife Restoration Act. The statutory provisions related to administrative deductions are as follows:

Federal Aid in Sport Fish Restoration (SFR)—Federal Aid Administrative Funds for sport fish restoration may not exceed 6 percent of the deposits in the SFR Account of the Aquatic Resources Trust Fund. These funds may be used for administrative projects for the ''conduct of necessary investigations, administration, and the execution of this Act and for the aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or fresh waters.'' (Section 4 of the Act as amended by Pub. L. 98–369, 16 U.S.C. 777c)

Federal Aid in Wildlife Restoration (WR)—Federal Aid Administrative Funds for wildlife restoration may not exceed 8 percent of the excise tax receipts deposited in the WR Fund. These funds may be used for the ''administration and execution of this Act and the Migratory Bird Conservation Act.'' (Section 4 of the Act, 16 U.S.C. 669c)

After making administrative deductions as specified above, the remainder of the funds will be apportioned to the States in accordance with the formulas contained in the Acts. The Service will strive to minimize administrative deductions in order to maximize apportionments to the States.

C. Availability of Funds

In fiscal year 1999, the amounts of funds estimated to be available for administrative projects are $2,000,000 for sport fish restoration and $2,000,000 for wildlife restoration.

D. Interstate Compacts

The Service also will make available a total of $600,000 annually, without competition, for funding The Atlantic States Marine Fisheries Commission, Gulf States Marine Fisheries Commission, and Pacific States Marine Fisheries Commission, as authorized by law. Requests for additional amounts that may be eligible, must compete with other proposals for Administrative Funds. Proposals will be subject to all of the requirements in Section E.

E. Eligibility Requirements

The Service's Division of Federal Aid will review each proposal to determine if proposals are eligible for funding. To be eligible for funding, proposals must meet the following:

1. *Authority*—The project being proposed must be consistent with the missions of the program authorized by the SFR/WR laws and regulations.

2. *Scope*—The problem or need addressed in the proposal is of direct

concern to one-half or more of the States or of national significance, but confined to a lesser geographic area. The scope of marine resources proposals must also address a need that is of direct concern to a majority of States on a specific coast.

3. *Significance*—The problem or need addressed is deserving of the level of attention proposed.

4. *Feasibility*—The proposed objectives can be attained in the amount of time and with the personnel and resources requested.

5. *Cost-effectiveness*—The expected results of accomplishing the proposal are worth the costs to be expended.

6. *Period*—The maximum duration for any approved projects will be three years. New proposals may be submitted to extend a project beyond the original three-year period.

7. *Documentation*—Proposals must address each section of the documentation as listed under Submission Requirements, Section G.

F. Application Process

1. All proposals for Federal Aid administrative funding must be submitted to the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, ARLSQ. 140, Arlington, Virginia 22203. See guidance below for electronic submission of proposals. Proposals originating within the Service must have prior approval by the appropriate Regional Director or Assistant Director.

2. Each year, a Notice will be published in the **Federal Register** announcing the deadline for submitting proposals. The Notice will also announce total funds available for wildlife and sport fish restoration projects. A table with the approximate dates for each step of the process is provided in Appendix A.

G. Submission Requirements

An original and two copies of each proposal for Federal Aid Administrative funds must be submitted in the following format. A floppy disk must accompany each application that contains the narrative portion of the proposal (excluding required forms).

Electronic submission of the narrative portion of proposals via the Internet is encouraged and should be addressed to tom–taylor@fws.gov. Applicants who submit proposals using email will be required to submit hard copies of the Application for Federal Assistance (Standard Form 424 series), if their projects are judged eligible for funding.

Any commonly used word processing software may be used to compose projects submitted via disk or email.

Applicants are strongly encouraged to limit the narrative portion of proposals to 10 pages or less.

1. *Application for Federal Assistance*—Standard Form 424 is prescribed by Office of Management and Budget Circular A–110 and the common rule (Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments). The SF 424 consists of a coversheet, the SF 424A consists of a budget sheet, and the SF 424B consists of compliance assurances. Proposals received without these forms will not be accepted.

2. *Title*—A short descriptive name of the proposal.

3. *Objective*—What will this proposal do? State a concise statement of the purpose of the proposal in quantified terms where possible.

4. *Need*—Why address this problem?

a. State the problem or need that this proposal is intended to address. Make references to any focus areas that the proposal addresses.

b. Describe the number of states affected by the project, how they will benefit, and expressed support for the proposal. If the proposal is confined to a specific geographic area, describe the national significance of the proposal.

c. Brief status report on the history of previous work conducted by the proposer or others to address this need.

5. *Expected Results or Benefits*—What will be gained by funding this proposal? Describe the significance of accomplishing the project relative to the stated need. Relate benefits of satisfactorily completing the project to the States' fish and wildlife programs. In addition to stating how the results will be useful, describe provisions for making the product or results available and usable to those affected by the problem or need. Benefits should be expressed in quantified terms, i.e., angler days, harvest per unit effort, improvements to State administration, dollars saved, etc.

6. *Approach*—How will the proposed project be conducted? Describe how the work will be conducted including a description of techniques and method to be used, milestones, and a schedule of accomplishments.

7. *Resumes*—What are the qualifications of key personnel? Include resumes and names of key individuals who will be involved in the project, stating their particular qualifications for undertaking the project.

8. *Project Costs*—Submit a completed SF–424A, Budget Information—Non-Construction Programs. Multi-year proposals must include an itemized budget showing funds required for each 12 month period.

H. Focus Areas

Focus areas are those specific areas in which the States are seeking information and assistance in administering or implementing the Sport Fish and Wildlife Restoration programs. Focus areas will be announced each year by the Service, based on recommendations from the Grants-In-Aid Committee (GIAC) in accordance with the bylaws of the International Association of Fish and Wildlife Agencies (IAFWA). Each year, the GIAC will be asked to submit recommendations for focus areas after its September meeting. Each year a **Federal Register** Notice will announce the Focus Areas, along with the amount of funds available for administrative projects.

The following focus areas were identified as priority needs of the States and those proposals addressing these needs will likely be given priority by the States during the ranking in 1998.

1. *Outreach*—Providing public information on fishing, boat access, hunting, trapping, and wildlife related recreation.

a. Provide innovative approaches to introducing people to hunting and fishing, including emphasis on families.

b. Advance public awareness of the value and successes of the Sport Fish and Wildlife Restoration Funds.

c. Focus public attention on and enhance public awareness of the economic value of managing fish and wildlife resources for both consumptive and non-consumptive recreation.

d. Provide better understanding of how to reach constituents with fish and wildlife related information.

2. *Education*—Teaching or training people about fish and wildlife resources and the responsible use of the resources.

a. Advance the public's understanding of importance of actively managing fish and wildlife resources.

b. Advance public understanding of the importance of biological diversity in maintaining diverse hunting and fishing opportunities.

c. Promote natural resources and environmental education of ''K through 12'' students.

d. Provide for continuing education and training for state fish and wildlife biologists.

3. *Management*—Handling, directing, manipulating, and managing fish and wildlife populations and providing improved public access to these populations. These focus areas relate to hands-on responsibilities of fish and wildlife management agencies.

a. Restore, create, enhance, and protect fish and wildlife.

b. Provide, enhance, or maintain public access to fish and wildlife resources.

c. Protect, create, and enhance fish and wildlife recreational opportunities.

4. *Administration*—Providing service, supervisory, and management responsibilities that directly link to supporting fish and wildlife agency affairs.

a. Provide better understanding of constituents and their needs.

b. Measure changing social, economic, and political environment within which fish and wildlife must be managed.

c. Advance automated licensing and fiscal data collections for fish and wildlife agencies.

5. *Research*—Conducting investigations, inquiries, searches, examinations, and experiments for the discovery and interpretation of facts.

a. Evaluate effectiveness of incorporating constituent involvement and information in fish and wildlife resource management.

b. Measure effectiveness of habitat restoration, creation, and enhancement techniques.

I. Proposal Review and Selection Process

1. Each proposal will be reviewed for eligibility as defined in section E. The review and final determination for eligibility will be conducted by the Washington Office staff.

2. All applicants will be notified that their proposal has been determined eligible or ineligible.

3. Copies of eligible proposals will be forwarded to the Chair, GIAC, along with lists of ongoing grants and ineligible proposals. The Chair, GIAC, will forward copies to the voting members of the GIAC.

4. Voting members of the GIAC will review and rate each eligible proposal high, medium, low, or do not fund.

5. All ratings from GIAC voting members and comments from Service Offices will be returned to the Division of Federal Aid in Washington.

6. The Division of Federal Aid will summarize the ratings and comments.

7. A summary of the comments and ratings will be provided to the Chair, GIAC, for review at the GIAC September meeting.

8. During the September meeting of the IAFWA, the GIAC will evaluate and rank eligible proposals based on the needs of the States. The GIAC will forward its rankings and recommendations to the Service in accordance with IAFWA procedures.

9. The Division of Federal Aid will summarize and consolidate all rankings and comments and develop recommendations for proposal selections and awards. The recommendations may be for partial funding of any proposal.

10. The Federal Aid Division's recommendations will be forwarded to the Director of the Service. The Director will review the recommendations and make the final decision on project selections and funding.

11. The Service will notify each eligible applicant in writing of the final disposition of their proposal.

12. The Director will notify the Regional Directors and the Chair, GIAC, of the proposals selected for funding.

K. Lobbying Restrictions

During the review of proposals, grant applicants may not engage in any activities that might be considered as attempts to influence Federal reviewers or approving officials. If the activities are determined to be lobbying, the proposal will be disqualified for Federal Aid Administrative Funds.

J. Awards and Funding

1. The Service's Division of Contracting and General Services will prepare and sign the formal award agreements. The Federal Aid Office, may provide technical assistance to the Division of Contracting and General Services in finalizing the award agreements. The formal award agreements will be forwarded to the awardees for signature and must be signed by the Service and authorized awardee officials before they become valid agreements. This process may require up to 60 days to complete. The Service is not responsible for costs incurred prior to the effective date of a signed agreement; therefore, the starting date for all projects should be planned accordingly.

2. The entire amount of funds required for a project must be obligated in the fiscal year the grant is approved.

3. Non-profit grantees must maintain a financial management system in accordance with the Office of Management and Budget Circular A–110. State and local governments must maintain a financial management system in accordance with OMB Circular A–102 and 43 CFR part 12.

K. Project Administration

Proposals awarded funding will be assigned to a Project Officer. Project Officers are those persons representing the Contracting Officer on technical matters relating to the responsibilities of the grantee. They provide assistance that includes:

1. Assisting Service contracting officials in completing the award agreement;

2. Serving as the Service's point of contact after the award agreement is signed;

3. Receiving and approving bills; and

4. Monitoring project performance and assuring that the award recipient adheres to the award agreement.

SUMMARY OF EVENTS—APPENDIX A

Target date	Event
April 14	FEDERAL REGISTER Notice announcing availability of Federal Aid Funds and focus areas for grant applications.
June 1	Washington Office receives proposals.
June 30	Washington Office with assistance from the Regions determines eligibility (Chair of the Grants-In-Aid Committee (GIAC) participates as an observer).
July 15	Service forwards copies of eligible proposals to voting members of the GIAC (includes summary list of ongoing grants and list of ineligible proposal).
July 15	Service sends letters to all applicants informing them that their proposal is eligible or ineligible.
August 28	Voting members of the GIAC forward comments and ratings to Chief, FA (Ratings of High, Medium, Low, or Do Not Fund).
September 4	Chief, FA, summarizes comments and ratings and forwards to Chair, GIAC, for review at the September meeting.
September 13	GIAC reviews and ranks proposals and forwards rankings and recommendations to Service, along with recommendations for Focus Areas for the following year.
October 31	Federal Air summarizes all rankings and recommendations for consideration by the Director.
November 15	Director selects proposals for funding.
November 30	Federal Aid notifies applicants and Chair, GIAC, of the final disposition of proposals.

SUMMARY OF EVENTS—APPENDIX A—Continued

Target date	Event
March 1	Contracting and General Services awards grants.

[FR Doc. 98–9560 Filed 4–9–98; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Application for a Natural Gas Pipeline Right-of-Way

SUMMARY: Notice is hereby given that under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449: 30 U.S.C. 185), as amended by Public Law 93–153, Midcoast Interstate Transmission, Inc. has applied to remove a 3.5-inch natural gas pipeline within an existing right-of-way, and to install and maintain a 12.75-inch pipeline, across approximately 5,142 feet of the Wheeler National Wildlife Refuge, in Morgan County, Alabama, within the existing easement described as follows:

An easement and right-of-way for pipeline on, over, and across two strips of land lying in Morgan County, State of Alabama, in the W½ SW¼ Section 21, and W½ NW¼ Section 28, Township 6 South, Range 4 West, on both sides of the Flint Creek Embayment of Wheeler Lake, approximately 4 miles north of Harselle, each strip being 35 feet wide lying 17.5 feet on each side of the centerline of the pipeline location, the said strips being identified as Parcel No. 1 and Parcel No. 2, the centerlines being described as follows:

Parcel No. 1

Beginning at a point in the centerline of the pipeline location in the west line of Section 21, and in the boundary of the United States of America's land from which US–TVA Monument 136, T. 6 S., R. 4 W., (Coordinates: N. 1,639,961; E. 660,930) in the said section line and in the boundary of the United States of America's land at a corner of the lands of A.L. Handley and Mrs. Adele Russell bears S. 3° 15′ W., at a distance of 46 feet; thence from the point of beginning with the centerline of the pipeline location S. 46° 38′ E., 53 feet to a point; thence S. 32° 33′ E., 214 feet to a point; thence S. 22° 28′ E., 143 feet to a point; thence S. 12° 11′ E., 419 feet to a point; thence S. 12° 46′ E., 310 feet to a point; thence S. 22° 50′ W., 61 feet to a point; thence S. 1° 16′ W., 185 feet to a point; thence S. 50° 04′ E., 61 feet to a point in or near the 556.3-foot contour on the shore of the Flint Creek Embayment at the south end of the said parcel from which the centerline of the pipeline location continues on a bearing of S. 73° 54′ E.

The land described above as Parcel No. 1 contains 1.16 acres, more or less.

Parcel No. 2

Beginning at a point in the centerline of the pipeline location in the south line of the NW¼ Section 28, and in the boundary between the lands of the United States of America and S.A. Blair & John T. Kyle from which US–TVA Monument 96, T. 6 S., R. 4 W. (Coordinates N. 1,635,184; E. 661,772) in the said quarter section line and at a corner in the boundary of the United States of America's land bears N. 88° 25′ W., at a distance of 46 feet; thence from the point of beginning with the center line of the pipeline location N. 9° 35′ W., 1,346 feet to a point; thence N. 10° 50′ W., 568 feet to a point; thence N. 4° 17′ E. 1,432 feet to a point; thence N. 21° 29′ W., 102 feet to a point; thence N. 73° 54′ W., approximately 30 feet to a point in the 556.3-foot contour on the shore of the Flint Creek Embayment.

The land described above as Parcel No. 2 contains 2.80 acres, more or less.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service is currently considering the merits of approving this application.

DATES: Interested persons desiring to comment on this application should do so on or before May 11, 1998.

ADDRESSES: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 420, Atlanta, Georgia 30345.

Sam D. Hamilton,

Regional Director.

[FR Doc. 98–9469 Filed 4–9–98; 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 revising and 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, 807 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: Ferrous Metals Surveys.

Current OMB approval number: 1032–0006.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on ferrous and related metals. This information will be published as monthly and annual reports for use by Government agencies, industry, and the general public.

Bureau form number: Various (18 forms).

Frequency: Monthly and Annual.

Description of respondents: Producers and consumers of ferrous and related metals.

Annual Responses: 3,560.

Annual burden hours: 1,997.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 98–9439 Filed 4–9–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–00–NPRA]

Northeast National Petroleum Reserve-Alaska Draft Integrated Activity Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of public subsistence-related hearing.

SUMMARY: The Bureau of Land Management announces a public subsistence-related hearing concerning the Northeast National Petroleum Reserve-Alaska Draft Integrated Activity Plan/Environmental Impact Statement (IAP/EIS). The planning area is roughly bounded by the Colville River to the east and south, the Ikpikpuk River to the west and the Beaufort Sea to the north. The planning area includes Teshekpuk Lake and neighboring habitat used by migratory waterfowl important to southwest Alaska subsistence users.

Section 810 of the Alaska National Interest Lands Conservation Act requires the BLM to evaluate the effects of the alternative plans presented in this IAP/EIS on subsistence activities in the planning area, and to hold public hearings if it finds that any alternative might significantly restrict subsistence activities. The Association of Village Council Presidents has identified a potential of subsistence impacts in the Yukon-Kuskokwim Delta based upon activities that might affect migrating waterfowl on the Alaska North Slope. The Association of Village Council Presidents has requested a hearing in the Yukon-Kuskokwim Delta area. Therefore, the BLM is holding a public hearing on the date given below.

The IAP/EIS contains five alternatives for a land management plan for the 4.6 million-acre planning area and assessments of the impacts on the surface resources present there. These alternatives provide varying answers to two primary questions. First, will the BLM conduct oil and gas lease sales in the planning area and, if so, what lands will be made available for leasing? Second, what protections and enhancements will be implemented for natural and cultural resources and the activities that are based on these resources? The public hearing noted below will be to receive comments on the potential subsistence impacts to users in the Yukon-Kuskokwim Delta.

DATES: Oral and/or written comments may be presented at a public hearing to be held: May 12, 1998, 9 am; KVNA, Bethel, Alaska.

Any change to the hearing schedule will be accompanied by appropriate public notice.

FOR FURTHER INFORMATION CONTACT: Gene Terland (907–271–3344; gterland@ak.blm.gov) or Jim Ducker (907–271–3369; jducker@ak.blm.gov). They can be reached by mail at the Bureau of Land Management (930), Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska 99513–7599.

SUPPLEMENTARY INFORMATION: Authority for developing this IAP/EIS is derived from the Federal Land Policy and Management Act, the Naval Petroleum Reserves Production Act, and the National Environmental Policy Act. Authority for holding this hearing is derived from the Alaska National Interest Lands Conservation Act.

Copies of the draft IAP/EIS are available for public review at the Kuskokwim Consortium Library in Bethel, at the BLM Alaska State Office, 222 West 7th Avenue, #13, Anchorage, AK 99513, or through the internet at: http://aurora.ak.blm.gov/npra/.

Sally Wisely,

Associate State Director.

[FR Doc. 98–9499 Filed 4–9–98; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior; National Park Service; and Acadia National Park.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) Visitor Services Project and Acadia National Park propose to conduct visitor surveys to learn about visitor demographics and visitor opinions about services and facilities in Acadia National Park. The results of the surveys will be used by park managers to improve the services they provide to visitors while better protecting park natural and cultural resources. A study package that includes the proposed survey questionnaire for the proposed Acadia National Park study has been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on the proposed information collection request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The purpose of the proposed ICR is to document the demographics of visitors to Acadia National Park, to learn about the motivations and expectations these visitors have for their park visit, and to obtain their opinions regarding services provided by the park and the suitability of the visitor facilities maintained in the park. This information will be used by park planners and managers to plan, develop, and operate visitor services and facilities in ways that maximize use of limited park financial and personnel resources to meet the expectations and desires of park visitors.

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information collection for this survey.

DATES: Public comments will be accepted on or before May 11, 1998.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530; and also to: Margaret Littlejohn; Cooperative Park Studies Unit; Department of Forest Resources; College of Forestry, Wildlife and Range Sciences; University of Idaho; Moscow, ID 83844–1133.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGE SUBMITTED FOR OMB REVIEW, CONTACT:

Margaret Littlejohn, phone: 208–885–7863, fax: 208–885–4261, or email: littlej@uidaho.edu.

SUPPLEMENTARY INFORMATION:

Title: National Park Service (NPS) Visitor Services Project Visitor Survey at Acadia National Park.

Form: Not applicable.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information concerning visitor demographics and visitor opinions about the services and facilities that the National Park Service provides in Acadia National Park.

The proposed information to be collected regarding visitors in this park is not available from existing records, sources, or observations.

Automated Data Collection: At the present time, there is no automated way to gather this information, since it includes asking visitors to evaluate services and facilities that they used during their park visit. The intrusion on visitors to the park is minimized by only contacting visitors during one 7–9 day period.

Description of Respondents: A sample of visitors to Acadia National Park.

Estimated Average Number of Respondents: 864.

Estimated Average Number of Responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated Average Burden Hours Per Response: 12 minutes.

Frequency of Response: One time per respondent.

Estimated Annual Reporting Burden: 173 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–9483 Filed 4–9–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Death Valley National Park Advisory Commission will be held April 22 and 23, 1998; assemble at 8:00 AM in the front lobby of Best Western, 1008 S. Main Street, Lone Pine, California.

The main agenda will include:

- Reconnaissance of the western portion of Death Valley National Park
- Discussion of sites visited and general park issues
- Items for Discussion at Upcoming Meetings

The Advisory Commission was established by PL #03–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are Janice Allen, Kathy Davis, Michael Dorame, Mark Ellis, Pauline Esteves, Stanley Haye, Sue Hickman, Cal Jepson, Joan Lolmaugh, Gary O'Connor, Alan Peckham, Michael Prather, Robert Revert, Wayne Schulz, and Gilbert Zimmerman.

This meeting is open to the public.

Richard H. Martin,

Superintendent, Death Valley National Park.

[FR Doc. 98–9482 Filed 4–9–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a joint meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission with board members of The Presidio Trust will be held from 9 a.m. until 12 noon on Monday, April 27, 1998 at the Presidio Golden Gate Club, Fisher Loop, Presidio of San Francisco, California. The main agenda item of this meeting will be to hear a presentation of the draft Presidio Trust Financial Management Plan.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Ms. Naomi T. Gray
Mr. Michael Alexander
Ms. Lennie Roberts
Mr. Trent Orr
Ms. Jacqueline Young
Mr. R. H. Sciaroni
Dr. Edgar Wayburn
Mr. Mel Lane
Dr. Howard Cogswell
Mr. Jerry Friedman
Ms. Yvonne Lee
Mr. Redmond Kernan
Mr. Merritt Robinson
Mr. John J. Spring
Mr. Joseph Williams

A specific final agenda for this meeting will be made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4633.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: April 3, 1998.

Brian O'Neill,

General Superintendent.

[FR Doc. 98–9484 Filed 4–9–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Friday, April 24, 1998, at the Inyo County Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Sue Kunitomi Embrey, Chairperson
William Michael, Vice Chairperson
Keith Bright
Martha Davis

Ronald Izumita
Gann Matsuda
Vernon Miller
Mas Okui
Glenn Singley
Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after June 1, 1998. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: April 1, 1998.

Richard H. Martin,

Superintendent, Manzanar National Historic Site.

[FR Doc. 98–9481 Filed 4–9–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *City of Aberdeen, Mississippi; and Board of Supervisors of Monroe County, Mississippi,* (N.D. Miss.) was lodged with the United States District Court for the Northern District of Mississippi on March 26, 1998 (1:94cv304–S–D). The proposed Consent Decree resolves the United States' claims against the City of Aberdeen and the Board of Supervisors of Monroe County, Mississippi pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), as amended. This Decree also settles settling defendants' counterclaim against the United States. The settling defendants are alleged to be liable under Section 107 of CERCLA for costs incurred by the United States Environmental Protection Agency during a cleanup of the Prairie Metals Site in Monroe County, Mississippi. Under the Consent Decree, the settling defendants agree to reimburse the United States in the amount of $675,000, payable in two installments.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States* v. *City of Aberdeen et al.,* DOJ Ref. # 90–11–2–1074

The proposed settlement agreement may be examined at the Office of the United States Attorney, Federal Building, Room 265, 911 West Jackson Avenue, Oxford, Mississippi, 38665 and at the office of the Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–9452 Filed 4–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy at 28 CFR § 50.7, notice is hereby given that on March 19, 1998, a proposed consent decree in *United States* v. *The Dow Chemical Company, et al.,* Civil Action No. 980553, was lodged with the United States District Court for the Western District of Louisiana, Lafayette-Opelousas Division. The proposed Consent Decree resolves the liability of the Settling Defendants under Sections 106 and 107 of CERCLA at D.L. Mud Superfund Site (''Site'') located in Vermilion Parish, Louisiana. Under the terms of the Consent Decree, the Settling Defendants have agreed to conduct a remedial action at the Site in accordance with the Record of Decision (''ROD'') for the site. The ROD estimate of total site costs is $416,000.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Dow Chemical Company, et al.,* DOJ #90–11–2–892.

The proposed consent decree may be examined at the offices of the United States Attorney for the Western District of Louisiana, Lafayette-Opelousas Division, 600 Jefferson Street, Suite 1000, Lafayette, Louisiana, 70501–7206, and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Keith Smith, Assistant Regional Counsel). A copy of the consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the decree may be obtained in person or by mail from the Consent Decree Library. Such requests should be accompanied by a check in the amount of $92.75 (25 cents per page reproduction charge for decree) payable to ''Consent Decree Library''. When requesting copies, please refer to *United States* v. *The Dow Chemical Company, et al.,* DOJ #90–11–2–892.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–9450 Filed 4–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Pursuant to RCRA and CERCLA

In accordance with Department policy, 28 C.F.R. § 50.7, notice is hereby given that on March 25, 1998, the United States entered into a proposed Agreement and Covenant Not To Sue with the U.S. Environmental Protection Agency (''EPA'') and Ferex Corporation, its subsidiaries and affiliates, (''Ferex''), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.* and the Solid Waste Disposal Act, as amended by the

Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6901 *et seq.* Ferex intends to purchase the assets of McKinney Smelting, Inc. (''MSI''), a RCRA facility that is the subject of an EPA determination of imminent and substantial endangerment pursuant to RCRA § 7003 due to high levels of lead contamination on and off-site. Ferex intends to lease the property from MSI and take immediate steps to abate the endangerment and clean up the facility prior to continuing the existing metal recycling operation.

Pursuant to the terms of the proposed PPA, and in exchange for corrective action to be performed at the MSI facility and other public benefits, the United States will grant covenants not to sue Ferex under Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA for contamination presently existing on and emanating from the facility.

The U.S. Department of Justice will receive for a period of twenty (20) days from the date of this publication comments concerning the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *Agreement and Covenant Not To Sue Between The United States and Ferex Corporation*, D.J. ref. 90–5–1–1–4458. In addition, interested parties may request a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The proposed Agreement may be examined at the Office of the United States Attorney for the Eastern District of Texas, Sherman Division, 660 North Central Expressway, Suite 400, Plano, Texas 75704; the Office of the City Manager, City of McKinney, 222 E. Tennessee, McKinney, Texas 75070; and at the Consent Decree Library, 1120 G. Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the proposed Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $12.00 ($0.25 per page for reproduction costs) payable to: Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–9451 Filed 4–3–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with 28 CFR 50.7, notice is hereby given that on March 23, 1998, a proposed consent decree in *United States* v. *Florida Water Services Corporation*, Civil Action No. 97–711–CIV–T–26E, was lodged with the United States District Court for the Middle District of Florida, Tampa Division.

In this action, the United States sought civil penalties under Sections 301(a) and 309(b) and (d) of the Clean Water Act (the ''Act''), 33 U.S.C. 1311(a) and 1319(b) and (d), for violations of effluent limits set forth in the NPDES permits applicable to discharges from Defendant's Seaboard Utilities wastewater treatment plant located in Hillsborough County, Florida, and from Defendant's University Shores wastewater treatment plant located in Orange County, Florida. Under the proposed consent decree, the Defendant will pay a civil penalty of $250,000, and implement a Supplemental Environmental Project (''SEP''), valued at approximately $200,000, and an additional project, valued at approximately $450,000. The SEP will entail the acquisition and operation of a real-time monitoring system at the Defendant's Deltona Lakes Wastewater treatment plant in Volusia County, Florida, and the additional project will entail the expansion of the current water reuse project at the Deltona plant to provide reclaimed water to an elementary school and two residential subdivisions for landscape irrigation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Florida Water Services Corporation*, Civil Action No. 97–711–CIV–T–26E, D.J. Ref. No. 90–5–1–1–4290.

The proposed consent decree may be examined at the Office of the United States Attorney, Middle District of Florida, Robert Timberlake Bldg., 500 Zack Street, Room 400, Tampa, Florida 33602; the Region IV Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth St., S.W., Atlanta, Georgia 30303–3104; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the proposed decree and attachments, please refer to the referenced case and enclose a check in the amount of $10.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–9447 Filed 4–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on March 27, 1998 a proposed Consent Decree in *United States* v. *Lancaster Battery Company, et al.*, Civil Action No. 90–5201 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought to recover response costs incurred by the Environmental Protection Agency in performing cleanup actions at the Lancaster Battery Superfund Site located in Lancaster, Pennsylvania. The Consent Decree requires that the 32 settling defendants (31 companies that sent used auto batteries to the site for disposal, plus the site operator) pay to the Hazardous Substances Superfund, the amount of $723,400. This represents a 100% recovery of EPA's response costs at this site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Lancaster Battery company, et al.*, D.J. Ref. No. *90–11–2–605.*

The consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia 19106, at U.S. EPA Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th

Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $13.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–9446 Filed 4–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* versus *Nassau Metals Corp.*, C.A. No. 3:96–CV–562 (M.D. Pa.), was lodged on March 23, 1998, with the United States District Court for the Middle District of Pennsylvania. The consent decree resolves the United States' claims with respect to past costs, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607, in connection with the cleanup of the C&D Recycling Site, located in Luzerne County, Pennsylvania. The decree also resolves counterclaims alleged against the United States by defendant Nassau Metals Corp. The decree, however, does not resolve the United States' claims for past costs with respect to defendants Joseph Brenner and Myron Brenner.

Under this mixed funding settlement, pursuant to Sections 112 and 122 of CERCLA, 42 U.S.C. §§ 9612 and 9622, defendant Nassau will perform the remedial action selected by EPA for the Site at a cost of approximately $10.3 million. EPA will pay approximately 30% of said cost from the Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Nassau Metals Corp.*, DOJ Reference No. 90–11–3–1057–A.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 309, Federal Building, Washington and Linden Streets, Scranton, Pennsylvania 18501; the Region III Office of the Environmental Protection Agency, 840 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $28.00 (.25 cents per page production costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–9445 Filed 4–9–98; 8:45 am]

BILLING CODE 1410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Water Act and Oil Pollution Act of 1990

In accordance with United States Department of Justice policy, as set out in 28 CFR 50.7, notice is hereby given of the lodging on March 25, 1998 of a proposed Consent Decree in *United States, et al.* v. *Texaco Refining and Marketing, Inc.*, Civil Action No. C98–0371 (W.D. Wash.).

The proposed Decree resolves claims by Natural Resources Trustees of the United States Department of the Interior, the State of Washington, the Lummi Nation, the Nooksack Tribe, the Swinomish Indian Tribal Community and the Suquamish Tribe for Natural Resource Damages arising out of discharges of oil by Texaco Refining and Marketing, Inc. in 1991 and 1992 from its facility near Anacortes, Washington into the waters of the United States and the adjoining shoreline at Fidalgo Bay in violation of the Clean Water Act (CWA), 33 U.S.C. 1251, *et seq.*, as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701, *et seq.*, and OPA itself.

The same discharges were the subject of an earlier judicial action by the United States captioned *United States* v. *Texaco Refining and Marketing, Inc.*, Civil Action No. C93–181C, (W.D. Wash.) and administrative proceedings by the State of Washington which were resolved through a clean-up by Texaco; the payment of $500,000 in civil and administrative penalties; and actions to prevent future discharges. Under the current Decree, Texaco will pay an additional $500,000 to undertake projects to restore natural resources and reimburse assessment costs.

The United States Department of Justice will receive comments on the proposed Decree for a period of thirty days after publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, D.C., 20530 and should reference *United States, et al.* v. *Texaco Refining and Marketing Inc.*, DJ Ref. #90–5–1–1–3766A.

The proposed Decree may be examined at the offices of the United States Attorney for the Western District of Washington, 3600 Seafirst Plaza, 800—5th Avenue, Seattle, Washington 98104; the Office of the Attorney General for the State of Washington, Ecology Division, 629 Woodland Square Loop SE, 4th Floor, Lacey, Washington 98503; or the United States Department of Justice Consent Decree Library, 1120 F Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). If requesting copies from the Department of Justice Consent Decree Library, please enclose a check in the amount of $13.00 (twenty-five cents per page reproduction cost) payable to the Consent Decree Library and refer to *United States, et al.* v. *Texaco Refining and Marketing Inc.*, DJ Ref. #90–5–1–1–3766A.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–9449 Filed 4–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that two consent decrees that would resolve the liability of (1) Morris Brothers Farms and (2) Joseph M. Morris, two of four defendants in *United States of America* v. *Jane A. Young, et al.*, Civil Action No. 95–4202–JPG (S.D. Ill.), were lodged with the United States District Court for the Southern District of Illinois on March 30, 1998.

Both of the proposed consent decrees concern alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of dredged and fill materials onto approximately 100 acres of wetlands, in Hamilton County, Illinois (''Site''), which is alleged to constitute ''waters of the United States.''

The consent decree between the United States and Morris Brothers Farms permanently enjoins Morris Brothers Farms from taking any actions, or causing others to take any actions, which result in the discharge of dredged

or fill material into waters of the United States. The consent decree with Morris Brothers Farms further requires Morris Brothers Farms to pay (a) a $20,000 civil penalty and (b) $47,000 into an interest-bearing Registry Account of the United States District Court for the Southern District of Illinois, to be used to conduct a wetland restoration at the Site if the United States obtains access to the Site through litigation or other means. In addition, the consent decree with Morris Brothers Farms provides that if the United States is not able to obtain access to the Site to conduct a wetland restoration, all funds in the Registry Account (except for 10% of the interest that is to be paid to the Court) will be deposited by the Clerk of the Court into the United States Treasury.

The consent decree between the United States and Joseph M. Morris permanently enjoins Joseph M. Morris from taking any actions, or causing others to take any actions, which result in the discharge of dredged or fill material into waters of the United States. The consent decree with Joseph M. Morris further requires Joseph M. Morris, subject to the right of prior approval by the United States Army Corps of Engineers, to convey to an appropriate entity for conservation 68.7 acres of land that are immediately adjacent to the violation Site. The purpose of the conveyance is to provide a conservation area in which no development, excavation, or other disturbance will occur. To achieve that end, the conveyance shall contain several restrictions that are set forth in an exhibit to the consent decree with Joseph M. Morris.

The Department of Justice will receive written comments relating to the consent decrees for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Steven E. Rusak, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States* v. *Jane A. Young, et al.*, DJ Reference No. 90–5–1–6–580.

The proposed consent decrees may be examined at the Clerk's Office, United States District Court, United States Courthouse, 301 West Main Street, Benton, Illinois, 62812.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 98–9448 Filed 4–9–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval: National Prisoner Statistics: Prison Population Reports Midyear Counts (NPS–1A) and Advance Yearend Counts (NPS–1B)—Revision of a currently approved collection.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and approval in accordance with Section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The Bureau of Justice Statistics has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by April 15, 1998. If granted, the emergency approval is valid only for 180 days.

The proposed information collection is published to obtain comments from the public and affected agencies. All comments should be directed to OMB, Office of Information and Regulatory Affairs: *Attention:* Mr. Dennis Marvich, 202–395–3122, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Marvich at 202–395–7285. During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, BJS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until June 9, 1998. During the 60-day regular review All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. James Stephan, Statistician, Corrections Statistics Branch, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 7th Street N.W. Washington, DC 20531. Comments regarding this information collection may also be submitted via facsimile to Mr. Stephan at 202–307–1463.

Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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.

Overview of this information collection:

(1) Type of information collection. Revision of a currently approved information collection.

(2) The title of the Form/Collection: National Prisoner Statistics: Prison Population Reports Midyear Counts (NPS–1A); and Prison Population Report Advance Yearend Counts (NPS–1B).

(3) The agency form number and the applicable component of the Department sponsoring the collection. Form: NPS–1A; and NPS–1B. Correction Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State Departments of Corrections. Others: The Federal Bureau of Prisons. For the NPS–1A Form, 52 central reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of June 30 of the current year and June 30 of the previous year, the number of male and female inmates under this jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates; and

(b) As of June 30 of the current year, and June 30 of the previous year, the number of male and female inmates in their custody with maximum sentences

of more than one year, one year or less; and unsentenced inmates.

For the NPS–1B form, 52 central reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of December 31 of the current year, and December 31 of the previous year, the number of male and female inmates under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in county or other local authority correctional facilities, or in other state or Federal facilities on December 31 of the current year solely to ease prison crowding;

As of the direct result of state prison crowding during the current year, the number of inmates released via court order, administrative procedure or statute, accelerated release, sentence reduction, emergency release, or other expedited release; and

(d) The aggregate rated, operational, and design capacities, by sex, of each State's correctional facilities at yearend. The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond: 52 respondents each taking an average 2.5 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 130 annual burden hours.

If additional information is required during the first 60 days of this same regular review period, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW Washington, DC 20530.

Dated: April 6, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–9444 Filed 4–9–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 048 and TA–W–34, 048A]

Dresser-Rand Company, Painted Post and Corning, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on January 21, 1998, applicable to workers of the Dresser-Rand Company located in Painted Post, New York. The notice was published in the **Federal Register** on February 18, 1998 (63 FR 8211).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that as a result of the layoffs at the Painted Post facility layoffs have also occurred at the Dresser-Rand Company headquarters in Corning, New York.

The intent of the Department's certification is to include all workers of the Dresser-Rand Company adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers of Dresser-Rand Company in Corning, New York.

The amended notice applicable to TA–W–34,048 is hereby issued as follows:

All workers of Dresser-Rand Company, Painted Post, New York (TA–W–34,048) and Dresser-Rand Company in Corning, New York (TA–W–34, 048A) who became totally or partially separated from employment on or after November 18, 1996 through January 21, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 30th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–9541 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,297]

Dresser-Rand Co., Corning, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 9, 1998 in response to a worker petition which was filed February 23, 1998 on behalf of workers at Dresser-Rand Company located in Corning, New York (TA–W–34,297).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–34,048A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 30th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–9544 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix of this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address

shown below, not later than April 20, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 20, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 23rd day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 3/23/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,341	Koch Refinery Co (Wrks)	Corpus Christi, TX	03/09/98	Petroleum and Petro Chemicals.
34,342	Alps Electric (USA) (Comp)	Hunt. Beach, CA	03/12/98	Plastic Computer Perpheral Parts.
34,343	Trorrington Co (The) (Comp)	Calhoun, GA	03//05/98	Radial Ball Bearings.
34,344	Lipton (Wrks)	Flemington, NJ	02/26/98	Dry Foods and Seasonings.
34,345	Little Sister, Inc (Wrks)	Gettysburg, PA	03/08/98	Children's Clothing.
34,346	Russell-Newman, Inc (Comp)	Cisco, TX	03/10/98	Ladies' Sleepwear.
34,347	Westwood Lighting, Inc (Comp)	El Paso, TX	12/16/97	Brass Lamps.
34,348	Madison Specialties, Inc (Comp)	Morristown, NJ	03/01/97	Optical Cases.
34,349	Lee Apparel, Inc (UFCW)	Boax, AL	03/05/98	Denim Jeanswear.
34,350	General Electric Environ. (USWA)	Lebanon, PA	03/03/98	Cyclones, Steel Fabrication.
34,351	Clearing-Niagara, Bliss (UAW)	Buffalo, NY	03/04/98	Metal Forming Equipment.
34,352	WinTron, Inc (Wrks)	Bellefonte, PA	03/11/98	Electronic Yokes—Stator and Saddle.
34,353	Lane Plywood (Wrks)	Eugene, OR	03/12/98	Plywood.
34,354	Tescom (Wrks)	Elk River, MN	03/13/98	Valves and Regulators.
34,355	American Components, Inc (Wrks)	Dandridge, TN	03/12/98	Automotive Air Bladders and Hosp. Mattress.
34,356	Sero Co., Inc (The) (Wrks)	Cordele, GA	03/12/98	Shirts, Pants, Sweaters.
34,357	Boise Cascade Corp (Wrks)	Elgin, OR	03/09/98	Stud Length Lumber.
34,358	Pioneer Natural Resources (Comp)	Houston, TX	02/08/98	Oil.
34,359	Canaan Fashions & (UNITE)	Brooklyn, NY	03/11/98	Men's and Ladies' Jackets.
34,360	UniBlend Spinners (Wrks)	Union, SC	03/10/98	Yarn for Apparel and Home Furnishings.
34,361	Otis Elevator Co (IUE)	Bloomington, IN	03/05/98	Top of Car Boxes, Door Operators.
34,362	Delphi (UAW)	Trenton, NJ	03/12/98	Body Side Moldings, Elec. Seat Adjuster.
34,363	Dana Corp (BBF)	Marion, OH	03/11/98	Truck Axles.
34,364	Stanley Blacker, Inc (Comp)	Vidalia, GA	03/11/98	Men's Dress Slacks.

[FR Doc. 98–9543 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,052]

Matsushita Home Appliance Corp. (Microwave Division), Franklin Park, Illinois; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Matsushita Home Appliance Corporation, Microwave Division, Franklin Park, Illinois. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–34,052; Matsushita Home Appliance Corp., Microwave Division, Franklin Park, Illinois (March 30, 1998)

Signed at Washington, D.C. this 31st day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–9539 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,003 and TA–W–34,003A]

Umbro International and Umbro North America, Fairbluff, NC, and Greenville, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 8, 1998, applicable to all workers of Umbro North America, located in Fairbluff, North Carolina. The notice was published in the **Federal Register** on February 6, 1998 (63 FR 6209).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Umbro International is the parent firm of Umbro North America. Findings also show that worker separations are expected to occur at the subject firm's Greenville, South Carolina location in March 1998 and continue through June 1998 when the entire company closes. The workers produce soccer shorts and jerseys as well as provide administrative and support function services for Umbro International. Also, the Department incorrectly limited the certification to ''all workers engaged in employment related to the production of soccer shorts and jerseys.''

Accordingly, the Department is amending the certification to cover workers at the subject firms' Greenville, South Carolina location.

The intent of the Department's certification is to include ''all workers''

of Umbro International adversely affected by increased imports.

The amended notice applicable to TA–W–34,003 is hereby issued as follows:

All workers of Umbro International, Umbro North America, Fairbluff, North Carolina (TA–W–34,003) and Greenville, South Carolina (TA–W–34,003A) who became totally or partially separated from employment on or after October 28, 1996 through January 8, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–9537 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,826]

UNOCAL, Sugar Land, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 6, 1996 applicable to all workers of UNOCAL, Oil and Gas Division, located in Sugar Land, Texas. The notice was published in the **Federal Register** on December 24, 1996 (61 FR 67858).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly limited the certification to the Oil and Gas Division. The investigation conducted for the subject firm was conducted on behalf of the entire Sugar Land, Texas facility. The Oil and Gas Division was only one division of several divisions of UNOCAL's Sugar Land, Texas facility. The Department is amending the certification determination to correctly identify the title name to read UNOCAL, Sugar Land, Texas.

The amended notice applicable to TA–W–32,826 is hereby issued as follows:

All workers of UNOCAL, Sugar Land, Texas (TA–W–32,826) and at various locations in Texas (TA–32,826A), Alabama (TA–W–32,826B), Louisiana (TA–W–32,826C), Michigan (TA–W–32,826D), New Mexico (TA–W–32,826E), Oklahoma (TA–W–32,826F) and Utah (TA–W–32,826G) who became totally or partially separated from employment on or after December 9, 1996 through December 6, 1998 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–9542 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Office of Job Corps Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed reinstatement with change of the standard Job Corps Center Request for Proposal and Related Contracting Information Gathering Reporting Requirements.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 9, 1998.

The Department of Labor is particularly interested in comments which:

- 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;
- 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;
- Enhance the quality, utility, and clarify of the information to be collected; and
- 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 submissions of responses.

ADDRESSEE: Andra Rebar, Office of Job Corps, 200 Constitution Avenue, Room N–4510, Washington, DC 20210. E-mail Internet address: Rebara@doleta.gov; Telephone number: (202) 219–8550 (This is not a toll-free number); Fax number: (202) 219–5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps is an intensive training program for economically disadvantaged young people aged 16–24 who are out of school and out of work. The enabling legislation, Job Training Partnership Act (JTPA) requires that 80% of all Job Corps enrollees (''Students'') be residential students. The program is principally carried out through a nationwide network of 114 Job Corps centers. These are located at facilities either owned or leased by the Federal Government. The Department has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program. Job Corps centers are established by the Department and it is the Department's responsibility to select operators for them. Of the 114 current centers, 28 are operated by the Department of Agriculture and the Interior through interagency agreements. These centers are located on Federal lands controlled by these two agencies. The remaining 86 centers are operated by contractors selected by the Department, 3 are operated by public organizations on a noncompetitive basis, and the remainder are operated by private organizations, including private for profit companies. These contracts are negotiated procurement done through competition. Many of the current contractors operate more than one center.

II. Current Actions

The Request for Proposal provides the Government's expectations of potential

offerors for the development of proposals to operate Job Corps Centers. The proposals developed by offerors in response to the RFP are evaluated in terms of technical factors and costs. These proposals serve as the principal basis for selection of a successful offeror.

The operation of the Job Corps program is such that many activities required of contractors must be coordinated with other organizations, both Federal and nonfederal. Most of the information collection requirements of Job Corps center operators stem directly from operational needs or are necessary to ensure compliance with Federal requirements and the terms of the contract. Statistical reports are normally generated from source documents directly by the Federal Government, not the contractors. During the last year several paper forms have been eliminated. Data is entered directly into a database and several reports are generated as a result of the data. Examples of this are ETA Forms 6–106, Initial Allowance Authorization, 6–101, Request for Change of Job Corps Living Allowance and Allotment, 6–102, Transmittal Letter for Job Corps, 6–103, Signature Cards, 6–142B, WSSR Log. In addition several other forms have been combined into one computer generated form. These forms are ETA 6–10, Voucher for Allocation for Living Expenses and Partial Payment of Readjustment, 6–105, Receipt for Taxable Clothing and Transportation, 6–107, Receipt for Cash Payment, and 6–108, Receipt for Miscellaneous Cash Collections.

Type of Review: Reinstatement with Change.

Agency: Employment and Training Administration, Office of Job Corps.

Title: Standard Center Job Corps Request for Proposal and Related Contractor Information Gathering Reporting Requirements.

OMB Number: 1205–0219.

Recordkeeping: Center operators are required to keep accurate records on each Job Corps student. All records are required to be maintained on Center for five years.

Affected Public: Business, for profit and not-for-profit institutions, and tribal Government.

TOTAL ESTIMATED BURDEN

Required activity	ETA form No.	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hours
Inspection Residential & Educational Facilities	6–37	114	4	456	1	456
Inspection Water Supply Facilities	6–38	114	4	456	1.25	570
Inspection of Waste Treatment Facilities	6–39	114	4	456	1.25	570
Program Description—Narrative Section	6–124	114	1	114	1	114
Job Corps Health Staff Activity	6–125	114	1	114	.25	28.5
Job Corps Utilization Summary	6–127	114	12	1368	2	2736
Job Corps Health Annual Service Costs	6–128	114	1	114	.25	28.5
Immunization Record	6–112	60000	1	60000	.10	6000
CM Health Record Envelope	6–135	60000	1	60000	.25	15000
CM Health Record Folder	6–136	60000	1	60000	.25	15,000
Center Operations Budget	2181/2181A	250	2	500	2.0	1,000
Center Financial Report	2110	114	12	1368	3.25	4,446
Property Inventory Transcription	3–28	175	12	2100	.75	1,575
Disciplinary Discharge	6–131 A	1500	1	1500	.5	750
Review Board Hearings	6–131 B	1500	1	1500	.10	150
Rights to Appeal	6–131 C	1500	1	1500	.10	150
Other plans:						
Center Operating Plan		86	1	86	30	2580
Maintenance		114	1	114	5	570
C/M Welfare		114	1	114	2	228
Annual VST (if applicable)		114	1	114	4	456
Annual Staff Training		114	1	114	1	114
Energy Conservation		114	1	114	5	570
Outreach (if applicable)		114	1	114	2	228
TWX Authorized Medical Terms		1500	1	1500	.20	300
Automated Forms:						
Notice of Termination	6–61	60000	1	60000	.03 (2 Minutes)	1800
Student Profile	6–640	60000	1	60000	.017 (1 Minute)	1020
Automated Records (see information collected electronically below).		60000	1	60000	.03 (2 Minutes)	1800
Payment Receipt (See Combined forms that have been automated into one form below).		65000	4	260000	.03 (2 Minutes)	7800

Combined forms that have been automated into one form: The below listed forms have been combined into one computer generated form listed above (Payment Receipt). For each form it previously took at least 5 minutes to complete. The data can now be entered in less than one minute and a form generated.

Required activity	ETA form No.
Voucher for Allocation for Living Expense and Partial Payment of Readjustment	6–104
Receipt for taxable Clothing and Transportation	6–105
Receipt for Cash Payment	6–107
Receipt for Miscellaneous Cash Collections	6–108

Previously the burden for preparing these forms manually was approximately 19,900 hours. This has resulted in a burden hour reduction of 12,100 burden hours.

Information collected electronically: The information from the below listed forms is now entered directly into a single data base. No hard copies of the forms are produced. It is estimated that

it takes approximately 2 minutes to complete the form.

Required activity	ETA form No.
Allowance and Allotment Change ..	6–101
Forms Transmittal Letter	6–102
Signature Card	6–103
Voucher for Allocation for Living Expense	6–104
Initial Allowance Authorization	6–106
WSSR Log	6–142B

Burden hour for collecting information electronically: Previously the burden for preparing these forms manually was approximately 8,177 hours. This has resulted in a reduction of 6,377 burden hours for these activities.

Total Estimated Burden: 65,890.

Total Burden Cost (Capital/startup): The Office of Job Corps is the process of automating of its Centers. The Center Information System (CIS) will allow all centers to directly input data into a national database. It is anticipated that the burden hours associated with preparation of forms will decrease significantly when the CIS is completely finalized. The capital/startup of this system is estimated to be $8.08 Million for Hardware and Software.

Total Burden Cost (Operating/Maintaining): Operating and maintenance services associated with these are contracted yearly by the Federal government with various contractors. This is one of the many functions the contractors perform for which precise cost cannot be identified. However, at the present time, based on past experience, the annual costs for contractor staff and related costs estimated to be $733,524 at an average cost of $11.43 per hour.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC this 6, day of April 1998.

Mary H. Silva,

Director, Office of Job Corps.

[FR Doc. 98–9545 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02127]

Omak Wood Products Inc., Omak, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of March 6, 1998, the Washington State Labor Council, AFL-CIO, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance (NAFTA–02127) for workers of the subject firm. The denial notice was signed on February 20, 1998, and published in the **Federal Register** on March 16, 1998 (63 FR 12838).

The petitioner presents evidence that the investigation did not cover all products produced by workers of the subject firm.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 27th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–9538 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02016 and NAFTA–02016A]

Umbro International and Umbro North America, Fairbluff, NC and Greenville, SC; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on January 8, 1998, applicable to all workers of Umbro North America located in Fairbluff, North Carolina. The notice was published in the **Federal Register** on January 22, 1998 (63 FR 3352).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Umbro International is the parent firm of Umbro North America. Findings also show that worker separations are expected to occur at the subject firm's Greenville, South Carolina location in March 1998 and continue through June 1998 when the entire company closes. The workers produce soccer shorts and jerseys as well as provide administrative and support function services for Umbro International. Also, the Department incorrectly limited the certification to ''all workers engaged in employment related to the production of soccer shorts and jerseys.''

Accordingly, the Department is amending the certification to cover workers at the Umbro International, Greenville, South Carolina.

The intent of the Department's certification is to include ''all workers'' of Umbro International, adversely affected by imports from Mexico and Canada.

The amended notice applicable to NAFTA–02016 is hereby issued as follows:

All workers of Umbro International, Umbro North America, Fairbluff, North Carolina (NAFTA–02016) and Greenville, South Carolina (NAFTA–02016A) who became totally or partially separated from employment on or after October 28, 1996 through January 8, 1998 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–9540 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on

construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts

MA980001 (Feb. 13, 1998)
MA980002 (Feb. 13, 1998)
MA980003 (Feb. 13, 1998)
MA980007 (Feb. 13, 1998)
MA980009 (Feb. 13, 1998)
MA980013 (Feb. 13, 1998)
MA980016 (Feb. 13, 1998)
MA980018 (Feb. 13, 1998)
MA980019 (Feb. 13, 1998)
MA980020 (Feb. 13, 1998)
MA980021 (Feb. 13, 1998)

New Jersey

NJ980002 (Feb. 13, 1998)

Volume II

Maryland

MD980049 (Feb. 13, 1998)

Pennsylvania

PA980007 (Feb. 13, 1998)
PA980040 (Feb. 13, 1998)

Volume III

Georgia

GA980003 (Feb. 13, 1998)
GA980022 (Feb. 13, 1998)
GA980032 (Feb. 13, 1998)
GA980040 (Feb. 13, 1998)
GA980050 (Feb. 13, 1998)
GA980058 (Feb. 13, 1998)
GA980065 (Feb. 13, 1998)
GA980066 (Feb. 13, 1998)
GA980073 (Feb. 13, 1998)
GA980085 (Feb. 13, 1998)
GA980086 (Feb. 13, 1998)
GA980087 (Feb. 13, 1998)
GA980088 (Feb. 13, 1998)

Kentucky

KY980003 (Feb. 13, 1998)
KY980029 (Feb. 13, 1998)

Mississippi

MS980060 (Feb. 13, 1998)

Volume IV

Illinois

IL980008 (Feb. 13, 1998)
IL980018 (Feb. 13, 1998)

Michigan

MI980062 (Feb. 13, 1998)
MI980069 (Feb. 13, 1998)
MI980079 (Feb. 13, 1998)
MI980083 (Feb. 13, 1998)

Ohio

OH980001 (Feb. 13, 1998)
OH980029 (Feb. 13, 1998)

Volume V

Arkansas

AR980047 (Feb. 13, 1998)

Iowa

IA980003 (Feb. 13, 1998)
IA980004 (Feb. 13, 1998)
IA980005 (Feb. 13, 1998)

Louisiana

LA980001 (Feb. 13, 1998)
LA980004 (Feb. 13, 1998)
LA980005 (Feb. 13, 1998)
LA980018 (Feb. 13, 1998)
LA980045 (Feb. 13, 1998)
LA980055 (Feb. 13, 1998)

Volume VI

Alaska

AK980001 (Feb. 13, 1998)

Idaho

ID980003 (Feb. 13, 1998)

Oregon

OR980001 (Feb. 13, 1998)
OR980004 (Feb. 13, 1998)

South Dakota

SD980003 (Feb. 13, 1998)
SD980005 (Feb. 13, 1998)

Washington

WA980001 (Feb. 13, 1998)
WA980002 (Feb. 13, 1998)
WA980004 (Feb. 13, 1998)
WA980005 (Feb. 13, 1998)
WA980008 (Feb. 13, 1998)
WA980023 (Feb. 13, 1998)
WA980026 (Feb. 13, 1998)

Wyoming

WY980005 (Feb. 13, 1998)
WY980006 (Feb. 13, 1998)
WY980007 (Feb. 13, 1998)

Volume VII

California

CA980001 (Feb. 13, 1998)
CA980002 (Feb. 13, 1998)
CA980028 (Feb. 13, 1998)
CA980033 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This

publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 3rd day of April 1998.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–9175 Filed 4–9–98; 8:45 am]

BILLING CODE 4510–07–M

NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Public Meeting

Establishment of the Medicare Commission included in Chapter 3, Section 4021 of the Balanced Budget Act of 1997 Conference Report. The Medicare Commission is charged with holding public meetings and publicizing the date, time and location in the **Federal Register**.

Notice of Public Meetings to be held on Monday, April 20 and Tuesday, April 21, 1998 in Washington, DC.

The National Bipartisan Commission on the Future of Medicare will hold public meetings on April 20–21, 1998 in the Hart Senate Office Building, Room 216, Washington, DC 20510.

Monday, April 20, 1998

1:00 PM–5:00 PM

Agenda

America in the Next Century
The Health Needs of an Aging Population

Tuesday, April 21, 1998

8:30 AM–11:30 AM

Agenda:

Medicare and the Baby Boomers Multi-Generational Perspectives

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202–252–3380.

Authorized for publication in the **Federal Register** by Julie Hasler, Office Manager, National Bipartisan Medicare Commission.

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register**.

Julie Hasler,

Office Manager, National Bipartisan Medicare Commission.

[FR Doc. 98–9608 Filed 4–7–98; 5:03 pm]

BILLING CODE 1132–00–M

NATIONAL CAPITAL PLANNING COMMISSION

Proposed Construction of a Mixed-Use Waterfront Destination Resort in Prince George's County, Maryland; Public Meeting and Intent To Prepare an Environmental Impact Statement

AGENCY: National Capital Planning Commission.

ACTION: Proposed construction of a mixed-use waterfront destination resort in Prince George's County, Maryland; public meeting and intent to prepare an environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), and in accordance with the Environmental Policies and Procedures implemented by the National Capital Planning Commission (Commission), the Commission announces its intent to conduct one (1) public meeting to discuss the preparation of an Environmental Impact Statement for the proposed construction of a mixed-use, waterfront entertainment and retail destination resort in Prince George's County, Maryland known as National Harbor. The purpose of the public meeting is to determine the significant environmental issues related to the construction and operation of the National Harbor development. The meeting will serve as part of the formal environmental review/scoping process for the preparation of the environmental document that is required for this project.

This Notice of Intent (NOI) initiates the formal environmental scoping process for this project and the public is encouraged to submit written comments on the alternatives and on the impacts at this time. The Commission considers a comprehensive Environmental Impact Statement (EIS) to be the appropriate environmental document for this project and expects that completion of an EIS will conform with federal environmental laws. The comments and responses received on the scope of the alternatives and potential impacts, as a result of this NOI, will be considered for the environmental document.

The National Harbor resort development is proposed to be built on two parcels totaling 533.9 acres in Prince George's County just south of the Capital Beltway (I–95/I–495) between the Woodrow Wilson Bridge and the Beltway interchange at Indian Head Highway (Maryland Route 210). Approximately 241 acres of the site consists of land under Smoot Bay in the Potomac River. The development would include hotels, restaurants, retail and entertainment facilities, office space, and a visitor's center, as well as associated vehicular transportation and parking facilities, pedestrian walkways, and other infrastructure improvements.

The Environmental Impact Statement (EIS) will identify and analyze impacts and mitigation options of the alternative actions under consideration. Alternatives to be considered include (1) construction and operation of the proposed National Harbor development plan, and (2) development of the site under the existing approved plans for the project (known as PortAmerica), including extensive office space and residential development. Topics for environmental analysis include short-term construction-related impacts; long-term changes in traffic, parking, socio-economic impacts, land use and physical/biological conditions within the project area; cultural (historic and archeological) and visual resource protection; and site operation and maintenance.

SUPPLEMENTARY INFORMATION: The environmental review/scoping process will include all written comments and one (1) public meeting for the purpose of determining significant issues related to the alternatives and to the potential impacts associated with the proposed construction and operation of National Harbor. The public meeting will be held:

Monday, May 12, 1998 at 7:00 p.m. at Oxon Hill High School, 6701 Leyte Drive, Oxon Hill, Maryland

This public meeting will be advertised in local and regional

newspapers. Adequate signs will be posted to direct meeting participants. A short formal presentation will precede the request for public comments. National Capital Planning Commission representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, regional and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. A document summarizing the written and oral comments received will be prepared.

An Informational Packet will be available for review at the offices of the National Capital Planning Commission at 801 Pennsylvania Avenue, N.W., and at the Prince George's County Branch Library at 6200 Oxon Hill Road, Oxon Hill, Md.; or upon request. Agencies and the general public are invited and are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, environmental scoping comments should clearly describe specific issues or topics which the community believes the EIS should address.

DATES: All written statements regarding environmental review of the proposed National Harbor must be postmarked no later than May 26, 1998 to the address below: National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Suite 301, Washington, D.C. 20576, Attention: Mr. Maurice Foushee, Community Planner.

FOR FURTHER INFORMATION PLEASE CONTACT: National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Suite 301, Washington, D.C. 20576, Phone: (202) 482–7200.

Sandra H. Shapiro,

General Counsel, National Capital Planning Commission.

[FR Doc. 98–9529 Filed 4–9–98; 8:45 am]

BILLING CODE 7502–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–325]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–71 issued to the Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant, Unit 1 (BSEP) located in Southport, North Carolina.

In an application dated February 23, 1998, as supplemented on March 27, 1998, the licensee proposed a license amendment to change the Technical Specifications (TS) for the Safety Limit Minimum Critical Power Ratio (SLMCPR) pertaining to two/single recirculation loop operation. A footnote is being added to the SLMCPR value in TS and the associated action statement. The proposed change is limited to Cycle 12 operation only. The amendment also includes a reference in the TS to the NRC's Safety Evaluation approving the proposed license amendment. The amendment request is provided both in the current TS and improved Standard Technical specification (iSTS) format. The licensee's proposed amendment for conversion to iSTS is currently under Nuclear Regulatory Commission (NRC) staff review.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment establishes a revised SLMCPR value of 1.09 for two recirculation loop operation and 1.10 for single recirculation loop operation for use during Unit 1 Cycle 12 operation. The derivation of the cycle-specific SLMCPRs was performed using ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–13; U. S. Supplement, NEDE–24011–P–A–13–US, August 1996; and the ''Proposed Amendment 25 to GE Licensing Topical Report NEDE–24011–P–A (GESTAR II) on Cycle Specific Safety Limit MCPR.'' Amendment 25 was submitted by General Electric Nuclear Energy (GE) to the NRC on December 13, 1996. GE has determined that both generic and plant-specific evaluations yield the same calculated SLMCPR value for Unit 1 Cycle 12. The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established, consistent with NRC approved methods, to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The SLMCPR is a Technical Specification numerical value that cannot initiate an accident. No individual precursors of an accident are affected. Therefore, the probability of an evaluated accident is not increased by revising the SLMCPR value to 1.09 for two recirculation loop operation and to 1.10 for single loop operation.

The proposed license amendment establishes a revised SLMCPR that ensures the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences. Specifically, the reload analysis demonstrates that a SLMCPR value of 1.09 for two recirculation loop operation and 1.10 for single loop operation ensures that less than 0.1 percent of the fuel rods will experience boiling transition during any plant operation if the limit is not violated.

Based on (1) the determination of the new SLMCPR value using conservative approved methods, and (2) the operability of plant systems designed to mitigate the consequences of accidents not having been changed; the consequences of an accident previously evaluated have not been increased.

Additionally, the proposed license amendment establishes a footnote for the SLMCPR value in Technical Specification 2.1.2 and revises TS 6.9.3.2.c to reference the NRC Safety Evaluation associated with approval of the proposed license amendment. The footnote for the SLMCPR value in TS 2.1.2, as well as reference ''c'' in TS 6.9.3.2, are associated with the acceptance of the SLMCPR value for Unit 1 Cycle 12 operation only. Thus, these changes are administrative revisions that have no effect on the probability or consequences of accidents previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed license amendment involves a revision of the SLMCPR to 1.09 for two recirculation loop operation and to 1.10 for single loop operation based on the results of both cycle-specific and generic analyses. Additionally, the proposed license amendment establishes a footnote for the SLMCPR value in TS 2.1.2 and revises TS 6.9.3.2.c to reference the NRC Safety Evaluation associated with approval of the proposed license amendment. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable modes of operation. Therefore, no new precursors of an accident are created and no new or different kinds of accidents are created.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

As previously stated, the derivation of the cycle-specific safety limit MCPRs was performed using ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–13; U. S. Supplement, NEDE–24011–P–A–13–US, August 1996; and the ''Proposed Amendment 25 to GE Licensing Topical Report NEDE–24011–P–A (GESTAR II) on Cycle Specific Safety Limit MCPR.'' Amendment 25 was submitted by GE to the NRC on December 13, 1996. GE has determined that both generic and plant-specific evaluations yield the same calculated SLMCPR value for Unit 1 Cycle 12. Use of these methods ensures that the resulting SLMCPR satisfies the fuel design safety criteria that less than 0.1 percent of the fuel rods experience boiling transition if the safety limit is not violated. Based on the assurance that the fuel design safety criteria will be met, the proposed license amendment does not involve a significant reduction in a margin of safety.

Additionally, the proposed license amendment establishes a footnote for the safety limit MCPR value in TS 2.1.2 and revises TS 6.9.3.2.c to reference the NRC Safety Evaluation associated with approval of the proposed license amendment. The footnote on the SLMCPR value in TS 2.1.2, as well as reference ''c'' in TS 6.9.3.2, are associated with the use of a SLMCPR value for Unit 1 Cycle 12 operation only. Thus, these changes are administrative revisions that have no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail 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 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 11, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with

the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 23, 1998, as supplemented on March 27, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297. This notice supersedes the **Federal Register** notice of March 25, 1998 (63 FR 14484).

Dated at Rockville, Maryland, this 7th day of April 1998.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–9652 Filed 4–9–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York, Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.60 for Facility Operating License No. DPR–64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 (IP3) located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.60 to allow the use of the ABB Combustion Engineering Nuclear Operations methodology (the CE methodology) for developing pressure-temperature (P–T) limits.

The proposed action is in accordance with the licensee's application for exemption dated January 28, 1998.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all light water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. The licensee used the methodology by ABB Combustion Engineering Nuclear Operations (the CE methodology) for constructing its P–T limits in place of the 1989 ASME Appendix G methodology approved by the staff in the regulations; therefore, the licensee applied for an exemption to use the CE methodology.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the CE methodology for developing P–T limits and concludes that there will be no physical or operational changes to IP3.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the proposed action, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there are not significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Indian Point Nuclear Generating Unit No. 3, dated February 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on March 19, 1998, the staff consulted with the New York State Official, Jack Spath, of the New York State Research and Development Authority regarding the environmental impact of the

proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 28, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 7th day of April 1998.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–9651 Filed 4–9–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York, Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.60 for Facility Operating License No. DPR–64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 (IP3) located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.60 to allow the use of Code Case N–514 in place of the safety margins required by Appendix G to 10 CFR Part 50 to determine the low temperature overpressure (LTOP) parameters.

The proposed action is in accordance with the licensee's application for exemption dated November 3, 1997.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all light water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. Since the licensee wishes to use Code Case N–514 as opposed to the requirements of Appendix G, an exemption to the regulations is necessary.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the use of Code Case N–514 in place of the safety margins required by Appendix G to 10 CFR Part 50 to determine the low temperature overpressure (LTOP) parameters and concludes that there will be no physical or operational changes to IP3.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the proposed action, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Indian Point Nuclear Generating Unit No. 3, dated February 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on March 20, 1998, the staff consulted with the New York State Official, Jack Spath, of the New York State Research and Development Authority regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 3, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 7th day of April 1998.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–9653 Filed 4–9–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

State of Oregon Relinquishment of Sealed Source and Device Evaluation and Approval Authority and Reassumption by the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of reassumption of sealed source and device evaluation and approval authority from the State of Oregon.

SUMMARY: Notice is hereby given that effective April 1, 1998, the Nuclear Regulatory Commission reassumed regulatory authority for sealed source and device evaluations and approvals in the Agreement State of Oregon in response to a request from the Governor of the State of Oregon to relinquish this authority.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Myers, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–2328, Internet: JHM@NRC.GOV.

SUPPLEMENTARY INFORMATION: Currently, the State of Oregon has an Agreement with the Nuclear Regulatory Commission (NRC) which grants the State authority to regulate specific categories of radioactive materials formerly regulated by the NRC. This Agreement was entered into on July 1, 1965, pursuant to Section 274b of the Atomic Energy Act of 1954, as amended.

Recently, the NRC received a letter from Oregon Governor John A. Kitzhaber, M.D. (December 8, 1997), requesting relinquishment of the State's authority to evaluate and approve sealed source and devices, and assumption of this authority by NRC. The requested action would involve reassertion of regulatory authority by NRC over activities currently regulated by Oregon pursuant to its Agreement with NRC.

The State of Oregon has conducted two sealed source and device evaluations; the last evaluation was issued in 1997. Governor Kitzhaber indicated that it would not be cost effective to fund and maintain staff to conduct sealed source and device evaluations.

The Commission has agreed to the request and has notified Oregon that effective April 1, 1998, the NRC reassumed authority to evaluate and approve sealed source and device applications within the State of Oregon. The State of Oregon will retain authority to regulate the manufacture and use of sealed sources and devices within the State in accordance with its Section 274b Agreement with the NRC.

Dated at Rockville, Md., this 3rd day of April 1998.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Acting Secretary of the Commission.

[FR Doc. 98–9487 Filed 4–9–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on March 20, 1998 (62 FR 13706). Individual authorities established or revoked under Schedules A and B and established under Schedule C between February 1, 1998, and February 28, 1998, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during February 1998.

Schedule B

No Schedule B authorities were established or revoked during February 1998.

Schedule C

The following Schedule C authorities were established during February 1998.

Agency for International Development

Special Assistant to the Assistant Administrator, Bureau for Latin America and the Caribbean. Effective February 19, 1998.

Department of Agriculture

Deputy Administrator, Food Stamp Program to the Administrator, Food and Nutrition Service. Effective February 12, 1998.

Special Assistant to the Administrator, Food and Inspection Service. Effective February 12, 1998.

Special Assistant to the Administrator, Food and Inspection Service. Effective February 12, 1998.

Confidential Assistant to the Administrator, Rural Housing Service. Effective February 18, 1998.

Director, Native American Programs to the Assistant Secretary for Congressional Relations. Effective February 18, 1998.

Confidential Assistant to the Administrator, Rural Business Service. Effective February 27, 1998.

Deputy Press Secretary to the Director, Office of Communications. Effective February 27, 1998.

Deputy Press Secretary to the Director, Office of Communications. Effective February 27, 1998.

Department of the Army (DOD)

Staff Assistant for Policy to the Secretary of the Army. Effective February 10, 1998.

Department of Defense

Staff Specialist to the Deputy Assistant Secretary of Defense, (European and NATO Affairs). Effective February 23, 1998.

Defense Fellow to the Special Assistant for White House Liaison. Effective February 24, 1998.

Staff Specialist to the Assistant Secretary (Strategy and Threat Reduction). Effective February 25, 1998.

Department of Education

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective February 4, 1998.

Confidential Assistant to the Special Assistant, Office of the Deputy Secretary. Effective February 19, 1998.

Special Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective February 19, 1998.

Department of Health and Human Services

Strategic Planning and Policy Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective February 4, 1998.

White House Liaison to the Chief of Staff. Effective February 24, 1998.

Confidential Assistant (Scheduling) to the Director of Scheduling and Advance. Effective February 25, 1998.

Department of Housing and Urban Development

General Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs. Effective February 24, 1998.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective February 24, 1998.

Department of Justice

Program Manager, Violence Against Women Office to the Director, Violence Against Women Office. Effective February 26, 1998.

Department of Labor

Special Assistant to the Secretary of Labor. Effective February 18, 1998.

Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration. Effective February 20, 1998.

Special Assistant to the Assistant Secretary for Public Affairs. Effective February 20, 1998.

Special Assistant to the Secretary of Labor. Effective February 25, 1998.

Department of State

Special Assistant to the Assistant Secretary, Bureau of African Affairs. Effective February 12, 1998.

Staff Assistant to the Deputy Assistant Secretary for Strategic Planning. Effective February 24, 1998.

Department of Transportation

Associate Director, Office of Intergovernmental and Consumer Affairs to the Director, Office of Intergovernmental Affairs. Effective February 5, 1998.

Special Assistant to the Administrator, Federal Highway Administration. Effective February 11, 1998.

Department of the Treasury

Senior Advisor to the Assistant Secretary for Financial Markets. Effective February 18, 1998.

Department of Veterans Affairs

Special Assistant to the Deputy Secretary of Veterans Affairs. Effective February 6, 1998.

Special Assistant to the Secretary of Veterans Affairs. Effective February 19, 1998.

Executive Assistant to the Secretary of Veterans Affairs/Deputy Chief of Staff. Effective February 19, 1998.

General Services Administration

Deputy Associate Administrator to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective February 18, 1998.

National Aeronautics and Space Administration

Radio Production Specialist to the Associate Administrator, Public Affairs. Effective February 11, 1998.

National Transportation Safety Board

Confidential Assistant to the Chairman. Effective February 24, 1998.

Special Assistant to the Managing Director. Effective February 25, 1998.

Office of Management and Budget

Confidential Assistant to the Associate Director for Natural Resources, Energy and Science. Effective February 5, 1998.

Small Business Administration

National Director for Community Outreach to the Administrator, Small Business Administration. Effective February 12, 1998.

United States Information Agency

Supervisory Public Affairs Specialist (New York) to the Associate Director, Bureau of Information, Foreign Press Center. Effective February 26, 1998.

United States Tax Court

Secretary (Confidential Assistant) to the Judge. Effective February 9, 1998.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Janice R. Lachance

Director.

[FR Doc. 98–9443 Filed 4–9–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23102; 812–10992]

Harris & Harris Group, Inc.; Notice of Issuance of Certification

April 6, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Issuance of Certification Pursuant to Section 851(e) of the Internal Revenue Code of 1986, as Amended (''Code'').

SUMMARY: The SEC is issuing a certification pursuant to section 851(e) of the Code that applicant Harris & Harris Group, Inc. (''Harris'') was, for the fiscal year ended December 31, 1997, principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available.

FILING DATES: The application for the certification was filed on January 6, 1998, and amended on March 2, 1998 and April 2, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application and a certification. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicant's Representations

1. Harris is a New York corporation and a closed-end, non-diversified management investment company registered under the Investment Company Act of 1940 (''Act''). On July 26, 1995, Harris elected to become regulated as a business development company pursuant to section 54(a) of the Act.

2. Harris proposes to qualify as a ''regulated investment company'' under section 851(a) of the Code pursuant to section 851(e) of the Code. Section 851(b) of the Code imposes certain portfolio diversification requirements on investment companies that seek to qualify as a regulated investment company. Section 851(e) of the Code provides an exemption from these diversification requirements if the investment company, among other things, obtains a certification from the SEC that the investment company is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available (collectively, ''Development Corporations'').

3. Harris has filed an application seeking a certification pursuant to section 851(e) of the Code for the fiscal year ended December 31, 1997. The application describes each company in Harris' portfolio during the fiscal year ended December 31, 1997 that Harris believes to be a Development Corporation. Harris states that, in making this determination, it relied upon information provided by the portfolio companies to Harris and to others, including but not limited to, offering circulars, prospectuses, analyst reports, internal company memoranda, patent applications and similar documents. In addition, Harris generally is represented on the boards of directors of its portfolio companies through member or observer status, and also has direct access to senior management of the companies.

4. The following table shows the composition of the total assets of Harris as of each of the calendar quarters ended March 31, June 30, September 30, and December 31, 1997, as set forth in the Application.

Assets (at value)	Mar. 31, 1997	June 30, 1997	Sept. 30, 1997	Dec. 31, 1997
Investments representing capital furnished to corporations believed to be Development Corporations	$18,746,134	$17,676,340	$16,424,441	$20,748,370
Other investments, cash and U.S. Government securities	15,116,513	11,514,006	12,827,611	18,056,448
Other assets	2,502,630	2,510,409	3,384,327	468,966
Total assets	36,365,277	31,700,755	32,636,379	39,273,784

As reflected in the table above, Development Companies comprised the following percentages of the total assets of Harris at the end of each calendar quarter of 1997: March 31, 51.5%; June 30, 55.8%; September 30, 50.3%; and December 31, 52.8%.

Certification

On the basis of the information set forth in the application, it appears that Harris was principally engaged in the furnishing of capital to Development Corporations within the meaning of section 851(e) of the Code in the fiscal year ended December 31, 1997. It is therefore certified to the Secretary of the Treasury, or his delegate, pursuant to section 851(e) of the Code, that Harris was, for the twelve months ended December 31, 1997, principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9463 Filed 4–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26855]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

April 3, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 28, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New Century Energies, Inc., et al. (70–9007)

New Century Energies, Inc. (''NCE''), a registered holding company, Public Service Company of Colorado (''PSCo''), Cheyenne Light, Fuel and Power Company (''Cheyenne''), New Century Services, Inc., WestGas Interstate Inc., NC Enterprises, Inc., New Century International, Inc., and its subsidiary companies, e prime, inc. and its subsidiary companies PS Colorado Credit Corporation (''PSCCC''), Natural Fuels Corporation, PSR Investments, Inc., Green & Clear Lakes Company, 1480 Welton, Inc., each located at 1225 Seventeenth Street, Denver, Colorado 80202–5534, and Southwestern Public Service Company (''SPS''), Tyler at Sixth, Amarillo, Texas 79101, and Quixx Corporation and its subsidiary companies, Amarillo National's Plaza/Two, 500 South Tyler, Suite 1100, Lobby Box 254, Amarillo, Texas 79101–2442, and Utility Engineering Corporation and its subsidiary companies, each located at Utility Engineering Plaza, 5601 I–40 West, Amarillo, Texas 79101–4605 (collectively, ''Applicants''),[1] have filed a post-effective amendment under sections 6(a), 7 and 12(b) of the Act and rules 43, 45 and 53 under the Act to their application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 32 and 33 of the Act and rules 42, 43, 45 and 53 under the Act.

By order dated August 1, 1997 (HCAR No. 26750) (''August 1997 Order''), the Commission authorized, through December 31, 1999:

(1) External financings (''External Financings'') by PSCo, SPS and Cheyenne (''Utility Subsidiaries''), NCE and certain of its nonutility subsidiaries; (2) intrasystem financing, including guarantees, among NCE and its subsidiary companies and among subsidiary companies; (3) the issuance of types of securities not exempt under rules 45 and 52; (4) the Utility Subsidiaries to enter into risk management instruments; (5) NCE's subsidiary companies to alter their capital stock; and (6) the formation by NCE's subsidiary companies of new financing entities and the issuance of securities and related guarantees by the new financing entities and one existing financing entity.

The External Financing authorized in the August 1997 Order include: (1) The issuance by NCE of common stock, par value $1.00 per share, (''Common Stock'') for an aggregate offering price of up to $535 million (exclusive of Common Stock issued for benefit plans and divided reinvestment plans), and (2) short-term debt aggregating not more than $100 million outstanding at any one time, which limit is to increase by an additional $125 million in the event that PSCCC, presently a subsidiary of PSCo, becomes a direct subsidiary of NCE. The intrasystem financing authorization includes $50 million for guarantee and credit support arrangements among the subsidiaries of NCE.

Applicants now propose that the August 1997 Order be modified to increase the amount of: (1) Common Stock issuances by NCE (exclusive of Common Stock issued for benefit plans and dividend reinvestment plans) from $535 million to $745 million; (2) short-term debt issuances and sales from $100 million to $200 million (with the retention of the $125 million increase in

[1] Fuel Resources Development Company was an applicant in the original filing. Since then it has been dissolved.

the event that PSCCC becomes a direct subsidiary of NCE); and (3) nonexempt guarantees and credit support arrangements among the subsidiaries of NCE from $50 million to $100 million. In addition, Applicants propose to use the proceeds from the various financings authorized by the August 1997 Order, as modified by an order authorizing this post-effective amendment, to invest in ''energy-related companies'' within the meaning of rule 58 under the Act, subject to the limitations of rule 58(a)(1).

American Electric Power Company, Inc. (70–9191)

American Electric Power Company, Inc. (''AEP''), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a declaration under section 12(b) of the Act and rule 45.

American Electric Power Service Corporation (''AEPSC''), AEP's service company subsidiary, leases office space (''Premises'') for its employees under an agreement dated as of October 11, 1979 with American Property Investors IX (''Investors''), as amended to date (''Lease''). AEPSC agreed in the Lease to pay an initial annual lease amount of $458,636, through December 31, 2009. It can extend the Lease for four successive five-year terms. The annual lease amount for each additional term would be determined by the market, provided that the new annual payment does not exceed the initial annual lease amount.

On April 1, 1995, Ohio Power Company (''OPCo''), an operating company subsidiary of AEP and an associate company of AEPSC, occupied the Premises. Concurrently, AEPSC, OPCo and American Real Estate Holdings Limited Partnership (''American Real Estate''), as successor to Investors, entered into an assignment of the Lease (''Assignment''), dated as of April 1, 1995. Under the terms of the Assignment, AEPSC was released from, and OPCo assumed, all of the liabilities under the Lease.

Due to a recent office realignment, AEPSC intends to once again occupy the Premises and will reassume its obligations under the Lease. In connection with its assumption of these obligations, AEP now requests authority to enter into an agreement with American Real Estate to guarantee AEPSC's obligations under the Lease.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9464 Filed 4–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Docket No. IC–23100; File No. 812–10816]

Salomon Brothers Variable Series Funds Inc, et al; Notice of Application

April 3, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting relief from Sections 9(a), 13(a), 15(a) and 15(b) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application

Appplicants seek an order of exemption to the extent necessary to permit shares of the Fund to be sold to and held by: (i) variable annuity and variable life insurance separate accounts (''Separate Accounts'') of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''), and (ii) trustees of certain qualified pension or retirement plans.

Applicants

Salomon Brothers Variable Series Funds Inc (the ''Fund'') and Salomon Brothers Asset Management Inc (''SBAM'' or the ''Adviser'').

Filing Dates

The application was filed on October 16, 1997 and an amendment was filed on February 9, 1998.

Hearing or Notification of Hearing

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on April 28, 1998, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Gary S. Schpero, Esq., Simpson Thacher & Barlett, 425 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Elisa Metzger, Senior Counsel, or Mark C. Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W. Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is a Maryland corporation and is registered under the 1940 Act as an open-end management investment company. The Fund consists of, and offers shares in, seven separate investment portfolios (the ''Initial Portfolios''), each of which has its own investment objective and policies. The Fund may in the future issue shares of additional portfolios (together with the Initial Portfolios, the ''Portfolios'') and/or multiple classes of shares of each Portfolio.

2. SBAM serves as the investment adviser to each of the Portfolios. SBAM is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). SBAM is a wholly-owned subsidiary of Salomon Brothers Holding Company Inc, which is a wholly-owned subsidiary of Salomon Smith Barney Holdings, Inc. which is, in turn, wholly-owned by Travelers Group, Inc. SBAM serves as the overall investment manager of the Portfolios, subject to the general direction and supervision of the Fund's Board of Directors (the ''Board of Directors''). SBAM has entered into a subadvisory agreement with Salomon Brothers Asia Pacific Limited (''SBAM AP''), an affiliate of SBAM and an investment adviser registered under the Advisers Act. SBAM AP serves as the sub-adviser to one of the Portfolios, Salomon Brothers Variable Asia Growth Fund. The Adviser also has entered into a subadvisory consulting agreement with Salomon Brothers Asset Management Limited (''SBAM Limited''), an affiliate of the Adviser and an investment adviser registered under the Advisers Act. SBAM Limited provides advisory services relating to

currency transactions and investments in non-dollar-denominated debt securities for the benefit of one of the Portfolios, Salomon Brothers Variable Strategic Bond Fund. SBAM AP and SBAM Limited are hereinafter referred to as the ''Sub-Advisers.''

3. The Fund currently offers shares of certain of its Initial Portfolios to Separate Accounts of Sun Life of Canada U.S. (''Sun Life'') in order to serve as the investment vehicle for certain variable annuity contracts. In the future, the Fund wishes to offer shares of its Portfolios, to Separate Accounts of Sun Life and other insurance companies in order to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively referred to herein as ''Contracts''). Applicants represent that the Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts.

4. The Fund also may offer shares of the Fund to the trustees (or custodians) of certain qualified pension or retirement plans (the ''Plans'') as permitted by Treasury Regulation § 1.817–5(f)(3)(iii) adopted pursuant to § 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code'') and described in Revenue Ruling 94–62.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management company that also offers its shares to a variable annuity separate account of the same insurance company or any other insurance company or to trustees of a Plan. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

2. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.''

3. The relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act similar to those provided by Rule 6e–2. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T)(b)(15) grants the exemptions if the underlying fund engages in mixed funding, but not if it engages in shared funding or sells its shares to Plans.

5. Applicants state that the current tax law permits the Fund to increase its asset base through the sale of shares to Plans. Section 817(h) of the Code imposes certain diversification requirements on the underlying assets of the Contracts invested in the Fund. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified as prescribed by Treasury regulations. To meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their contracts. Treas. Reg. § 1–817–5(f)(3)(iii).

6. The promulgation of Rules 6e–2 and 6e–3(T) preceding the issuance of these Treasury regulations. Applicants state that given the then-current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Accordingly, Applicants hereby request an order of the Commission exempting the variable life insurance Separate Accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such a Separate Account) and the Applicants from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T) thereunder (and any permanent rule comparable to Rule 6e–3(T)), to the extent necessary to permit shares of the Fund to be offered and sold to, and held by: (1) both variable annuity Separate Accounts and variable life insurance Separate Accounts of the same life insurance company or of affiliated life insurance companies (*i.e.*, mixed funding); (2) Separate Accounts of unaffiliated life insurance companies (including both variable annuity Separate Accounts and variable life insurance Separate Accounts) (*i.e.*, shared funding); and (3) trustees of Plans.

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a), subject to the limitations on mixed and shared funding. These rules provide: (i) that the eligibility restrictions of Section 9(a) shall not apply to persons who are

officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of the underlying fund; and (ii) that an insurer shall be ineligible to serve as an investment advisor or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the fund.

9. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from requirements of section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9 when the life insurer serves as investment adviser to or principal underwriter for the underlying fund. Applicants state that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to many individuals in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies.

10. Applicants submit that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans. Applicants further assert that sales to those entities does not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have no involvement in the underlying fund.

Pass-Through Voting

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to certain requirements. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such insurance company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T)).

13. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation of insurance. Applicants assert that in adopting Rules 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary to ''assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants state that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Applicants assert that the corresponding provisions of Rule 6e–3(T) undoubtedly were adopted in recognition of the same factors.

14. Applicants further represent that the offer and sale of shares of the Fund to Plans will not have any impact on the relief requested in this regard. Shares of the Fund sold to Plans would be held by the trustees of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), or applicable provisions of the Code. Section 403(a) of ERISA also provides that trustee(s) must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions of such fiduciary which are made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, ERISA permits but does not require pass-through voting to the participants in Plans. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans because they are not entitled to pass-through voting privileges.

15. Applicants explain that some Plans, however, may provide participants with the right to give voting instructions. Applicants note, however, that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Applicants submit that, therefore, the purchase of the shares of the Fund by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

16. Applicants submit that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

17. Applicants submit that shared funding, in this respect, is no different than the use of the same investment company as the funding vehicle for

affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions proposed in the application, which are adapted from the conditions included in Rule 6e–3(T)(b)(15), are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulatory decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Fund.

18. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners under certain circumstances. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Applicants submit that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rule 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

19. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The insurer's action possibly could be different from the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the Fund's election, to withdraw its Separate Account's investment in the Fund, with the result that no charge or penalty would be imposed as a result of such withdrawal.

20. Applicants submit that investment by the Plans in any of the Portfolios will similarly present no conflict. The likelihood that voting instructions of insurance company Separate Account holders will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Plan choosing to invest in the Fund. Moreover, Applicants state that even if a material irreconcilable conflict involving Plans were to arise, the Plans may simply redeem their shares and make alternative investments.

21. Applicants also submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance contracts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. Similarly, the investment objectives of Plans—as long-term investments—coincides with that of the Contracts and should not increase the potential for conflicts. Applicants represent that each Portfolio will be managed to attempt to achieve the investment objective of the Portfolio and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

22. Applicants note that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Fund. In addition, permitting mixed and shared funding also will facilitate the establishment of additional Portfolios serving diverse goals.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, recognize or proscribe any inherent conflicts of interests if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

24. While there may be differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants assert that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Plan cannot net purchase payments to make the distributions, the Separate Account or the Plan will redeem Shares of the Fund at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicants represent that the Portfolios will inform each shareholder, including each Separate Account and each Plan, of its respective share of ownership in the respective Portfolio. Applicants further represent that, at that time, each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

26. Applicants assert that the ability of the Portfolios to sell their respective shares directly to Plans does not create a ''senior security,'' as that term is defined in Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. As noted above, regardless of the rights and benefits of participants under the Plans or Contract owners under the Contracts, the Plans and the Separate Accounts have rights only with respect to their respective shares of the Fund. They can only redeem such shares at their net asset value. No shareholder of any of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the Contract owners of the separate accounts and the participants under the Plans with respect to state insurance Commissioners' veto powers over investment objectives. A basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-

consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants submit that, on the other hand, trustees of Plans can make the decision quickly and implement the redemption of their shares from a Portfolio and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable reinvestment. Based on the foregoing, Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of participants in Plans are in conflict, the issues can be resolved almost immediately because the trustees of the Plans can, on their own, redeem the shares out of the Portfolio.

28. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. According to the Applicants, these factors include the costs of organizing and operating a fund medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Applicants submit that the use of the Fund as a common investment medium for variable contracts would reduce or eliminate these concerns. Applicants argue, in addition, that mixed and shared funding should provide several benefits to Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser and the Sub-Advisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of asserts. Mixed and shared funding also would permit a greater amount of assets available for investment by the Fund, thereby promoting economies of scale, by permitting increased safety through greater diversification, and by making the addition of new Portfolios more feasible. Applicants assert that, therefore, making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower changes to investors. Applicants further note that the sale of shares of the Fund to Plans can also be expected to increase the amount of assets available for investment by the Fund and thus promote economies of scale and greater diversification.

29. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted.

1. A majority of the Board of Directors shall consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Director or Directors, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the remaining Directors: (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy of vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board of Directors will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the Contract owners of all Separate Accounts investing in the Fund and of the Plan participants investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners and trustees of Plans; (f) a decision by an insurer to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. Participating Insurance Companies, the Adviser or any other investment adviser who may serve as the adviser to any Portfolio in the future, and any Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of the Fund (collectively, the ''Participants'') will report any potential or existing conflicts of interest to the Board of Directors. Participants will be responsible for assisting the Board of Directors in carrying out its responsibilities under these conditions by providing the Board of Directors with all information reasonably necessary for the Board of Directors to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board of Directors whenever voting instructions of Contract owners are disregarded and, if pass-through voting is applicable, an obligation by each Plan to inform the Board of Directors whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board of Directors will be contractual obligations of all Participating Insurance Companies and Plans with participation agreements, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Plan participants or Contract owners, as appropriate.

4. If it is determined by a majority of the Board of Directors, or by a majority of the disinterested Directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested Directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) withdrawing the assets allocable to some or all of the Separate Accounts from the Fund or any Portfolio and reinvesting such assets in a different investment medium, including another Portfolio of the Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or

more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, then that insurer may be required, at the Fund's election, to withdraw the insurer's Separate Account investment in the Fund or relevant Portfolio(s) and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the Fund's election, to withdraw its investment in the Fund or relevant Portfolio(s) and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by the Board of Directors of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested Directors will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by vote of a majority of the Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Plan shall be required by Condition 4 to establish a new funding medium for such Plan if (a) a majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

6. The determination of the Board of Directors of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, Participating Insurance Companies will vote shares of the Fund held in their Separate Accounts in a manner consistent with voting instructions timely-received from Contract owners. Each Participating Insurance Company will also vote shares of the Fund held in its Separate Accounts for which no voting instructions from Contract owners are timely-received, as well as shares of the Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from Contract owners are timely-received. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts participating in the Fund calculates voting privileges in a manner consistent with other Participating Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

8. All reports of potential or existing conflicts received by the Board of Directors, and all action by the Board of Directors with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board of Directors or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. The Fund will notify all Participating Insurance Companies that separate account disclosure in their respective Separate Account prospectuses may be appropriate to advise accounts regarding the potential risk of mixed and shared funding. The Fund shall disclose in its prospectus that (a) the Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in the Fund and the interests of Plans investing in the Fund may conflict; and (c) the Board of Directors will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. The Fund will comply with all provisions of the 1940 Act that require voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Fund), and, in particular, the Fund will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) and comply with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic election of Directors and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rule 6e–2 or 6e–3(T) under the 1940 Act is amended, or proposed rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with such Rules 6e–2 and 6e–3(T), as amended, or proposed Rule 6e-3 as adopted, to the extent that such rules are applicable.

12. The Participants, at least annually, will submit to the Board of Directors such reports, materials, or data as the Board of Directors may reasonably request so that the Board of Directors may fully carry out the obligations imposed upon it by the conditions contained in the application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board of Directors. The obligations of the Participants to provide these reports, materials, and data to the Board of Directors, when the Board of Directors so reasonably requests, shall be a contractual obligation of all Participants under their agreements governing participation in the Fund.

13. If a plan should ever become a holder of ten percent or more of the assets of the Fund, such Plan will execute a participation agreement with the Fund that includes conditions set

forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of the Fund.

Conclusion

For the reasons set forth above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9466 Filed 4–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23101; File No. 812–10844]

STI Classic Variable Trust, et al.; Notice of Application

April 3, 1998.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of STI Classic Variable Trust (the ''Trust'') and shares of any other investment company or portfolio that is designed to fund insurance products and for which STI Capital Management, N.A. may serve in the future, as investment adviser, administrator, manager, principal underwriter, or sponsor (together with the Trust, ''Trusts'') to be sold to and held by: (1) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

APPLICANTS: STI Classic Variable Trust and STI Capital Management, N.A. (''STI Capital'').

FILING DATE: The application was filed on October 28, 1997, and amended and restated on February 9, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 28, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Kevin P. Robins, Esq., SEI Investments Company, Oaks, Pennsylvania 19456.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is a Massachusetts business trust and is registered under the 1940 Act as an open-end management investment company. The Trust currently consists of five separate portfolios (''Funds''), each of which has its own investment objective or objectives and policies.

2. STI Capital, and investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser to the Trust. STI Capital is an indirect wholly owned subsidiary of Sun Trust Banks, Inc.

3. Shares representing interest in each Fund currently offered to insurance companies as an investment vehicle for their separate accounts that fund variable annuity contracts. The Trust intends to offer shares representing interests in each Fund, and any other portfolio established by the Trust in the future (''Future Portfolio'') (Fund, together with Future Portfolios, ''Portfolios'' or each a ''Portfolio''), to separate accounts of Participating Insurance Companies (''Separate Accounts'') to serve as the investment vehicle for variable annuity contracts and variable life insurance contracts (collectively, ''Variable Contracts'').

4. Applicants also propose that the Trusts offer and sell shares representing interests in their Portfolios directly to Qualified Plans.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts to be offered and sold to and held by: (a) both variable annuity and variable life insurance separate accounts of the same life insurance company or any affiliated life insurance company (''mixed funding''); (b) separate accounts of unaffiliated life insurance companies (''shared funding''); and (c) trustees of Qualified Plans.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' [1] Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible

[1] The exemptions provided by Rule 6e–2 also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account.

premium variable life insurance separate account of the same company or of a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. Furthermore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to Qualified Plans.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e-3(T)(b)(15) provides similar partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only if the assets of the separate account consist of shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' [2] Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account but does not permit shared funding. Also, the exemptions provided by Rule 6e–3(T) are not available if the underlying fund sells its shares to Qualified Plans.

5. Applicants state that changes in the federal tax law have created the opportunity for the Trust to substantially increase its net assets by selling shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in such portfolios must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of Qualified Plans to hold shares of an investment company portfolio, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company portfolio as an adequately diversified underlying investment for variable contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

6. Applicants maintain that there is no policy reason for the sale of the Portfolios' shares to Qualified Plans to prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants note that if the Portfolios were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to such plans.

7. Applicants also note that the promulgation of Rules 6e–2(b)(15) and Rule 6e–3(T)(b)(15) preceded the issuance of the Regulations. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and Rule 6e–3(T)(b)(15).

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

9. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those 1940 Acts rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization.

10. Applicants state that neither the Participating Insurance Companies nor the Qualified Plans are expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans use the Trusts. Applicants maintain that applying the monitoring requirements of Section 9(a) because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

11. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. More specifically, Rules 6e–22(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T). In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in such insurance company's investment policies, principal underwriter or any investment

[2] The exemptions provided by Rule 6e–3(T) also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account.

adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

12. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act (''ERISA''), shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

13. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

14. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Plan investors with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not required to pass-through voting privileges.

15. Even if a Qualified Plan were to hold a controlling interest in a Portfolio, Applicants do not believe that such control would disadvantage other investors in such Portfolio to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Portfolio by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

16. Where a Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable contract holders. The purchase of shares of Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

17. Applicants submit that the prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

18. Applicants submit that shared funding is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

19. Applicants assert that the right of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to disregard the voting instructions of the contract owners does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

20. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different from the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw its Separate Account's investment in such Portfolio, and no charge or penalty would be imposed as a result of such withdrawal.

21. Applicants submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what those policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies whether flexible premium or scheduled premium policies. In this regard, Applicants note that each type of insurance product is designed as a long-term investment program. In addition, Applicants represent that each Portfolio will be managed to attempt to achieve the investment objective or objectives of such portfolio and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

22. Furthermore, Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable

annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A Portfolio supporting even one type of insurance product must accommodate these factors in order to attract and retain purchasers.

23. Applicants do not believe that the sale of shares of the Portfolios to Qualified Plan will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners. Applicants note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in an underlying mutual fund. The Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest.

24. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan will make distributions in accordance with the terms of the Plan.

25. With respect to voting rights, Applicants determined that it is possible to provide an equitable means of giving voting rights to contract owners in the Separate Account and to Qualified Plans. Applicants represent that the Trusts will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the shareholder meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with a Trust concerning participation in the relevant Portfolio. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Portfolios would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

26. Applicants contend that the ability of the Trusts to sell shares of Portfolios directly to Qualified Plans does not create a ''senior security'' as such term is defined under Section 18(g) of the 1940 Act. Regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts only have rights with respect to their respective shares of the Portfolios. They only can redeem such shares at net asset value. No shareholder of a Portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants considered whether there are any conflicts between the contract owners of the Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Portfolios and reinvest in another funding vehicle without the same regulatory impediments faced by Separate Accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of contract owners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Portfolios.

28. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants in Qualified Plans and contract owners of Separate Accounts from future changes in the federal tax laws than that which already exist between variable annuity contract owners and variable life insurance contract owners.

29. Applicants assert that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investment), and the lack of name recognition by the public of certain insurers as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

30. Applicants contend that the use of Portfolios as common investment media for variable contracts would reduce or alleviate these concerns. Participating Insurance Companies will benefit not only from the investment and administrative expertise of STI Capital, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Portfolios available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the Portfolios to Qualified Plans in addition to the Separate Accounts will result in an increased amount of assets available for investment by such Portfolios. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investment through greater diversification, and by making the addition of new portfolios more feasible.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of each Trust shall consist of persons who are not ''interested persons'' of such Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this

condition is not met by reason of the death, disqualification or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict among the interests of the contract holders of all Separate Accounts and of participants of Qualified Plans investing in such Trust and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, STI Capital, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10% or more of the assets of any Portfolio (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such conflicts and information, and to assist the Board will be contractual obligations of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees, take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment medium, including another Portfolio, or, in the case of insurance company participants, submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instruction, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action, will be a contractual obligation of all Participants under their agreements governing participation in the Trust, and these responsibilities will be carried out with a view only to the interest of contract owners and Plan participants.

For the purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will any Trust or STI Capital be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by the vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if: (a) A majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes each decision without a Plan participant vote.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all contract owners as required by the 1940 Act. Accordingly, such Participants, where applicable, will vote shares of the applicable Portfolio held in its Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trust governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting

instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, each Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trusts are not one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

8. The Trusts will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that: (a) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict; and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to such conflict.

9. If and to the extent Rule 6e–2 and 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, or terms and conditions materially different from any exemptions granted in the order requested in the application, then the Trusts and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or 6e–3(T), or Rule 6e–3, as such rules are applicable.

10. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in the application, and said reports, materials and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

11. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

12. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation is such Portfolio that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9465 Filed 4–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 13, 1998.

An open meeting will be held on Tuesday, April 14, 1998, at 1:00 p.m. A closed meeting will be held on Wednesday, April 15, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, April 14, 1998, at 1:00 p.m., will be:

Roundtable discussion to provide securities industry representatives and technology industry representatives with an opportunity to discuss how rapid changes in technology will impact the securities industry. For further information, please contact Howard Kramer at (202) 942–0180.

The subject matter of the closed meeting scheduled for Wednesday, April 15, 1998, will be:

Institution and settement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: April 7, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9664 Filed 4–8–98; 11:44 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3066]

State of Alabama; Amendment #2

In accordance with a notice from the Federal Emergency Management Agency dated March 21, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on

March 7, 1998 and continuing through March 21, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 8, 1998 and for economic injury the termination date is December 9, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 27, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–9500 Filed 4–9–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3073]

State of North Carolina; Disaster Area

As a result of the President's major disaster declaration on March 22, 1998 I find that Rockingham County in the State of North Carolina constitutes a disaster area due to damages caused by severe storms, tornadoes, and flooding that occurred on March 20–21, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on May 21, 1998, and for loans for economic injury until the close of business on December 22, 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

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Alamance, Caswell, Forsyth, Guilford, and Stokes Counties in North Carolina, and Henry, Patrick, and Pittsylvania Counties in Virginia.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.250
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.625
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 307312. For economic injury the numbers are 978400 for North Carolina and 978500 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 27, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–9507 Filed 4–9–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of WestJet Express Airlines, Inc. for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 98–4–6) Docket OST–97–3270.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding WestJet Express Airlines, Inc., fit, willing, and able, and (2) awarding it a certificate to engage in interstate charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than April 24, 1998.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–97–3270 and addressed to Department of Transportation Dockets (SVC–121.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis or Mr. Galvin Coimbre, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366–9721.

Dated: April 6, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–9471 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–98–3713, Notice 98–16]

Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry

AGENCY: Office of the Secretary, DOT.

ACTION: Request for comments.

SUMMARY: This notice sets forth a proposed Statement of the Department of Transportation's Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry. By this notice, the Department is inviting interested persons to comment on the statement. The Department is acting on the basis of informal complaints.

DATES: Comments must be submitted on or before June 9, 1998. Reply comments must be submitted on or before July 9, 1998.

ADDRESSES: To facilitate the consideration of comments, each commenter should file eight copies of each set of comments. Comments must be filed in Room PL–401, Docket OST–98–3713, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Late-filed comments will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Jim Craun, Director (202–366–1032), or Randy Bennett, Deputy Director (202–366–1053), Office of Aviation and International Economics, Office of the Assistant Secretary for Aviation and International Affairs, or Betsy Wolf (202–366–9349), Senior Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh St. SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This proposed Statement of the Department of Transportation's Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry was developed by the Department of Transportation in consultation with the Department of Justice. It sets forth tentative findings and guidelines for use by the Department of Transportation in evaluating whether major air carriers' competitive responses to new entry

warrant enforcement action under 49 U.S.C. 41712. We will give all comments we receive thorough consideration in deciding whether and in what form to make this statement final.

Statement of Enforcement Policy Regarding Unfair Exclusionary Conduct

Congress has put a premium on competition in the air transportation industry in the policy goals enumerated in 49 U.S.C. 40101. The Department of Transportation thus has a mandate to foster and encourage legitimate competition. We believe that legitimate competition encompasses a wide range of potential responses by major carriers to new entry into their hub markets [1]—responses involving price reductions or capacity increases, or both, or even neither. Some of the responses we have observed, however, appear to be straying beyond the confines of legitimate competition into the region of unfair competition, behavior which, by virtue of 49 U.S. 41712, we have not only a mandate but an obligation to prohibit.

Following Congress's deregulation of the air transportation industry in 1978, all of the major air carriers restructured their route systems into ''hub-and-spoke'' networks. Major carriers have long charged considerably higher fares in most of their ''spoke'' city-pairs, or the ''local hub markets,'' than in other city-pairs of comparable distance and density. In recent years, when small, new-entrant carriers have instituted new low-fare service in major carriers' local hub markets, the major carriers have increasingly responded with strategies of price reductions and capacity increases designed not to maximize their own profits but rather to deprive the new entrants of vital traffic and revenues. Once a new entrant has ceased its service, the major carrier will typically retrench its capacity in the market or raise its fares to at least their pre-entry levels, or both. The major carrier thus accepts lower profits in the short run in order to secure higher profits in the long run. This strategy can benefit the major carrier prospectively as well, in that it dissuades other carriers from attempting low-fare entry. It can hurt consumers in the long run by depriving them of the benefits of competition. In those instances where the major carrier's strategy amounts to unfair competition, we must take enforcement action in order to preserve the competitive process.

We hereby put all air carriers on notice, therefore, that as a matter of policy, we propose to consider that a major carrier is engaging in unfair exclusionary practices in violation of 49 U.S.C. 41712 if, in response to new entry into one or more of its local hub markets, it pursues a strategy of price cuts or capacity increases, or both, that either (1) causes it to forego more revenue than all of the new entrant's capacity could have diverted from it or (2) results in substantially lower operating profits—or greater operating losses—in the short run than would a reasonable alternative strategy for competing with the new entrant. Any strategy this costly to the major carrier in the short term is economically rational only if it eventually forces the new entrant to exit the market, after which the major carrier can readily recoup the revenues it has sacrificed to achieve this end. We will therefore be focusing our enforcement efforts on this strategy while continuing our scrutiny of any other strategies that may threaten competition.

Our policy represents a balance between the imperative of encouraging legitimate competition in all of its various forms and the imperative of prohibiting unfair methods of competition that ultimately deprive consumers of the range of prices and services that legitimate competition would otherwise afford them. This policy does not represent an attempt by the Department to reregulate the air transportation industry: we are neither prescribing nor proscribing any fares or capacity levels in any market. Rather, we are carrying out our statutory responsibility to ensure that if a new-entrant carrier's entry into a major carrier's hub markets fails, it fails on the merits, not due to unfair methods of competition.

Background

The competitive benefits of deregulation have been exhaustively documented in numerous studies. Among other things, the major carriers' development of hub-and-spoke networks has brought most domestic air travelers more extensive service, more frequent service, and lower fares. Also widely documented are the competitive advantages in serving local markets that a major carrier enjoys at its hub. Flow traffic, or the passengers that the major carrier is transporting from their origins to their destinations by way of its hub, typically accounts for more than half of the traffic in local hub markets. Flow traffic thus allows the major carrier to operate higher frequencies in local markets than the local traffic alone would support. In turn, in local markets served by more than one carrier, the major carrier's higher frequency attracts a greater share of the local traffic than that carrier would otherwise carry.[2] Due to its more extensive route network, the major carrier is also able to offer a frequent flyer program and commission overrides—*i.e.*, higher commissions to travel agents for a higher volume of sales—that are more effective. These factors, too, confer competitive advantages on the major carrier in local hub markets.

These advantages have translated into the power to charge higher local fares. A major carrier usually provides all of the service in most of its local hub markets, the exceptions being mainly city-pairs whose other endpoints are hubs of other major carriers or city-pairs served by low-fare carriers. Many local hub markets that have enough traffic to support competitive nonstop service are nonetheless served only by the major carrier. In the absence of competition, the major carrier is able to charge fares that exceed its fares in non-hub markets of comparable distance and density by upwards of 40 percent, or at least $100 to $150 per round trip. Even in those local hub markets in which the major carrier competes with another major carrier, load factors may be relatively low, but fares are relatively high. We have observed, in fact, that low-fare service has provided the only effective price competition in major carriers' local hub markets.

Major carriers use sophisticated yield-management techniques to price-discriminate and thereby maximize their revenues. They can monitor sales and fine-tune fares, change fare offerings for individual flights as frequently as conditions may warrant, and segment each city-pair market so that those passengers needing the greatest flexibility pay the highest premiums while passengers needing progressively less flexibility pay progressively lower fares. The lowest fares, which typically carry heavy restrictions, provide revenue for seats that the carrier would otherwise fly empty. It is in the carrier's interest, of course, to sell each seat at the highest fare that it can. Generally, major carriers find it most profitable to focus on high-fare service, leaving much of the demand for low-fare service in many local hub markets unserved.

Both these unserved consumers and travelers paying fare premiums in local

[1] We use the term *new entrant* to mean an independent airline that has started jet service within the last ten years and pursues a competitive strategy of charging low fares. We use the term ''major carrier'' to mean the major carrier that operates the hub at issue.

[2] This phenomenon, called the ''S-Curve'' effect, reflects the value that time-sensitive travelers place on schedule frequency.

hub markets stand to reap substantial benefits from new competition. Southwest, a low-fare carrier certificated before deregulation, and various new-entrant carriers have shown that a non-hub carrier can compete successfully with a major carrier in the latter's hub markets.[3] By charging lower fares, the new entrant can profitably serve that portion of a local market's demand which the major carrier has mostly not been serving; the resultant competition can bring fares down for most travelers. Traffic stimulation and reductions in average fares can both be dramatic. According to a study by this Department, low-fare competition saved over 100 million travelers an estimated $6.3 billion in the year that ended September 30, 1995.[4] At Salt Lake City, for example, local markets served by Morris Air and Southwest saw their traffic triple and their average fares decrease by half, while local markets served only by the dominant carrier saw their fares increase. By late 1995, the average fares in local markets served by Morris Air and Southwest were only one-third as high as fares in other local Salt Lake City markets.

The Problem

The major carriers view competition by new entrants as a threat to their ability to maximize revenues through price-discrimination. As noted, not only will the previously unserved consumers take advantage of a new entrant's low fares, but so, too, will at least some of the consumers that have been paying the major carrier's higher fares. Regardless of how the major carrier chooses to respond to the new entry, the more low-fare capacity available in the market, the less of its high-fare traffic the major carrier will retain. The stakes are high: a major carrier's fare premiums in its local hub markets can mean revenues of tens of millions of dollars annually over its revenues in markets where fares are disciplined by competition.

In some instances, a major carrier will choose to coexist with the low-fare competitor and tailor its response to the latter's entry accordingly. For example, at cities like Dallas and Houston, the major carriers tolerate Southwest's major presence in local markets by not competing aggressively for local passengers. Instead, they focus their efforts on carrying flow passengers to feed their networks. At the other extreme, the major carrier will choose to drive the new entrant from the market. It will adopt a strategy involving drastic price cuts and flooding the market with new low-fare capacity (and perhaps offering ''bonus'' frequent flyer miles and higher commission overrides for travel agents as well) in order to keep the new entrant from achieving its break-even load factor and thus force its withdrawal. Before the new entrant does withdraw, the major carrier, with its higher cost structure, will carry more low-fare passengers than the new entrant, thereby incurring substantial self-diversion of revenues—*i.e.*, it will provide unrestricted low-fare service to passengers who would otherwise be willing to pay higher fares for service without restrictions. Consumers, for their part, enjoy unprecedented benefits in the short term. After the new entrant's withdrawal, however, the major carrier drops the added capacity and raises its fares at least to their original level. By accepting substantial self-diversion in the short run, the major prevents the new entrant from establishing itself as a competitor in a potentially large array of markets. Consumers thus lose the benefits of this competition indefinitely.[5]

We propose to consider this latter extreme to be unfair exclusionary conduct in violation of 49 U.S.C. 41712. We have been conducting informal investigations in response to informal allegations of predation, and we have observed behavior consistent with the behavior described above. The following hypothetical example involving a local hub market serves to illustrate the problem. Originally, the major carrier is able to charge one-third of its local passengers a fare of $350. These passengers generate revenue of $3 million per quarter, which constitutes half of the major carrier's total local revenue. After new entry, the major carrier initially continues to price-discriminate, continues to sell a large number of seats at $350, and sustains little revenue diversion. Then the major carrier changes its strategy and offers enough unrestricted seats at the new entrant's fare of $50 to absorb a large share of the low-fare traffic. It sells far more seats at low fares than the new entrant's total seat capacity. Consequently, virtually all of the passengers who once paid $350 now pay just $50, and instead of $3 million, these passengers now account for revenue of less than $0.5 million per quarter. To make up the difference, the major carrier would have to carry six more passengers for each passenger diverted from the $350 fare to the $50 fare. The major carrier loses more revenues through self-diversion than it lost to the new entrant under its initial strategy.

The Department's Mandate

Our mandate under 49 U.S.C. 41712 to prohibit unfair methods of competition authorizes us to stop air carriers from engaging in conduct that can be characterized as anticompetitive under antitrust principles even if it does not amount to a violation of the antitrust laws. The unfair exclusionary behavior we address here is analogous to (and may amount to) predation within the meaning of the federal antitrust laws.[6]

Although the Supreme Court has said that predation rarely occurs and is even more rarely successful, our informal investigations suggest that the nature of the air transportation industry can at a minimum allow unfair exclusionary practices to succeed. Compared to firms in other industries, a major air carrier can price-discriminate to a much greater extent, adjust prices much faster, and shift resources between markets much more readily. Through booking and other data generated by computer reservations systems and other sources, air carriers have access to comprehensive, ''real time'' information on their competitors' activities and can thus respond to competitive initiatives more precisely and swiftly than firms in other industries. In addition, a major carrier's ability to shift assets quickly between markets allows it to increase service frequency and capture a disproportionate share of traffic, thereby reaping the competitive advantage of the S-Curve effect. These characteristics of the air transportation industry allow the major carrier to drive a new entrant from a local hub market. Having observed this behavior, other potential new entrants refrain from entering, leaving the major carrier free to reap greater profits indefinitely.

[3] Southwest has scored the broadest and longest-lived success with this strategy, having established a strong presence in numerous local markets at a number of hubs. New-entrant carriers such as ValuJet (now AirTran Airlines), Morris Air (before being acquired by Southwest), and Frontier have entered local markets at Atlanta, Salt Lake City, and Denver, respectively. Vanguard, another new-entrant carrier, has pursued a strategy of providing direct service between Kansas City and several hubs.

[4] The Low Cost Airline Service Revolution, April 1996. A goodly portion of the savings occurred in local hub markets.

[5] Economists have recognized that consumers are harmed if a dominant firm eliminates competition from firms of equal or greater efficiency by cutting its prices and increasing its capacity, even if its prices are not below its costs. See Ordover and Willig, ''An Economic Definition of Predation: Pricing and Product Innovation,'' Yale Law Journal, (Vol. 91:8, 1981).

[6] We will continue to work closely with the Department of Justice in evaluating allegations of anticompetitive behavior, but we will take enforcement action under 49 U.S.C. 41712 against unfair exclusionary practices independently.

Enforcement Action

We will determine whether major carriers have engaged in unfair exclusionary practices on a case-by-case basis according to the enforcement procedures set forth in Subpart B of 14 CFR Part 302. We will investigate conduct on our own initiative as well as in response to formal and informal complaints. Where appropriate, cases will be set for hearings before administrative law judges. We will apply our policy prospectively, and we expect to refine our approach based on experience. We anticipate that in the absence of strong reasons to believe that a major carrier's response to competition from a new entrant does not violate 49 U.S.C. 41712, we will institute enforcement proceedings to determine whether the carrier has engaged in unfair exclusionary practices when one or more of the following occurs:

(1) The major carrier adds capacity and sells such a large number of seats at very low fares that the ensuing self-diversion of revenue results in lower local revenue than would a reasonable alternative response,

(2) The number of local passengers that the major carrier carries at the new entrant's low fares (or at similar fares that are substantially below the major carrier's previous fares) exceeds the new entrant's total seat capacity, resulting, through self-diversion, in lower local revenue than would a reasonable alternative response, or

(3) The number of local passengers that the major carrier carries at the new entrant's low fares (or at similar fares that are substantially below the major carrier's previous fares) exceeds the number of low-fare passengers carried by the new entrant, resulting, through self-diversion, in lower local revenue than would a reasonable alternative response.

As the term ''reasonable alternative response'' suggests, we by no means intend to discourage major carriers from competing aggressively against new entrants in their hub markets. A major carrier can minimize or even avoid self-diversion of local revenues, for example, by matching the new entrant's low fares on a restricted basis (and without significantly increasing capacity) and relying on its own service advantages to retain high-fare traffic. We have seen that major carriers can operate profitably in the same markets as low-fare carriers. As noted, major carriers are competing with Southwest, the most successful low-fare carrier, on a broad scale and are nevertheless reporting record or near-record earnings.[7] We will consider whether a major carrier's response to new entry is consistent with its behavior in markets where it competes with other new-entrant carriers or with Southwest. Conceivably, a major carrier could both lower its fares and add capacity in response to competition from a new entrant without any inordinate sacrifice in local revenues. If the new entrant remained in the market, consumers would reap great benefits from the resulting competition, and we would not intercede. Conceivably, too, a new entrant's service might fail for legitimate competitive reasons: our enforcement policy will not guarantee new entrants success or even survival. Optimally, it will give them a level playing field.

The three scenarios set forth above reflect the more extreme and most obviously suspect responses to new entry that we have observed in our informal investigations. We do not intend them as an exhaustive list: we will analyze other types of conduct as well to determine whether to institute enforcement proceedings.[8] Besides examining service and pricing behavior, we will consider other possible indicia of unfair competition: for example, allegations that major carriers are attempting to block new entrants from local markets by hoarding airport gates, by using contractual arrangements with local airport authorities to bar access to an airport's infrastructure and services, or by using bonus frequent flyer awards or travel agent commission overrides in ways that appear to target new entrants unfairly.

In an enforcement proceeding, if the administrative law judge finds that a major carrier has engaged in unfair exclusionary practices in violation of 49 U.S.C. 41712, the Department will order the carrier to cease and desist from such practices. Under 49 U.S.C. 46301, violation of a Department order subjects a carrier to substantial civil penalties.

We have crafted our policy not to protect competitors but to protect competition. We hope that it will provide consumers with the benefits of competition in increasing numbers of local hub markets over the long term.

[7] One major carrier's internal documents that we reviewed as part of an informal investigation of alleged predation show strong profits on individual flight segments where it competes with Southwest.

[8] Moreover, our statutory responsibility to prohibit unfair methods of competition is not limited to the unfair exclusionary practices addressed here. We will continue to monitor the competitive behavior of all types of air carriers.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations or actions. The Act requires agencies to review proposed regulations or actions that may have a significant economic impact on a substantial number of small entities. For purposes of this policy statement, small entities include smaller U.S. airlines. It is the Department's tentative determination that the proposed enforcement policy would, as explained above, give smaller airlines a better opportunity to compete against larger airlines by guarding against exclusionary practices on the part of the larger airlines. To the extent that the proposed policy results in increased competition and lower fares, small entities that purchase airline tickets will benefit. Our proposed policy contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this request for comments.

Paperwork Reduction Act

This policy statement contains no collection-of-information requirements subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

This policy statement would have no 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 12812, we have tentatively determined that this policy does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

(Authority Citation: 49 U.S.C. 41712.)

Issued in Washington, DC on April 6, 1998.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–9488 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 98–02–C–00–RDM to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Roberts Field—Redmond Municipal Airport; Submitted by the City of Redmond, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use, the revenue from a PFC at Roberts Field—Redmond Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Carolyn S. Novick, A.A.E, Airport Manager, at the following address: Roberts Field—Redmond Municipal Airport, P.O. Box 726, Redmond, OR 97756.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Roberts Field—Redmond Municipal Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 98–02–C–00–RDM to impose and use the revenue from a PFC at Roberts Field—Redmond Municipal Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 2, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Redmond, Redmond, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 2, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 30, 1998.

Proposed charge expiration date: May 31, 2002.

Total estimated net PFC revenue: $1,593,148.

Brief description of proposed project(s): Impose and use: Construct electrical vault and acquire emergency generator; Master plan update; Extend taxiway ''G'' and construct taxiways ''J'' & ''M''; Install Precision Approach path Indicator (PAPI) for runway 28; Construct aircraft rescue and fire fighting facility; Acquire passenger access lift; Reconstruct taxiway ''F'' north and construct exit taxiway; Acquire airport sweeper; Construct snow removal equipment and operational facility; Acquire snow removal equipment; Reconstruct taxiway ''F'' south and relocate and construct taxiway ''H''.

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi/Commercial Operators who conduct operation in air commerce carrying persons for compensation or hire, except air taxi/commercial operators public or private charters in aircraft with a seating capacity of 10 or more.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division. ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Roberts Field—Redmond Municipal Airport.

Issued in Renton, Washington on April 2, 1998.

George K. Saito,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–9511 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application No. 98–03–C–00–SUX To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Sioux Gateway Airport, Sioux City, Iowa

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sioux Gateway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Keith D. Kaspari, Assistant Director, Sioux Gateway Airport, at the following address: Waterloo Gateway Airport, 2403 Ogden Avenue, Sioux City, Iowa 51111.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Sioux Gateway Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Sioux Gateway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 26, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Sioux Gateway

Airport, Sioux City Iowa, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 3, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June, 2006.

Proposed charge expiration date: February, 2010.

Total estimated PFC revenue: $610,537.

Brief description of proposed project(s): Rehabilitate Taxiway Bravo; Reconstruct of Taxiway Charlie, the air carrier ramp, Taxiway Alpha (south), and Taxiway Echo; update the airport master plan, and replace a snow plow.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sioux Gateway Airport.

Issued in Kansas City, Missouri on March 31, 1998.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 98–9513 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–13–M

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). Each Committee meeting, as well as a joint session of the two Committees, will be held on May 5–6, 1998, at the U.S. Department of Transportation (Nassif) Building, 400 Seventh Street, S.W., Washington, DC 20590, in Conference Room 2230.

On May 5, 1998, at 9:00 a.m., the TPSSC will meet. Topics to be discussed will include:

1. Docket RSPA–97–2879; Update on Remotely Controlled Valves for Gas Transmission Lines
2. Docket RSPA–97–3002; Adoption of Industry Standards for Liquefied Natural Gas Facilities
3. Docket RSPA–98–3347; Review of Plastic Pipe Public Meeting

At 1:00 p.m., the TPSSC will be joined by members of the THLPSSC for a joint session which will include:

1. Compliance Policy Report/System Integrity Project
2. Risk Management Demonstration Update
3. Mapping System Progress
4. Report from Government/Industry Data Teams
5. Cost/Benefit Analysis Framework
6. State Program Performance Highlights
7. Docket PS–94; Notice of Proposed Rulemaking on Qualification of Pipeline Safety Personnel
8. Pipeline Employee Performance Group (PEPG) presentation
9. Outer Continental Shelf Pipelines; Memorandum of Understanding Between DOT/DOI
10. Docket PS–153; Notice of Proposed Rulemaking—Metrication

On May 6, 1998, at 9:00 a.m. the THLPSSC will meet. Topics to be discussed will include:

1. Docket PS–117; Notice of Proposed Rulemaking on Hazardous Liquid Pipelines Operated at 20 Percent or Less of Specified Minimum Yield Strength.
2. Docket RSPA–97–2095; Notice of Proposed Rulemaking on Adoption of Industry Standards for Breakout Tanks
3. Docket PS–144; Notice of Proposed Rulemaking on Risk-based Alternatives to the Pressure Testing Rule.

At 1:00 p.m., there will be a public meeting at which the Office of Pipeline Safety will discuss the work of its Damage Prevention Quality Action Team (DAMQAT). DAMQAT is a joint industry-and will launch its pilot education campaign which will be conducted in Virginia, Tennessee and Georgia. DAMQAT is a joint industry-government effort to address the problem of outside force damage to underground facilities, including pipelines. OPS will launch its pilot Damage Prevention education campaign, which will be conducted in Virginia, Tennessee, and Georgia.

Each meeting will be open to the public. Members of the public may present oral statements on the topics. Due to the limited time, each person who wants to make an oral statement must notify Peggy Thompson, Room 2335, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590, telephone (202) 366-1933, not later than April 30, 1998, with the topics and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any meeting.

Issued in Washington, DC on April 7, 1998.

Richard D. Huriaux, P.E.,

Director for Technology and Standards, Office of Pipeline Safety.

[FR Doc. 98–9547 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20918]

Coach USA, Inc.—Control—Metro Cars, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, filed an application under 49 U.S.C. 14303 to acquire control of Metro Cars, Inc. (Metro), a motor passenger carrier. Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subparts B and C. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by May 25, 1998. Applicant may file a reply by June 9, 1998. If no comments are filed by May 25, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20918 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach currently controls 37 motor passenger carriers.[1] In this transaction, it seeks to

[1] In addition to the instant proceeding in which it seeks to acquire control of an additional motor passenger carrier, Coach has two pending proceedings: *Coach USA, Inc. and Coach XXIII Acquisition, Inc.—Control—Americoach Tours, Ltd.; Keeshin Charter Services, Inc.; Keeshin Transportation, L.P.; Niagara Scenic Bus Lines, Inc.; and Pawtuxet Valley Bus Lines,* STB Docket No. MC–F–20916 (STB served Feb. 27, 1998), in which it seeks to acquire control of five additional motor passenger carriers; and *Coach USA, Inc.—Control—*

acquire control of Metro [2] through the acquisition of all of its stock.

Applicant submits that there will be no transfer of any federal or state operating authorities held by Metro. It asserts that Metro will continue operating in the same manner as before, and that the acquisition of control will not reduce competition in the bus industry or competitive options available to the traveling public. It states that Metro does not compete with any Coach-owned carrier. Applicant submits that Metro is relatively small and faces substantial competition from other bus companies and transportation modes.

Applicant also submits that granting the application will produce substantial benefits, including interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. Specifically, applicant claims that Metro will benefit from the lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel. Applicant indicates that Coach will provide Metro with centralized legal and accounting functions and coordinated purchasing services. In addition, it states that vehicle sharing arrangements will be facilitated through Coach to ensure maximum use and efficient operation of equipment, and that coordinated driver training services will be provided. Applicant also states that the proposed transaction will benefit the employees of Metro and that all collective bargaining agreements will be honored by Coach.

Coach plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies will be enhanced further by these subsequent transactions. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby enhancing the benefits resulting from these control transactions.

Applicant certifies that: (1) Metro has not been rated for safety by the U.S. Department of Transportation; (2) Metro maintains sufficient liability insurance; (3) Metro is neither domiciled in Mexico nor owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on May 25, 1998, unless timely opposing comments are filed.

4. A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street and Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: April 6, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–9577 Filed 4–9–98; 8:45 am]

BILLING CODE 4910–00–P

Airport Limousine Service, Inc. and Black Hawk-Central City Ace Express, Inc., STB Docket No. MC–F–20917 (STB served Mar. 13, 1998), in which it seeks to acquire control of two additional motor passenger carriers.

[2] Metro is a Michigan Corporation. It holds federally issued operating authority in MC–276823 and intrastate operating authority issued by the Michigan Department of Transportation. The majority of its revenues are derived from its services between the Detroit Airport and points in Michigan and Ohio, and its gross revenue for fiscal year 1996 was approximately $6.6 million. It operates 75 sedans, 14 vans, 8 limousines, and 5 buses and other passenger vehicles. Prior to the transfer of its stock into a voting trust, it had been owned by Cullen F. Meathe and A. Gregory Eaton.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33576]

Albany Bridge Company, Inc., Georgia & Florida Railroad Co., Inc., Gulf & Ohio Railways, Inc., Lexington & Ohio Railroad Co., Inc., Live Oak, Perry & Georgia Railroad Company, Inc., Piedmont & Atlantic Railroad Co., Inc., Rocky Mount & Western Railroad Co., Inc., Wiregrass Central Railroad Company, Inc.—Corporate Family Transaction Exemption—Gulf & Ohio Railways Holding Co., Inc.

Albany Bridge Company, Inc., Georgia & Florida Railroad Co., Inc., Gulf & Ohio Railways, Inc., Lexington & Ohio Railroad Co., Inc., Live Oak, Perry & Georgia Railroad Company, Inc., Piedmont & Atlantic Railroad Co., Inc., Rocky Mount & Western Railroad Co., Inc., Wiregrass Central Railroad Company, Inc. (Railroad Companies), and Gulf & Ohio Railways Holding Co., Inc. (Holding Company) have filed a joint notice of exemption to undertake a corporate family transaction, which involves a transfer of ownership of the Railroad Companies from H. Peter Claussen and Linda C. Claussen, owners of all outstanding shares of stock in the Railroad Companies, to the Holding Company. The Holding Company will be wholly owned by H. Peter Claussen and Linda C. Claussen.

The transaction was to be consummated on or after March 30, 1998.

The purpose of the transaction is to eliminate administrative expenses associated with the continued maintenance of separate loans for each of the Railroad Companies.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service levels, significant operational changes or a change in the competitive balance with carriers operating outside the applicants' corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33576, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW Washington, DC 20423–0001 and served on: Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, NW Washington, DC 20005–4797.

Decided: April 1, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–9421 Filed 4–9–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33577]

Minnesota Commercial Railway Co.—Lease and Operation Exemption—Burlington Northern Santa Fe Railway Co.

Minnesota Commercial Railway Co (MC), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from The Burlington Northern and Santa Fe Railway Company (BNSF), its ''Hugo Line'' between Roseville and Hugo, MN, a total of 16 miles of track. MC has been operating over the Hugo Line and related BNSF track under local trackage rights. The lease will supersede the trackage rights on the Hugo Line, and MC will become exclusive operator of the line, assuming all maintenance and common carrier duties on that line.

The transaction is expected to be consummated on or shortly after April 24, 1998.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33577, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eugenia Langan, Esq., Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

Decided: April 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–9420 Filed 4–9–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee, Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on May 5, 1998, of the following debt management advisory committee:

The Bond Market Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:15 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of the Assistant Secretary for Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: April 6, 1998.

Gary Gensler,

Assistant Secretary (Financial markets).

[FR Doc. 98–9496 Filed 4–9–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of National Customs Automation Program Test; Semi-Monthly Statement Processing Prototype; Correction

AGENCY: Customs Service, Treasury.

ACTION: General notice; correction.

SUMMARY: Customs published a document in the **Federal Register** of March 30, 1998, announcing Customs plan to test the semi-monthly filing and statement processing program (semi-monthly processing), and inviting all eligible importers to participate. Customs wishes to correct some language to clarify one of the procedures for the test set forth in the document.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding the specifics of the semi-monthly processing prototype contact Rosalyn McLaughlin-Nelson at (703) 921–7494. Individual port contact persons will be provided to the participants at a later date. For inquiries regarding the eligibility of specific importers, contact Margaret Fearon, Process Analysis and Requirements Team (202) 927–1413.

Correction

In the **Federal Register** (63 FR 15259) published on March 30, 1998, in FR Doc. 98–8220, on page 15260 in the first column, under the heading III. Procedures and Restrictions, the first

two paragraphs are corrected to read as follows:

For the semi-monthly processing prototype, the following restrictions will be placed on the importers:

1. Initially, only merchandise entered for consumption or withdrawn from a Customs bonded warehouse or Foreign Trade Zone for consumption at the following ports will be eligible for the semi-monthly processing prototype:

Dated: April 6, 1998.

Charles W. Winwood,

National Trade Compliance Process Owner.

[FR Doc. 98–9440 Filed 4–9–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Tariff Classification of Drilled Softwood Lumber

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: On October 27, 1997, Customs published a **Federal Register** document soliciting comments regarding the commercial uses of wood studs with drilled holes. Based on the comments received, it has been decided to proceed, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), with a notice advising interested parties that Customs proposes to revoke the ruling that was the subject of that solicitation of comments.

FOR FURTHER INFORMATION CONTACT: Josephine Baiamonte, Textile Classification Branch, (202) 927–2394.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1997, Customs published a **Federal Register** document (62 FR 55667) soliciting comments regarding the commercial uses of wood studs with drilled holes. Based on the comments received, it has been decided to proceed, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), with a notice advising interested parties that Customs proposes to revoke the ruling that was the subject of that solicitation of comments. Comments on the proposed action will be entertained during the 30 day period following publication of the notice of proposed action in the Customs Bulletin pursuant to section 625(c)(1).

Douglas M. Browning,

Acting Commissioner of Customs.

Approved: April 6, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–9530 Filed 4–9–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of Program Test: Collection of Truck User Fees at Houlton, Maine and Champlain, New York by Means of Electronic Commerce Technology

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to test a simplified procedure pertaining to the collection of commercial truck user fees at the ports located at Houlton, Maine and Champlain, New York. The test will allow for the payment of the fees by use of electronic commerce technology, and is designed to reduce the manual collection and processing of cash fees by Customs Inspectors at truck booths at these two ports, thus, allowing them to focus on inspectional work. Public comments concerning any aspect of the test are solicited.

EFFECTIVE DATES: This test will commence no earlier than May 11, 1998 and will run for approximately six months, with evaluations of the program occurring periodically. Comments must be received on or before May 11, 1998.

ADDRESSES: Written comments regarding this notice or any aspect of this test should be addressed to Richard Wilcox, North Atlantic Customs Management Center, 10 Causeway Street, Suite 801, Boston, Massachusetts 02222–1056.

FOR FURTHER INFORMATION CONTACT: Supervisory Customs Inspector Dennis Grenier, Port Trade Compliance Process Owner, Houlton, Maine, (207) 532–2131; or, Richard Wilcox, North Atlantic Customs Management Center, Boston, Massachusetts, (617) 565–6324.

SUPPLEMENTARY INFORMATION:

Background

The Customs Regulations pertaining to the collection of certain user fees for Customs Services provide that these fee payments shall be in the amounts prescribed and shall be in U.S. currency, or by check or money order payable to the United States Customs Service, in accordance with the provisions of § 24.1 (19 CFR 24.1). *See* 19 CFR 24.22(i)(1). In the case of commercial trucks, the fees are $5.00 per arrival, unless a $100.00 prepayment has been made for the calendar year and a decal has been affixed to the vehicle windshield to show that the vehicle is exempt from payment of the fee on an individual arrival basis during the applicable calendar year. *See* 19 CFR 24.22(c).

This fee collection procedure has tasked Customs officers for years to collect the $5.00 user fee, in cash, from those commercial trucks that do not display an annual decal. In general, there are several problems which arise from this cash collection system. On the remitting side, often, the driver has no cash or only has foreign currency. On the collection side, Customs officers must spend many hours each day collecting, verifying, reporting, depositing, and administering this system, which keeps them from attending to inspectional and supervisory work. Further, large trucking companies complain that, because of the way the present user fee system operates, *i.e.*, it is only economical to purchase annual decals for those trucks that are routinely utilized in cross-border deliveries, the non-decaled portion of their commercial trucking fleets have become ''captive'' to utilization in less profitable ventures. These large trucking companies argue that if all their trucks could be utilized for timely cross-border work, this circumstance would enable them to employ their resources more efficiently and profitably.

As an example, under the present fee collection procedure followed at the Houlton, Maine, port of entry, the Customs inspector visually checks the truck window for the presence of a decal. If there is a decal, the inspector proceeds to the entry/examination/release cargo process. If there is no decal, the inspector must collect $5.00 in U.S. currency, as required by § 24.22(i)(1), Customs Regulations (19 CFR 24.22(i)(1)). Should the driver wish to purchase a decal at the time he drives up to the booth, the inspector will have the driver park the truck and go into the Customs/INS lobby area and purchase the decal there. If the driver has neither the decal nor the U.S. $5.00, then the driver is told to park the truck and ask the customs broker preparing the entry for the $5.00 to pay the fee. Should this not occur, the driver must wait until either another driver lends him the $5.00 or a trucking company representative arrives at the port with

the payment. Approximately 33 percent of the roughly 450 trucks arriving daily at the Houlton port of entry pay the user fee in cash.

The inspector who collects the $5.00 fee at Houlton rings it into the cash register and issues a receipt to the driver. The senior inspector or supervisor will then reconcile the cash each day and turn it over to either a Customs aide or supervisor for a second verification, and the money then will be placed in the safe. Two or three times a week, an SF 215B Deposit Form is prepared by the Customs aide or a supervisor, and the money is driven to the local bank for deposit. This procedure requires many man-hours of administrative work and is not an efficient method for the collection and processing of the $5.00 cash fees.

To address this situation, Customs at Houlton, Maine put together a Process Improvement Group: the Group was comprised of representatives from Yellow Freight Trucking, the American Trucking Association, and Roadway Express, Inc., the Vice President of KeyBank of Maine, and two Customs Management Center facilitators. The members of this Group were guided through the process improvement techniques, created a mission statement, and determined that the test program should only be conducted at Houlton, Maine and Champlain, New York, and that, if successful, it could then be expanded to other test locations. The mission statement adopted for this test program states that it is to develop an efficient system/process for user fee payments by trucks, without the use of cash or decals, for the benefit of all users and Customs. The Group concluded that some form of automated debit technology, such as a credit or debit card system, should be utilized, one which would be uniform in application nationally and would accept major credit cards such as VISA and MASTERCARD.

The Proposed Truck User Fee Collection System at Houlton

According to the simplified procedure proposed to be tested, the Customs inspector will visually check the truck window for the presence of a user fee decal. If there is no decal, the inspector will either collect the U.S. $5.00 in accordance with the existing procedure, or accept a VISA or MASTERCARD credit card from the driver, process it through an automated system that will deposit the user fee directly into the Treasury account via the Mellon Bank, issue a receipt to the driver, keep a copy for Customs accounting purposes, and process the merchandise transaction.

In this scenario, there will be much less handling of currency, less administrative work required of supervisors and senior inspectors, more control over the deposits, and fewer trips to the bank to deliver cash. It will also allow those trucking companies with ''captive'' fleets to use all of their trucks for cross-border work, whether or not they have decals. This system actually could eliminate the need for truck decals altogether.

The implementation of such a user-friendly system would enable Customs internal and external customers to work more efficiently and effectively, eliminate the need for processing cash by Customs inspectors, provide a secure deposit of fees directly into the Treasury account, and free up resources and equipment for all concerned.

To aid in the development of this initiative, Customs proposes a temporary change to the current procedures concerning the collection of truck user fees to allow for the electronic payment of this user fee by credit card. Accordingly, the fee payment requirements contained in § 24.22(i)(1) of the Customs Regulations will be suspended during this test period so that electronic commerce technology will be accepted. This procedure will only apply at the ports located at Houlton, Maine and Champlain, New York, and will not otherwise affect the procedures relating to other forms of user fee payments which are still in effect. Trucking companies who wish to participate in this pilot program should experience faster service, fewer delays at the truck booth, and enhanced service to their cross-border customers.

Pursuant to Customs Modernization provisions in the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057, 2170 (December 8, 1993), Customs amended its regulations (19 CFR chapter I), in part, to enable the Commissioner of Customs to conduct limited test programs/procedures designed to evaluate the effectiveness of new technology or operations procedures, which have as their goal the more efficient and effective processing of passengers, carriers, and merchandise. Section 101.9(a) of the Customs Regulations (19 CFR 101.9(a)) allows for such general testing. *See,* TD 95–21. This test is established pursuant to that regulatory provision.

The implementation date for a test of this new procedure will be in early May of 1998 (approximately 30 days from publication in the **Federal Register**). Upon implementation, Customs at Houlton, Maine and Champlain, New York will begin an evaluation period of at least six months to ensure the effectiveness of the program and to identify any shortfalls. If the program is successful, Customs will amend its regulations to make the new procedure permanent.

Regulatory Provisions Affected

During the automated user fee collection test, the normal user fee collection requirements of 19 CFR 24.22(i)(1) will be suspended.

Enforcement Provisions

Nothing in this test in any way interferes with Customs enforcement activities. Cargo will still be examined for compliance with laws and regulations, stratified examinations will continue, and targeted shipments will be stripped out of the trucks and examined as usual.

Comments and Evaluation of Test

Customs will review all public comments received concerning any aspect of the test program or procedures, and finalize procedures in light of those comments. Approximately 120 days after the conclusion of the test, evaluations of the test will be conducted and final results will be made available to the public upon request.

Dated: April 7, 1998.

Robert S. Trotter,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–9531 Filed 4–9–98; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Princes, Poets & Paladins'' (See [1] list), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg, Assistant General Counsel, at (202) 619–6084, and the address is U.S. Information Agency, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

also determine that the temporary exhibition or display of the listed exhibit objects at The Arthur M. Sackler Museum, Cambridge, MA from on or about May 16, 1998 to on or about August 29, 1998, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: April 7, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–9533 Filed 4–9–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 69

Friday, April 10, 1998

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-5978-4]

RIN 2060-AE02

National Emission Standards for Hazardous Air Pollutants and Control Techniques Guideline Document for Source Categories: Aerospace Manufacturing and Rework Facilities

Correction

In rule document 98–6999, beginning on page 15006, in the issue of Friday, March 27, 1998, make the following correction:

§ 63.744 [Corrected]

On page 15018, in the second column, in amendatory instruction 7., in the ninth line, ''(6)'' should read ''(c)''.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96-27]

Anant N. Mauskar, M.D.; Grant of Restricted Registration

Correction

In notice document 98–7188, beginning on page 13687, in the issue of Friday, March 20, 1998, make the following correction:

On page 13688, in the first column, in the third full paragraph, four lines from the bottom ''July'' should read ''Jury''.

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 63, No. 69

Friday, April 10, 1998

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

Public Laws Update Service (numbers, dates, etc.) **523–6641**

TTY for the deaf-and-hard-of-hearing **523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@etc.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@etc.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, APRIL

15739–16084 1
16085–16386 2
16387–16668 3
16669–16876 6
16877–17048 7
17049–17306 8
17307–17666 9
17667–17930 10

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7075 16385
7076 16668
7077 16873
7078 17307

Executive Order:
13079 17309
13080 17667

5 CFR

410 16877
831 17049
844 17049

Proposed Rules:
Ch. XIV 16141

7 CFR

91 16370
93 16370
96 16370
301 16877
354 16878
405 17050
457 17050
925 16387
959 16390
1425 17311
1700 16085
1942 16088
1951 16088

Proposed Rules:
301 16908
1956 17125
1468 16142
1710 17127
1714 17127
1728 17128
1755 17738

8 CFR

264 17489

Proposed Rules:
274a 16909

9 CFR

85 17315
97 16881

Proposed Rules:
200 16913

10 CFR

430 ..... 16446, 16669

Proposed Rules:
140 17130
171 17130
430 ..... 16706, 16707
625 17260

12 CFR

4 16378
202 16392
208 16378
226 16669
303 17056
309 16402
325 17056
326 17056
327 17056
337 16378
346 17056
347 17056
351 17056
362 17056
563 16378

Proposed Rules:
28 16708
220 16446
221 16446
224 16446

13 CFR

121 16882

Proposed Rules:
121 16148
125 16148
126 16148

14 CFR

21 16089
25 17090
39 ..... 16091, 16094, 16096, 16098, 16100, 16102, 16104, 16107, 16109, 16110, 16111, 16678, 16679, 16681, 16883, 16884, 16886, 17316, 17318, 17320, 17321, 17323, 17324, 17669, 17670, 17672, 17674, 17676, 17677
71 ..... 16408, 16888, 16889, 17092
73 16890
150 16409

Proposed Rules:
Ch. I 16913
39 ..... 16163, 16165, 16167, 16169 16170, 16172, 16174, 16175, 16177, 16447, 16449, 16709, 16711, 16713, 16715, 16716, 16916, 17130, 17341, 17342, 17344, 17346, 17740, 17741, 17742, 17743
71 ..... 16451, 16718, 17740, 17741, 17742, 17743
91 16452
121 16452
125 16452
129 16452

15 CFR

806 16890

16 CFR

Proposed Rules:
20.....17132
235.....17348

17 CFR

Proposed Rules:
10.....16453

19 CFR

10.....16414
118.....16683
123.....16414
128.....16414
141.....16414
143.....16414
145.....16414
148.....16414

20 CFR

200.....17325
216.....17326

21 CFR

101.....17327
172.....16417
520.....17329
606.....16685
610.....16685
640.....16685
1270.....16685
Proposed Rules:
26.....17744

22 CFR

40.....16686
41.....16892
93.....16686
121.....17329

24 CFR

206.....17654

25 CFR

514.....17489

26 CFR

1.....16895

27 CFR

9.....16902

28 CFR

Proposed Rules:
2.....17771

29 CFR

1910.....17093
1926.....17093
Proposed Rules:
1910.....16918

30 CFR

203.....17330
913.....17094
Proposed Rules:
56.....17781
57.....17781
72.....17492
75.....17492
206.....17349
210.....17133
216.....17133
913.....16719
914.....16723, 16725
916.....16728
920.....16730
944.....17138

31 CFR

285.....16354

33 CFR

100 .....16114, 16115, 16687, 16688
110.....16688
117.....16905, 17679
165.....16116, 17098
Proposed Rules:
20.....16731
100.....16179
117.....17781
151.....17783
165.....16181

34 CFR

280.....16906

37 CFR

Proposed Rules:
201.....17142

39 CFR

Proposed Rules:
111.....17143
501.....16464

40 CFR

51.....17331
52 .....16433, 16435, 17680
62.....17683
63.....17933
180 .....16437, 16690, 17099, 17101, 17687, 17690, 17692, 17699
185.....17101
186.....17101
258.....17706
Proposed Rules:
52 .....16465, 16751, 17349, 17793
62.....17793
131.....16182
300.....16465
372.....16754

41 CFR

51–5.....16439
51–6.....16439
51–8.....16439
51–9.....16439
51–10.....16439
Proposed Rules:
301–3.....16936
301–10.....16936

42 CFR

121.....16296

44 CFR

65.....17731, 17732
67.....17734
206.....17108
Proposed Rules:
67.....17793

46 CFR

Proposed Rules:
5.....16731

47 CFR

1.....17118
4.....17118
52.....16440
64.....16696
73 .....16906, 17123, 17736
76.....16906, 17333
Proposed Rules:
0.....16938
1.....16188, 16938
13.....16938
22.....16938
24.....16938
26.....16938
27.....16938
73.....17123, 17798
80.....16938
87.....16938
90.....16938
95.....16938
97.....16938
101.....169380

48 CFR

Ch. 28.....16118
209.....17124
212.....17124
213.....17124
217.....17124
222.....17124
235.....17124
243.....17124
252.....16871, 17124
801.....17334
810.....17334
811.....17334
812.....17334
836.....17334
852.....17334
870.....17304
1843.....17339
1852.....17339
Proposed Rules:
803.....16955
852.....16955
915.....17799
970.....17799

49 CFR

395.....16697
533.....16699
571.....16215
572.....16136
Proposed Rules:
393.....17811
571.....16217

50 CFR

230.....16701
660.....17736
679.....16705, 17737
Proposed Rules:
17 .....16217, 16218, 17350
285.....16220, 17353
424.....16955
644.....17353
679.....16223

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.

RULES GOING INTO EFFECT APRIL 10, 1998

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:
- Vehicle mass for 3-wheeled motorcycles; certification and test procedures; published 3-11-98

Air quality implementation plans; approval and promulgation; various States:
- Connecticut; published 2-9-98
- Texas; published 2-9-98

Hazardous waste:
- Municipal solid waste landfill facilities; corporate owners and operators; financial assurance mechanisms; published 4-10-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Bacillus thuringiensis; published 4-10-98
- Cyprodinil; published 4-10-98
- N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; published 4-10-98
- Prometryn; published 4-10-98

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Georgia; published 4-10-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid and medicare:
- Physical theraphy, respiratory theraphy, speech language pathology, occupational theraphy services; salary equivalency guidelines; correction; published 3-31-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 3-6-98
- British Aerospace; published 3-6-98
- Dornier; published 3-6-98
- Israel Aircraft Industries, Ltd.; published 3-6-98
- Raytheon; published 3-6-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
- Tuberculosis in livestock other than cattle and bison; testing requirements; comments due by 4-24-98; published 2-23-98

Plant-related quarantine, domestic:
- Oriental fruit fly; comments due by 4-24-98; published 2-23-98

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Export programs:
- Foreign donation of agricultural commodities; changes, corrections, and clarifications; comments due by 4-24-98; published 2-23-98
- Foreign donation of agricultural commodities; ocean transportation procurement procedures; comments due by 4-24-98; published 2-23-98

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Waters subject to subsistence priority; redefinition; comments due by 4-20-98; published 12-17-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Telecommunications standards and specifications:
- Materials, equipment, and construction—
  - Special equipment contract (including installation); comments due by 4-21-98; published 2-20-98

COMMERCE DEPARTMENT

International Trade Administration

Uruguay Round Agreements Act (URAA):
- Antidumping and countervailing duties; five-year ''sunset'' review procedures; comments due by 4-20-98; published 3-20-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Halibut; comments due by 4-20-98; published 3-4-98
- West Coast States and Western Pacific fisheries—
  - Northern anchovy; comments due by 4-22-98; published 3-23-98

COMMODITY FUTURES TRADING COMMISSION

Organization, functions, and authority delegations:
- Exemptive, non-action and interpretive letters; requests filing procedures establishment; comments due by 4-22-98; published 3-27-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Petroleum refineries, new and existing; comments due by 4-20-98; published 3-20-98

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Kansas; comments due by 4-20-98; published 3-20-98

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 4-20-98; published 3-20-98
- Illinois; comments due by 4-22-98; published 3-23-98
- Ohio; comments due by 4-22-98; published 3-23-98
- Virginia; comments due by 4-22-98; published 3-23-98

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Iowa; comments due by 4-20-98; published 3-19-98

Clean Air Act:
- Federal and State operating permits programs; draft rules and accompanying information availability; comments due by 4-24-98; published 3-25-98

Emergency response plans:
- Hazardous substance releases; reimbursement to local governments; comments due by 4-20-98; published 2-18-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Dimethomorph; comments due by 4-20-98; published 2-18-98
- Titanium dioxide; comments due by 4-24-98; published 3-25-98

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 4-20-98; published 3-19-98
  - National priorities list update; comments due by 4-22-98; published 3-23-98

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Federal sector equal employment opportunity:
- Complaint processing regulations; alternative dispute resolution programs availability, etc.; comments due by 4-21-98; published 2-20-98

FARM CREDIT ADMINISTRATION

Farm credit system:
- Organization—
  - Balloting and stockholder reconsideration issues; comments due by 4-20-98; published 3-20-98

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:
- Regulatory fees (1998 FY); assessment and collection; comments due by 4-22-98; published 4-2-98

Radio and television broadcasting:
- Emergency alert system; comments due by 4-20-98; published 4-1-98

Radio stations; table of assignments:

Montana; comments due by 4-20-98; published 3-9-98
New York; comments due by 4-20-98; published 3-9-98

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid:
Hospital participation conditions; provider agreements and supplier approval; comments due by 4-20-98; published 2-17-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Privacy Act; implementation; comments due by 4-24-98; published 2-23-98

INTERIOR DEPARTMENT
Indian Affairs Bureau
Indian Gaming Regulatory Act:
Class III (casino) gaming on Indian lands; authorization procedures when States raise Eleventh Amendment defense; comments due by 4-22-98; published 1-22-98

INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Waters subject to subsistence priority; redefinition; comments due by 4-20-98; published 12-17-97
Endangered and threatened species:
Howell's spectacular thelypody; comments due by 4-20-98; published 3-5-98

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Maryland; comments due by 4-21-98; published 4-6-98

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health standards:
Occupational noise exposure; comments due by 4-24-98; published 4-10-98

PERSONNEL MANAGEMENT OFFICE
Administrative law judges; appointment, pay, and removal; comments due by 4-24-98; published 2-23-98

TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades:
River Race Augusta; comments due by 4-23-98; published 3-24-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
de Havilland; comments due by 4-22-98; published 3-23-98
Aermacchi; comments due by 4-24-98; published 3-13-98
Aerospatiale; comments due by 4-20-98; published 3-20-98
Airbus; comments due by 4-20-98; published 3-20-98
AlliedSignal Inc.; comments due by 4-24-98; published 2-23-98
Boeing; comments due by 4-24-98; published 2-4-98
British Aerospace; comments due by 4-24-98; published 3-19-98
Cessna; comments due by 4-24-98; published 2-13-98
Construcciones Aeronauticas, S.A.; comments due by 4-22-98; published 3-23-98
Dornier; comments due by 4-20-98; published 3-20-98
Fokker; comments due by 4-20-98; published 3-20-98
Glaser-Dirks Flugzeugbau GmbH; comments due by 4-24-98; published 3-19-98
Pilatus Aircraft Ltd.; comments due by 4-24-98; published 3-24-98
Superior Air Parts, Inc.; comments due by 4-20-98; published 2-17-98
Airworthiness standards:
Special conditions—
Boeing model 757-300 airplane; comments due by 4-24-98; published 3-25-98
Class E airspace; comments due by 4-20-98; published 3-9-98

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Engineering and traffic operations:
Emergency relief program; disaster eligibility threshold; comments due by 4-20-98; published 2-19-98

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
State and political subdivision obligations; cross-reference; comments due by 4-22-98; published 1-22-98

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

S. 758/P.L. 105–166

Lobbying Disclosure Technical Amendments Act of 1998 (Apr. 6, 1998; 112 Stat. 38)

Last List March 25, 1998

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@etc.fed.gov** with the text message: **subscribe PUBLAWS-L** (your name)

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.