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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.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 614, 620, and 630

RIN 3052–AB67

Organization; Loan Policies and Operations; Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System; Other Financing Institutions

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issues a final rule amending its regulations that govern the funding and discount relationship between Farm Credit System (Farm Credit, FCS, or System) banks that operate under title I of the Farm Credit Act of 1971, as amended (Act), and non-System other financing institutions (OFIs). The final rule substantially expands access to System funding so OFIs can provide more short- and intermediate-term credit to parties who are eligible to borrow under sections 2.4(a) and (b) of the Act. The FCA has repealed several non-statutory limits on OFI eligibility. The final rule assures access to any creditworthy OFI that is significantly involved in agricultural lending and demonstrates a continuing need for funds to serve its agricultural borrowers. Under certain circumstances, OFIs may seek financing from a Farm Credit Bank (FCB) or agricultural credit bank (ACB) other than the System bank that is chartered to serve its territory. The final rule requires FCBs and ACBs to finance OFIs only on a fully secured basis and to have full recourse to the OFI's capital.

EFFECTIVE DATE: This regulation shall become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Policy Analyst or S. Robert Coleman, Senior Policy Analyst, Regulation and Policy Division, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Richard A. Katz, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: This final rule completes a 2-year effort by the FCA to revise these regulations so that farmers, ranchers, and other eligible rural residents have greater access to credit through OFIs that are financed by FCBs and ACBs. On May 17, 1996, the FCA published an Advance Notice of Proposed Rulemaking seeking comments on how these regulations could be more responsive to the credit needs of OFIs and their borrowers. *See* 61 FR 24907. In response to these comments, the FCA proposed a rule that substantially revised the regulations in subpart P of part 614. *See* 62 FR 38223 (July 17, 1997). After considering the comments received, the FCA Board adopts a final rule that provides greater opportunities for OFIs to obtain funding from FCS banks so they can finance agriculture, aquaculture, and other specified rural credit needs.

Sixteen comment letters were received in response to the proposed rule. Of this total, comments were received from 4 trade associations, 5 FCS banks (one comment letter came from 2 FCS banks that are jointly-managed), 4 System direct lender associations, a federation representing System production credit associations (PCAs), a commercial bank, a commercial bank holding company, and an existing OFI. Four trade associations submitted comments on behalf of their members: the American Bankers Association (ABA); the Independent Bankers Association of America (IBAA); the North Dakota Bankers Association (NDBA); and the Farm Credit Council (Council).

The comment letters revealed a diverse range of views about OFI access to System funding. All System direct lender association commenters, except one, opposed any revision to the existing OFI regulation because of their concerns over competition. One commercial bank supported the proposed rule and urged the FCA to adopt it as a final rule without revision. Three commercial bank trade associations recognized the FCA's efforts to improve OFI access to System funding, but they recommended modifications to the rule. The remaining commenters focused on specific issues that were important to their institutions.

Commercial bank trade associations opined that the FCA's regulatory proposal made progress toward granting OFIs more access to System funding. However, these commenters believe that several provisions of the statute discourage many commercial banks from becoming OFIs. The most commonly cited statutory impediments to greater commercial bank participation in this program include: (1) No authority for OFIs to obtain System bank funding [1] for long-term mortgages; (2) lack of OFI representation on the boards of FCS funding banks; and (3) the need to offer borrower rights. For these reasons, the commenters again asked the FCA to support legislative initiatives that would remodel the FCS so it is similar to the Federal Home Loan Bank System. As the commenters acknowledge, the existing statute does not enable the FCA to accommodate some of their requests, and therefore, these issues are not addressed by this rulemaking.

Several PCA commenters expressed concern that expanded OFI access would place them at a competitive disadvantage. These commenters asked the FCA to enact regulations that provide PCAs with more business opportunities before final OFI regulations are adopted. Although several commenters stated that PCAs cannot effectively compete with OFIs until their intermediate-term lending authorities are expanded, section 1.10(b) of the Act establishes the maximum timeframe for intermediate-term loans.

The FCA has considered the concerns of the commenters and adopts a final rule that balances the needs of these parties. The final rule incorporates

[1] As used in this preamble, references to Farm Credit banks apply only to FCBs and ACBs. Although the bank for cooperatives is also a System bank, it lacks statutory authority to finance the OFIs identified in section 1.7(b) of the Act.

many of the commenters' suggestions and promotes a safe and sound lending relationship between System funding banks and their OFIs. The changes increase availability of credit to farmers, ranchers, aquatic producers and harvesters, and other eligible rural borrowers.

I. OFI Access

A. Proposed Rule and Comments

The FCA proposed a two-tier approach for OFIs to establish their eligibility for a funding and discount relationship with a System bank. Under § 614.4540(a), any financial institution that operates under one of the charters specified in section 1.7(b)(1)(B) of the Act may borrow from an FCB or ACB. Additionally, § 614.4540(b) assures access to creditworthy OFIs that have at least 15 percent of their loans to agricultural or aquatic producers and enter into a 2-year funding agreement with an FCB or ACB. The regulations require OFIs to use System funding only to extend short- and intermediate-term credit to eligible persons for authorized purposes under sections 1.10(b) and 2.4(a) and (b) of the Act. This new approach enables more OFIs to borrow from System banks, and as a result, farmers and ranchers should have greater access to affordable and dependable credit.

The FCA proposed to repeal the following eligibility provisions of the existing regulations that are not required by the Act:

- The 60-percent loan-to-deposit ratio for OFIs that are depository institutions;
- The requirement that OFIs primarily use locally generated funds for lending operations;
- The automatic denial of access to any entity that primarily finances the sale of products by its affiliates;
- Consideration of an OFI applicant's relationship with its affiliates and subsidiaries; and
- A mandatory non-use fee for OFIs that fail to maintain a specified average daily loan balance.

The FCA received comments on proposed § 614.4540 from the ABA, IBAA, NDBA, and the Council. These commenters supported the repeal of the non-statutory OFI eligibility criteria that are identified above. The final rule repeals these provisions.

Although all four trade associations supported greater OFI access to System funding, they expressed differing views on the need to modify proposed § 614.4540. The NDBA supported the two-tier approach for OFI access. The Council requested that the FCA amend the regulation so it expressly conveys that System funding banks have discretion to deny the credit application of any OFI that is not covered by § 614.4540(b).

The ABA and IBAA requested amendments that would favor their respective constituencies. The IBAA believes that the regulation should favor small, rural community banks whereas the ABA opined that all banks that provide agricultural credit should be entitled to System funding. The IBAA commented that no lender should be granted access to the FCS unless agricultural loans comprise at least 10 percent of its loan portfolio. Although the IBAA supports the 15-percent threshold for assured access, it believes that OFIs that meet this criterion should be entitled to preferred status and special benefits, such as the lowest cost of funds from System banks and greater flexibility concerning collateral requirements. In contrast, the ABA suggested that any commercial bank should be assured access under final § 614.4540(b) if agricultural loans comprise at least 10 percent of its loan portfolio, or exceed a fixed dollar amount, such as $5,000,000. In the ABA's view, the final rule should include a fixed dollar threshold because agricultural loans often comprise a small percentage of the loan portfolios of large commercial banks that are major providers of agricultural credit. This commenter believes that these large commercial banks deserve assured access to System funding.

The ABA also asked the FCA to reorganize proposed § 614.4540. The commenter suggested that the FCA relocate the provisions in proposed § 614.4540(b) that enable FCBs and ACBs to deny the funding requests of OFIs that are assured access to § 614.4540(c), which governs denials. The ABA stated that this change would clearly communicate the FCA's expectations to System banks and make this regulation more user-friendly.

The IBAA requested that the FCA assume a more active role in collecting and reporting information about the efforts of each System bank to provide agricultural credit through OFIs. Specifically, the commenter suggested that the FCA appoint an Ombudsman to review complaints by OFIs. Additionally, the IBAA recommended that the FCA's Annual Report contain comprehensive information about the number of OFI applications, the number of funding requests that are either approved or denied, a summary of the reasons for denial, and the total amount of funds that System banks advance to OFIs. The IBAA also asked that the final regulations require outside board members to represent OFI interests and establish target goals for the minimum number of new commercial bank OFIs that each System bank will approve every year.

B. Final Rule

Final § 614.4540 retains the two-tier approach to OFI eligibility as proposed. The FCA continues to believe that this regulatory approach best implements the requirements of the Act. Section 1.7(b) of the Act and its legislative history indicate that Congress intended that Farm Credit banks primarily provide financial assistance to small, local OFIs, but it did not exclude other agricultural creditors from this program.[2]

The FCA was not persuaded by the IBAA's request to exclude large financial institutions and the ABA's request to grant most large commercial banks the same assured access to FCS funding as small, local OFIs. Accordingly, the FCA does not adopt the IBAA's recommendation to amend § 614.4540(a) so that OFI applicants are automatically denied access to FCS funding if agricultural loans comprise less than 10 percent of their loan portfolios. In addition, the final regulation does not incorporate the ABA's request that final § 614.4540(b) grant assured access to OFIs that have at least $5,000,000 or 10 percent of their loan portfolio in agricultural loans. The FCA emphasizes that the final regulation allows any institution, including large financial institutions, to fund or discount their agricultural loans with an FCB or ACB, but it does not assure access to creditworthy OFIs unless they have at least 15 percent of their loans in agriculture and enter into a 2-year funding relationship. The FCA continues to believe that the 15-percent threshold is the best measure of whether an OFI is significantly involved in agricultural or aquatic lending, as section 1.7(b)(4)(B)(i) of the Act requires.

The IBAA requested that the final regulation require FCBs and ACBs to provide the lowest cost of funds and other special benefits to OFIs that are entitled to assured access. This request would unnecessarily involve the regulator in the daily business decisions of System banks. Additionally, final § 614.4590 requires Farm Credit banks to treat their OFIs equitably and to determine loan rates through an objective process. The FCA believes that System funding banks should retain

[2] See H.R. 96–1287, 96th Cong., 2d. Sess., (1980), 21, 32–34. *See also* 126 Cong. Rec. H 10960–64 (daily ed. Nov. 19, 1980).

discretion to negotiate the price of funding and other loan terms with OFIs. The final rule fulfills the FCA's responsibility to ensure that FCBs and ACBs abide by their statutory mission to finance creditworthy OFIs in a safe and sound manner.

Many of the ABA's suggestions for reorganizing § 614.4540 have been incorporated into the final rule. The FCA adopts proposed § 614.4540(a) as a final regulation, without revision. This provision allows FCBs and ACBs to fund and discount short- and intermediate-term agricultural, aquatic, processing and marketing, farm-related business, and rural home loans for any financial institution that operates under a charter specified in section 1.7(b)(1)(B) of the Act. As amended, final § 614.4540(b) grants assured access to creditworthy OFIs that maintain at least 15 percent of their loan volume to agricultural and aquatic producers and enter into a 2-year funding or discount relationship with an FCB or ACB. Final § 614.4540(c) retains the requirement in the proposed regulation that FCBs and ACBs establish objective policies and loan underwriting standards for determining the creditworthiness of each OFI applicant. Under final § 614.4540(d), FCBs and ACBs can deny the funding requests of creditworthy OFIs that satisfy the conditions in § 614.4540(b) only if such requests: (1) Adversely affect the Farm Credit bank's ability to achieve and maintain established or projected capital levels or raise funds in the money markets; or (2) otherwise expose the Farm Credit bank to safety and soundness risks. The Council requested that the FCA amend § 614.4540(a) so it expressly conveys that System funding banks have discretion to deny the credit application of any OFI that is not assured access. This revision is unnecessary because § 614.4540(c) requires FCBs and ACBs to develop loan underwriting standards for all OFI applicants. As a result, the framework of this regulation provides FCS banks appropriate discretion, under their policies and loan underwriting standards, to deny the funding requests of OFIs that are not assured access.

Commercial bank trade associations commented that the proposed regulation did not require System funding banks to explain their reason for denying an OFI's application. In response to this concern, the FCA adds § 614.4540(e) that requires System banks to expeditiously process all OFI funding requests and to promptly provide all applicants written notification of the credit decision. Additionally, System banks must provide the applicant with specific reasons for any adverse credit decision.

In response to the IBAA's recommendation about comprehensive reporting on OFIs, the FCA adds new § 614.4540(f), which requires the board of directors of each FCB and ACB to receive annual written reports about the scope of their OFI program activities during the preceding fiscal year. The FCA expects that these annual reports will identify:

- The number of OFI applicants by category (such as commercial banks, credit unions, agricultural credit corporations, etc.);
- The number of approved and denied OFI applications;
- A summary of the reasons for denying OFI applications;
- The total amount of funds advanced to OFIs; and
- Other information necessary to evaluate the success of the System bank's OFI program.

Periodically, the FCA may issue special calls for this information.

The FCA does not adopt the IBAA's request to appoint an OFI Ombudsman because there are more efficient ways for the FCA to address concerns that OFIs may raise. The FCA Board does not accept the IBAA's request that the Agency appoint outside board members to represent OFI interests and to establish target goals for OFI lending. The FCA has no authority under the Act to appoint directors to the boards of Farm Credit banks. In further response to the IBAA, the Agency believes that this rule offers FCS banks sufficient business incentives to extend more credit to OFIs. Additionally, a creditworthy OFI has the option to seek funding from another System funding bank if its designated FCB or ACB denies or fails to approve its application.

II. Place of Discount

Proposed § 614.4550 addresses place of discount for OFIs. Proposed § 614.4550(a) specifies that an FCB or ACB provide funding, discount and other financial assistance to any OFI whose headquarters is located within the funding bank's chartered territory. Under proposed § 614.4550(b), an FCB or ACB could finance an OFI whose headquarters is not located in its chartered territory if the System funding bank identified in § 614.4550(a) consents, denies the OFI's application, or otherwise fails to approve the funding request pursuant to Regulation B of the Board of Governors of the Federal Reserve System, 12 CFR 202.2(f).

The ABA, IBAA, NDBA, three FCBs and two PCAs commented on the place of discount rule. AgFirst FCB supported the FCA's proposal. This commenter believes that the proposal best enables FCS banks to fund OFIs in today's market. The IBAA suggested that the FCA modify its proposal to allow an OFI that is dissatisfied with its System funding bank to seek financing from any other FCB or ACB. The ABA and the NDBA urged the FCA to remove all geographic restrictions on place of discount. These commenters believe that geographic restrictions hamper the success of the OFI program because non-System financial institutions are required to seek funding from a System bank that is owned and controlled by their competitors. The FCB of Texas asserted that the existing regulation governing place of discount is sound and should not be changed. The commenter believes that the FCA's proposal will ultimately lead to unsafe and unsound competition between FCS banks for OFI business. The FCB of Texas opposed the proposal to make an OFI's headquarters the sole factor to determine the place of discount. Finally, two PCAs made the FCA aware of their concerns that associations lack similar opportunities to seek funding from other FCBs or ACBs. After the comment period expired, the FCA received an inquiry from an FCB about whether existing OFIs would be required to change their place of discount once the proposed regulation became final.

The FCA Board believed the proposed rule established a balanced approach concerning the place of discount for OFIs. Traditionally, OFIs have been required to establish a funding or discount relationship with a System bank owned and controlled by their competitors. Several commenters believe that this factor explains why the program has not been widely used by commercial banks and other potential OFIs. The FCA has addressed this concern by proposing a regulation that provides additional flexibility concerning place of discount to OFI applicants.

The FCA believes that some limitations on the place of discount for OFIs are appropriate because FCS charters specify territories that System institutions serve. Direct lender associations do not have the same options to obtain financing from other FCBs and ACBs, and therefore, the recommendations of the three commercial bank trade associations would not treat FCS direct lender associations fairly. Additionally, the ABA's and NDBA's suggestion would deny an FCB or ACB the first

opportunity to finance OFIs operating in its chartered territory. The final rule permits OFIs to apply to any System funding bank after the designated FCS bank rejects or fails to approve the OFI's application. The FCA was not persuaded by the FCB of Texas' argument that changes to the place of discount rule will lead to destructive competition that will ultimately undermine the safety and soundness of the FCS.

In response to the comments, the FCA has modified proposed § 614.4550 to provide additional flexibility regarding an OFI's place of discount. The final regulation continues to require OFIs to apply first to the FCS bank that serves the territory where the OFI operates. The FCA recognizes that some OFIs operate in the chartered territory of two or more FCS banks. Under the final regulation, an OFI may select the FCS funding bank that serves the territory where the OFI is headquartered, or alternatively, where more than 50 percent of the OFI's outstanding loan volume is concentrated.

If the designated funding bank denies, or otherwise fails to approve an OFI's completed application within 60 days, final § 614.4550(b) allows the OFI to apply to any other FCB or ACB. Under final § 614.4550(c), the designated FCS bank may also grant an OFI its consent to seek financing from any other System funding bank. The FCA has redesignated this consent provision as final § 614.4550(c) to enhance the clarity of the regulation. A new provision, § 614.4550(d), states that an OFI is not required to terminate an established funding or discount relationship with its System funding bank if the OFI subsequently relocates its headquarters or experiences a shift in its loan volume concentration.

As mentioned earlier, the FCB of Texas urged the FCA to retain the existing regulation on place of discount. However, the FCB of Texas asked the FCA to consider three alternatives if the final regulation allows OFIs to seek funding from other FCS banks. First, the commenter requested that the FCA modify the regulation to provide the designated FCS bank with the ''right of first refusal'' for any lending agreement that an OFI negotiated with another System bank. Second, the commenter wanted the FCA to determine whether another FCS bank should be permitted to finance each OFI that has been denied credit from the designated System bank for safety and soundness reasons. Finally, the FCB of Texas asked the FCA to clarify that the regulation prohibits an OFI from ''shopping'' FCS banks for funding on a loan-by-loan basis. The commenter sought confirmation that the regulation does not allow an existing OFI to fund or discount individual loans with another System bank if its funding bank rejects those same loans.

The FCA believes a specific ''right of first refusal'' is unnecessary because the designated System bank will have already denied or failed to approve the OFI's initial application. The requirement that an OFI first seek funding from its designated bank is the equivalent of a ''right of first refusal.'' In response to the commenter's second request, the FCA need not determine whether another FCB or ACB can finance an OFI that has been denied credit by its designated funding bank because § 614.4540(c) requires each FCB and ACB to establish its own objective policies and loan underwriting standards for determining an OFI applicant's creditworthiness. The FCA will examine the extension of credit to OFIs in the same context of safety and soundness as it does other risks held in the funding bank's portfolio. The FCA clarifies that the regulation does not permit an OFI to ''shop'' for FCS funding on a loan-by-loan basis because § 614.4560(a)(1) requires all OFIs to execute a general financing agreement (GFA) to establish a funding or discount relationship with a System funding bank. Under the circumstances, § 614.4550(b) applies to the overall relationship between an FCB or ACB and the OFI, not a specific discounted loan.

III. Requirements for OFI Funding Relationships

Proposed § 614.4560 implements several statutory provisions that govern the funding and discount relationship between OFIs and System funding banks. More specifically, each OFI is required to: (1) Execute a GFA with its System funding bank; (2) purchase non-voting stock in the System funding bank pursuant to the bank's bylaws; (3) extend credit only to parties and for purposes that are authorized by sections 1.10(b) and 2.4(a) and (b) of the Act; (4) adhere to portfolio limitations on non-farm rural home loans and certain processing and marketing loans; and (5) comply with statutory and regulatory borrower rights requirements for all agricultural and aquatic loans that an FCB or ACB funds or discounts. Additionally, proposed § 614.4560(e) implements section 5.21 of the Act, which enables the FCA to examine non-depository OFIs and obtain examination reports from the State regulators of commercial banks, trust companies, and savings associations. Under this regulatory provision, OFIs are required to execute the applicable consent forms or releases before they obtain financing from an FCB or ACB. Section 5.22 of the Act enables the FCA to receive examination reports directly from other Federal regulatory agencies.

The FCA proposed to repeal existing § 614.4650, which contains five criteria for a System funding bank to revoke or suspend an OFI's line of credit. The FCA expects each FCS bank to incorporate criteria for revoking or suspending its funding relationship with an OFI into its policies and loan underwriting standards. This issue should also be addressed in the GFA between an OFI and the System funding bank.

The FCA received only one comment about proposed § 614.4560. The IBAA commented that the FCA should establish general guidelines for FCBs and ACBs to follow when they negotiate GFAs with their OFIs. Additionally, the commenter suggested that the FCA consult with OFIs to develop a model GFA.

The FCA recently adopted a GFA rule that eliminated Agency prior-approval of GFAs. See 63 FR 12401, March 13, 1998. The new rule addresses the IBAA's concerns because they provide general guidelines for developing GFAs between System funding banks and OFIs. However, the FCA does not believe it should interfere in the business operations of System banks by negotiating with OFIs to develop a model GFA. The FCA adopts proposed § 614.4560 as a final regulation.

IV. Recourse and Security Requirements

Proposed § 614.4570 would prohibit any FCB or ACB from extending credit to an OFI on an unsecured, limited, or non-recourse basis. Proposed § 614.4570(a) requires an OFI to endorse all obligations that it funds or discounts through an FCB or ACB with full recourse or its unconditional guarantee. Proposed § 614.4570(b)(1) requires each OFI to pledge all notes, drafts, and other obligations that are funded or discounted with the FCB or ACB as collateral for the credit extension. Proposed § 614.4570(b)(2) obligates each FCB or ACB to perfect its security interest in such obligations and the proceeds thereunder in accordance with applicable State law.

A. Full Recourse

An existing OFI, the Council, and two jointly managed FCBs opposed the full recourse requirement in § 614.4570(a). The existing OFI commented that the full recourse requirement would

seriously jeopardize any new opportunities that the new regulation creates for expanded OFI access. One of the jointly managed FCBs expressed concern about how the full recourse requirement in the proposal would affect its relationship with an existing OFI and potential opportunities to finance new OFIs in the future. The Council believes recourse to an OFI's capital should be subject to negotiation between the parties, and each System bank's loan underwriting standards should address this issue.

From a safety and soundness perspective, FCBs and ACBs need full recourse to an OFI's capital in the event of default. Full recourse is necessary because the final rule significantly expands OFI access to the FCS and it repeals many existing regulatory restraints on the funding and discount relationship between System banks and their OFIs. Section 1.7(b)(3)(A) of the Act prohibits a System bank from funding an OFI if its aggregate liabilities exceed ten times its paid-in and unimpaired capital and surplus. In light of this statutory safety and soundness requirement, the FCA believes that it is prudent for FCS banks to have full recourse to an OFI's capital. Additionally, the regulations in 12 CFR part 615, subpart H, require FCS lenders to hold sufficient capital as a cushion against risk in all loans. Full recourse to an OFI's capital strengthens the FCS funding bank's risk-bearing capacity. System funding banks are required to have full recourse to the capital of direct lender associations. Since OFIs have access to other sources of funds, they may expose System funding banks to greater risk of loss than direct lender associations.

B. Security

The FCA received comments from the ABA, IBAA, and the Council about the security OFIs are required to pledge under proposed § 614.4570(b). The ABA and the IBAA requested that the final regulation provide OFIs with additional flexibility to pledge other types of collateral to their FCS funding bank. The ABA opposed § 614.4570(b) because it requires OFIs to pledge all loans that are actually funded by the FCS bank as primary collateral. The commenter believes the requirement is particularly burdensome due to the tracking and recordkeeping that it entails. The ABA recommended that an OFI be allowed to pledge unrelated agricultural loans as collateral. The Council commented that loan perfection should be determined by the FCS funding bank's underwriting standards.

The security requirements of § 614.4570(b) ensure compliance with two sections of the Act. First, section 1.7(b) of the Act requires OFIs to use funds from a title I bank only for the purpose of extending short- and intermediate-term credit to eligible borrowers for authorized purposes under section 2.4(a) and (b) of the Act. Second, OFIs are required to track which loans are funded or discounted through the FCB or ACB funding relationship to ensure compliance with the borrower rights requirements of the Act. In light of these statutory requirements, the FCA does not adopt the ABA's suggestion to allow an OFI to pledge other agricultural loans as primary collateral to a System funding bank. However, § 614.4570(c) permits System funding banks to accept long-term mortgages on agricultural assets as supplemental collateral. Final § 614.4570(b)(2) requires that FCBs and ACBs perfect, in accordance with State law, a senior security interest in any and all obligations that an OFI pledges as collateral.

In summary, the FCA's new regulatory approach for OFI financing affords OFIs greater flexibility and additional access to the FCS. To ensure the safe and sound implementation of the OFI program, the FCA adopts proposed § 614.4570 as a final regulation without revision.

V. Limitation on the Extension of Funding, Discount and Other Similar Financial Assistance to an OFI

Proposed § 614.4580 derives from section 1.7(b)(3) of the Act. This statutory provision prohibits a System funding bank from extending credit to an OFI if its aggregate liabilities exceed ten times its paid-in and unimpaired capital and surplus, or a lesser amount established by the laws of the jurisdiction creating the OFI.

The IBAA commented that the FCA should discourage FCBs and ACBs from establishing less than a 10:1 capital ratio, except under rare circumstances. The commenter expressed concerns that a more stringent capital requirement could raise an OFI's cost of borrowing from the System, and make this program less attractive to potential OFI applicants.

The FCA expects each FCB and ACB to develop loan underwriting standards that address OFI capital requirements. Compliance with these loan underwriting standards are the basis for determining safety and soundness in credit extensions. The FCA believes System banks need the flexibility to tailor underwriting standards to manage the risks from OFIs, based on the banks' risk-bearing capacity. As a safety and soundness regulator, the FCA will not preclude FCBs and ACBs from establishing a capital requirement that is more stringent than the 10:1 ratio in the statute. However, the final rule requires FCS funding banks to treat OFIs equitably in this and other matters. The FCA adopts proposed § 614.4580 as a final regulation.

VI. Lending Limit to a Single OFI Borrower

The FCA proposed to eliminate the existing regulatory lending limit on extensions of credit that OFIs make to their borrowers with FCS funds. The proposal acknowledged that some OFIs will remain subject to the lending limit that their primary regulator imposes under applicable Federal or State law. Additionally, the FCA expects each FCB or ACB to prudently manage the risk exposure caused by concentrations in OFI loan portfolios through its loan underwriting standards and the GFA.

The FCA solicited commenters' views on whether the final rule should contain a lending limit on extensions of credit that an OFI makes to its borrowers with FCS funds. Additionally, the FCA requested suggestions for other approaches to manage and control risks originating through OFI lending relationships.

The ABA, IBAA, and the Council supported the repeal of the existing 50-percent lending limit on OFI borrowers. These commenters advised the FCA that the repeal of the lending limit would enhance the Farm Credit banks' ability to finance OFIs. These trade associations also claimed that the repeal of existing § 614.4565 would not imperil the safety and soundness of System banks that maintain adequate loan underwriting standards. The IBAA requested that the final regulation prohibit FCBs and ACBs from establishing a lending limit *below* 50 percent. The IBAA also expressed concern that the FCA's proposal would impose the Federal or State lending limit on the affiliates and subsidiaries of regulated financial institutions.

As the FCA originally proposed, the final rule repeals the lending limit in existing § 614.4565. In response to the IBAA, the FCA observes that OFIs remain subject to any lending limit imposed by Federal or State law. If the OFI is not subject to a Federal or State lending limit, the funding banks' underwriting standards and the GFA will address single borrower concentration risks in the OFI's portfolio. The FCA rejects the IBAA suggestion that the final rule prohibit FCBs and ACBs from establishing a

lending limit of less than 50 percent because it is inconsistent with safety and soundness. The underwriting standards of each Farm Credit bank should ensure that concentrations in an OFI's loan portfolio do not expose the bank to unacceptable levels of risk.

VII. Equitable Treatment of OFIs and FCS Associations

Proposed § 614.4590 promotes the equitable treatment of OFIs and direct lender associations. Proposed § 614.4590(a) would require FCBs and ACBs to apply objective loan underwriting standards for both types of borrowers. Under proposed § 614.4590(b), the total charges a Farm Credit bank assesses an OFI must be comparable to the charges it imposes on direct lender associations. Furthermore, any variation in funding costs must be attributed to differences in credit risk and administrative costs.

The IBAA and the NDBA commented on proposed § 614.4590. According to the IBAA, references to ''similar'' underwriting standards and ''comparable'' overall cost of funds in the proposed regulation grants System banks too much discretion. The IBAA asserts that the interest rates and the overall cost of funds should be equal for both OFIs and direct lender associations. For this reason, the commenter believes that the final regulation should require System banks to disclose pricing information about their loans to FCS direct lender associations. According to the IBAA, ''equal treatment'' entails lower stock purchase requirements and mandatory dividend payments to OFIs because they are not afforded voting rights and other privileges. The NDBA commented that the final rule should require FCBs and ACBs to adopt ''objective and uniform underwriting standards and pricing requirements.''

The FCA observes that there are fundamental differences between OFIs and direct lender associations. These differences make it difficult to compare the treatment of these two types of financial institutions. The following factors illustrate some of the basic differences between OFIs and direct lender associations that preclude identical treatment:

- OFIs have access to several funding sources whereas direct lender associations are required to borrow from their designated funding bank.
- Direct lender associations have significant amounts of capital invested in their System funding bank, but most OFIs do not.
- As part of a cooperative system, direct lender associations share in System gains and losses. In contrast, OFIs have limited exposure to System losses in the FCS.
- Administrative costs for funding a direct lender association and an OFI differ because OFIs are not required to maintain a long-term commitment with an FCB or ACB.

Under these circumstances, the regulations can only require FCBs and ACBs to treat OFIs and direct lender associations equitably, but not equally. The FCA expects System funding banks to treat similarly situated associations and OFIs comparably. Any variation in the overall amounts that System funding banks charge OFIs and direct lender associations for capitalization requirements, interest rates, and fees shall be attributed to differences in credit risk and administrative costs.

The FCA does not adopt any of the IBAA's suggestions for revising this regulation. The final regulation does not require dividend payments to OFIs, or establish OFI investment levels in System funding banks because the FCA regulations do not impose business practices on FCS institutions in the absence of compelling public policy or safety and soundness reasons. The final regulation does not compel FCS funding banks to charge identical rates to OFIs and FCS direct lender associations, and therefore, it is unnecessary for FCBs and ACBs to disclose pricing information for direct lender associations.

The FCA finds merit in the NDBA's suggestion that § 614.4590(a) should require FCBs and ACBs to establish comparable and objective loan pricing standards for both OFIs and direct lender associations. Accordingly, the FCA has incorporated this revision into final § 614.4590(a). Additionally, the FCA substitutes ''comparable'' for ''similar'' in final § 614.4590(a) so that the language used throughout this regulation is consistent.

VIII. Miscellaneous Issues

A. Association Funding of OFIs

One association asked the FCA to clarify that PCAs and agricultural credit associations can establish and manage OFI relationships on authority delegated by their System banks. The commenter observed that such a program, established under System bank guidelines, would become a natural adjunct to the participation authorities that associations now exercise. Although the Act authorizes only FCBs and ACBs to provide funding to OFIs, the FCA believes that direct lender associations have considerable opportunities for involvement in their funding bank's OFI relationships. Indeed, as funding banks have increasingly become wholesale lenders, associations may be in a position to recruit OFIs, assess the risk in the retail loans or collateral, and service the credit relationship on behalf of the bank. Through their participation authorities, associations may form effective alliances with other agricultural lenders for the benefit of farmers and ranchers.

B. Small Business Investment Companies

A commercial bank holding company commented that the final regulation should permit Small Business Investment Companies (SBICs) to participate in the OFI program. According to the commenter, SBICs and similar state-chartered entities need access to additional stable pools of funds to support their agricultural lending operations. The commenter also suggested that the FCA follow the lead of the Federal Housing Finance Board and permit System banks to invest directly in SBICs.

SBICs do not qualify as OFIs because they do not have one of the charters specified in section 1.7(b)(1)(B) of the Act. Additionally, Federal and State laws effectively preclude SBICs from participating in the OFI program. As a result, the final regulation does not allow SBICs to become OFIs.

The OFI regulations do not implement the investment authorities of FCS banks under sections 1.5(15) and 3.1(13)(A) of the Act. An existing investment regulation, § 615.5140, does not authorize System banks to invest in SBIC equities. However, the FCA recently proposed amendments to § 615.5140, and the Agency will consider the commenter's request when it deliberates on the final investment regulation.

C. Insolvency

The FCA received no comments about proposed § 614.4600, which governs the insolvency of OFIs. The FCA adopts proposed § 614.4600 as a final rule.

List of Subjects

12 CFR Part 611

Agriculture, Banks, Banking, Rural areas.

12 CFR Part 614

Agriculture, Banks, Banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, Banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 630

Accounting, Agriculture, Banks, Banking, Credit, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 614, 620, and 630 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart P—Termination of Farm Credit Status—Associations

2. Section 611.1205 is amended by revising paragraph (c) to read as follows:

§ 611.1205 Definitions.

* * * * *

(c) *OFI* means an other financing institution that has established a funding and discount relationship with a Farm Credit Bank or an agricultural credit bank pursuant to section 1.7(b)(1) of the Act and the regulations in subpart P of part 614.

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

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

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.3A, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5, 8.9 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5, 2279aa–9); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart J—Lending Limits

4. Section 614.4350 is amended by revising paragraph (a) to read as follows:

§ 614.4350 Definitions.

* * * * *

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity (except a Farm Credit System association or other financing institution that complies with the criteria in section 1.7(b) of the Act and the regulations in subpart P of this part) to which an institution has made a loan or a commitment to make a loan either directly or indirectly.

* * * * *

5. Subpart P of part 614 is revised to read as follows:

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

Sec.

614.4540 Other financing institution access to Farm Credit Banks and agricultural credit banks for funding, discount, and other similar financial assistance.
614.4550 Place of discount.
614.4560 Requirements for OFI funding relationships.
614.4570 Recourse and security.
614.4580 Limitation on the extension of funding, discount and other similar financial assistance to an OFI.
614.4590 Equitable treatment of OFIs and Farm Credit System associations.
614.4600 Insolvency of an OFI.

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

§ 614.4540 Other financing institution access to Farm Credit Banks and agricultural credit banks for funding, discount, and other similar financial assistance.

(a) *Basic criteria for access.* Any national bank, State bank, trust company, agriculture credit corporation, incorporated livestock loan company, savings association, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products may become an other financing institution (OFI) that funds, discounts, and obtains other similar financial assistance from a Farm Credit Bank or agricultural credit bank in order to extend short- and intermediate-term credit to eligible borrowers for authorized purposes pursuant to sections 1.10(b) and 2.4(a) and (b) of the Act. Each OFI shall be duly organized and qualified to make loans and leases under the laws of each jurisdiction in which it operates.

(b) *Assured access.* Each Farm Credit Bank or agricultural credit bank must fund, discount, or provide other similar financial assistance to any creditworthy OFI that:

(1) Maintains at least 15 percent of its loan volume at a seasonal peak in loans and leases to farmers, ranchers, aquatic producers and harvesters. The Farm Credit Bank or agricultural credit bank shall not include the loan assets of the OFI's parent, affiliates, or subsidiaries when determining compliance with the requirement of this paragraph; and

(2) Executes a general financing agreement with the Farm Credit Bank or agricultural credit bank that establishes a financing or discount relationship for at least 2 years.

(c) *Underwriting standards.* Each Farm Credit Bank and agricultural credit bank shall establish objective policies and loan underwriting standards for determining the creditworthiness of each OFI applicant.

(d) *Denial of OFI access.* A Farm Credit Bank or an agricultural credit bank may deny the funding request of any creditworthy OFI that meets the conditions in paragraph (b) of this section only when such request would:

(1) Adversely affect a Farm Credit Bank or agricultural credit bank's ability to:

(i) Achieve and maintain established or projected capital levels; or

(ii) Raise funds in the money markets; or

(2) Otherwise expose the Farm Credit Bank or agricultural credit bank to safety and soundness risks.

(e) *Notice to applicants.* Each Farm Credit Bank or agricultural credit bank shall render its decision on an OFI application in as expeditious a manner as is practicable. Upon reaching a decision on an application, the Farm Credit Bank or agricultural credit bank shall provide prompt written notice of its decision to the applicant. When the Farm Credit Bank or agricultural credit bank makes an adverse credit decision on an application, the written notice shall include the specific reason(s) for the decision.

(f) *Reports to the board of directors.* Each Farm Credit Bank and agricultural credit bank shall provide its board of directors with a written annual report regarding the scope of OFI program activities during the preceding fiscal year.

§ 614.4550 Place of discount.

(a) A Farm Credit Bank or agricultural credit bank may provide funding, discounting, or other similar financial assistance to any OFI applicant that:

(1) Maintains its headquarters in such funding bank's chartered territory; or

(2) Has more than 50 percent of its outstanding loan volume to eligible

borrowers who conduct agricultural or aquatic operations in such funding bank's chartered territory.

(b) If the Farm Credit Bank or agricultural credit bank identified in paragraph (a) of this section denies or otherwise fails to approve an OFI's funding request within 60 days of receipt of a ''completed application'' as defined by 12 CFR 202.2(f), the OFI may apply to any other Farm Credit Bank or agricultural credit bank for funding, discounting, or other similar financial assistance.

(c) The Farm Credit Bank or agricultural credit bank may grant its consent for an OFI identified in paragraph (a) of this section to seek financing from another Farm Credit Bank or agricultural credit bank.

(d) No OFI shall be required to terminate its existing funding or discount relationship with a Farm Credit Bank or agricultural credit bank if, at a subsequent time, an OFI relocates its headquarters to the chartered territory of another Farm Credit Bank or agricultural credit bank or the loan volume in the relevant territory falls below 50 percent.

§ 614.4560 Requirements for OFI funding relationships.

(a) As a condition for extending funding, discount and other similar financial assistance to an OFI, each Farm Credit Bank or agricultural credit bank shall require every OFI to:

(1) Execute a general financing agreement pursuant to the regulations in subpart C of part 614; and

(2) Purchase non-voting stock in its Farm Credit Bank or agricultural credit bank pursuant to the bank's bylaws.

(b) A Farm Credit Bank or agricultural credit bank shall extend funding, discount and other similar financial assistance to an OFI only for purposes and terms authorized under sections 1.10(b) and 2.4(a) and (b) of the Act.

(c) Rural home loans to borrowers who are not *bona fide* farmers, ranchers, and aquatic producers and harvesters are subject to the restrictions in § 613.3030 of this chapter. Loans that an OFI makes to processing and marketing operators who supply less than 20 percent of the throughput shall be included in the calculation that § 613.3010(b)(1) of this chapter establishes for Farm Credit Banks and agricultural credit banks.

(d) The borrower rights requirements in part C of title IV of the Act, and section 4.36 of the Act, and the regulations in subparts K, L, and N of part 614 shall apply to all loans that an OFI funds or discounts through a Farm Credit Bank or agricultural credit bank, unless such loans are subject to the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq.*

(e) As a condition for obtaining funding, discount and other similar financial assistance from a Farm Credit Bank or agricultural credit bank, all State banks, trust companies, or State-chartered savings associations shall execute a written consent that authorizes their State regulators to furnish examination reports to the Farm Credit Administration upon its request. Any OFI that is not a depository institution shall consent in writing to examination by the Farm Credit Administration as a condition precedent for obtaining funding, discount and other similar financial assistance from a Farm Credit Bank or agricultural credit bank, and file such consent with its Farm Credit funding bank.

§ 614.4570 Recourse and security.

(a) *Full recourse and guarantee.* All obligations that are funded or discounted through a Farm Credit Bank or agricultural credit bank shall be endorsed with the full recourse or unconditional guarantee of the OFI.

(b) *General collateral.* (1) Each Farm Credit Bank and agricultural credit bank shall take as collateral all notes, drafts, and other obligations that it funds or discounts for each OFI; and

(2) Each Farm Credit Bank and agricultural credit bank shall perfect, in accordance with State law, a senior security interest in any and all obligations and the proceeds thereunder that the OFI pledges as collateral.

(c) *Supplemental collateral.* (1) Each Farm Credit Bank and agricultural credit bank shall develop policies and loan underwriting standards that establish uniform and objective requirements to determine the need and amount of supplemental collateral or other credit enhancements that each OFI shall provide as a condition for obtaining funding, discount and other similar financial assistance from such Farm Credit bank.

(2) The amount, type, and quality of supplemental collateral or other credit enhancements required for each OFI shall be established in the general financing agreement and shall be proportional to the level of risk that the OFI poses to the Farm Credit Bank or agricultural credit bank.

§ 614.4580 Limitation on the extension of funding, discount and other similar financial assistance to an OFI.

(a) No obligation shall be purchased from or discounted for and no loan shall be made or other similar financial assistance extended by a Farm Credit Bank or agricultural credit bank to an OFI if the amount of such obligation added to the aggregate liabilities of such OFI, whether direct or contingent (other than *bona fide* deposit liabilities), exceeds ten times the paid-in and unimpaired capital and surplus of such OFI or the amount of such liabilities permitted under the laws of the jurisdiction creating such OFI, whichever is less.

(b) It shall be unlawful for any national bank that is indebted to any Farm Credit Bank or agricultural credit bank, on paper discounted or purchased, to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities, direct or contingent, will exceed the limitation described in paragraph (a) of this section.

§ 614.4590 Equitable treatment of OFIs and Farm Credit System associations.

(a) Each Farm Credit Bank and agricultural credit bank shall apply comparable and objective loan underwriting standards and pricing requirements to both OFIs and Farm Credit System direct lender associations.

(b) The total charges that a Farm Credit Bank or agricultural credit bank assesses an OFI through capitalization requirements, interest rates, and fees shall be comparable to the charges that the same Farm Credit Bank or agricultural credit bank imposes on its direct lender associations. Any variation between the overall funding costs that OFIs and direct lender associations are charged by the same funding bank shall result from differences in credit risk and administrative costs to the Farm Credit Bank or agricultural credit bank.

§ 614.4600 Insolvency of an OFI.

If an OFI that is indebted to a Farm Credit Bank or agricultural credit bank becomes insolvent, is in process of liquidation, or fails to service its loans properly, the Farm Credit Bank or agricultural credit bank may take over such loans and other assets that the OFI pledged as collateral. Once the Farm Credit Bank or agricultural credit bank exercises its remedies, it shall have the authority to make additional advances, to grant renewals and extensions, and to take such other actions as may be necessary to collect and service loans to the OFI's borrower. The funding Farm Credit Bank or agricultural credit bank may also liquidate the OFI's loans and other assets in order to achieve repayment of the debt.

PART 620—DISCLOSURE TO SHAREHOLDERS

6. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

§ 620.5 [Amended]

7. Section 620.5 is amended by removing the word ''financial'' and adding in its place the word ''financing''; and by removing the words '', as defined in § 614.4540(e) of this chapter'' in paragraph (a)(8).

PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

8. The authority citation for part 630 continues to read as follows:

Authority: Secs. 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2252, 2254).

Subpart B—Annual Report to Investors

§ 630.20 [Amended]

9. Section 630.20 is amended by removing the words '', as defined in § 614.4540(e) of this chapter'' in paragraph (a)(1)(v).

Dated: June 26, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–17844 Filed 7–6–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–155–AD; Amendment 39–10643; AD 98–14–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 757, 767, and 777 Series Airplanes Equipped with AlliedSignal RIA–35B Instrument Landing System Receivers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, 757, 767, and 777 series airplanes. This action requires a revision to the Airplane Flight Manual (AFM) to prohibit certain types of approaches if only one instrument landing system (ILS) receiver is operational. This action also requires repetitive inspections to detect certain faults of all RIA–35B ILS receivers, and replacement of discrepant ILS receivers with new, serviceable, or modified units; or, alternatively, an additional revision to the AFM and installation of a placard to prohibit certain operations. This AD also provides for optional terminating action for the AFM revisions and repetitive inspections. This amendment is prompted by a report of errors in the glide slope deviation provided by an ILS receiver. The actions specified in this AD are intended to detect and correct faulty ILS receivers, and to ensure that the flightcrew is advised of the potential hazard of performing ILS approaches using a localizer deviation from a faulty ILS receiver and also advised of the procedures necessary to address that hazard. Erroneous localizer deviation could result in a landing outside the lateral boundary of the runway.

DATES: Effective July 22, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–155–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. 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: Jay Yi, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1013; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that, during a test flight of a Boeing airplane, the flightcrew detected discrepancies in the glide slope deviation provided by one of the onboard Instrument Landing System (ILS) receivers. (The glide slope is the flight path that an airplane is to follow when making an ILS landing. The display of the glide slope deviation indicates the position of the airplane relative to the glide slope and indicates to the flightcrew whether the airplane needs to be at a higher or lower altitude to be on the normal approach flight path.) The discrepancies in the glide slope deviation provided by the discrepant ILS receiver resulted in the display showing that the airplane was on the glide slope, when the airplane was approximately one dot low on the glide slope (as determined from the data provided by the ILS receivers that were operating correctly). The flightcrew received no annunciation that there were discrepancies between the glide slope deviations being provided by the ILS receivers.

An investigation conducted by AlliedSignal, the manufacturer of the RIA–35B ILS receivers installed on the airplane, has revealed that the discrepancies in the glide slope deviation were caused by failure of an internal component of the ILS receiver due to that component's sensitivity to temperature. Due to the nature of the failure, that component also could fail on other airplanes.

The same ILS receiver provides localizer deviation. (The display of the localizer deviation indicates the position of the airplane relative to the center line of the runway during an ILS landing.) Faults in the ILS receiver, if not corrected, could result in a landing outside the lateral boundary of the runway. If a faulty ILS receiver provides a localizer deviation that contains errors that are not detected by the flightcrew, use of a single ILS receiver for ILS or localizer approaches could result in the pilot being directed to land the airplane outside the lateral boundary of the runway. If the localizer deviations generated by two of the ILS receivers onboard the airplane contain errors that are not detected by the flightcrew, during category II and III operations, the autopilot system may land the airplane outside the lateral boundary of the runway.

The FAA finds that flightcrews are not currently provided with adequate information necessary to address the potential hazard of performing an ILS or localizer approach using a localizer deviation provided by a faulty ILS receiver. Therefore, the FAA has determined that flightcrews must be provided with such information and must be made aware that certain types

of operations are prohibited when only one RIA–35B ILS receiver (with the affected part number) is operational.

The RIA–35B ILS receivers installed on certain Boeing Model 747–400, 757, 767, and 777 series airplanes are the same type as those on the affected Boeing airplane. Therefore, those Boeing Model 747–400, 757, 767, and 777 series airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998, which describes procedures for modifying RIA–35B ILS receivers, part number (P/N) 066–50006–0101. The modification includes removing the radio frequency (RF) assembly; modifying the RF module by cutting two solder-side tracks, installing two 221–ohm resistors, and replacing components U8009 and U8206; and reinstalling the modified RF assembly. Once modified, the P/N of the ILS receiver is converted to 066–50006–1101. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the 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, this AD is being issued to detect and correct faulty ILS receivers, and to ensure that the flightcrew is advised of the potential hazard of performing ILS approaches using a localizer deviation from a faulty ILS receiver and also advised of the procedures necessary to address that hazard. This AD requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit ILS or localizer approaches if only one ILS receiver is operational. This AD also requires repetitive visual inspections for faults stored in the internal fault memory of all RIA–35B ILS receivers, P/N 066–50006–0101; or, alternatively, an additional revision to the Limitations Section of the AFM and installation of a placard in the cockpit to prohibit category II and III operations. For cases where certain faults are detected in the internal fault memory, this AD also requires replacement of the faulty ILS receiver with a new, serviceable, or modified part. If accomplished, replacement of all ILS receivers, P/N 066–50006–0101, with modified ILS receivers terminates the repetitive inspections and AFM revisions described previously.

Explanation of the Applicability of the Rule

The FAA may consider separate rulemaking to address the identified unsafe condition on other transport category airplanes equipped with the affected ILS receiver. The FAA notes that its general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in a limited number of airplane models, an AD is issued so that it is applicable to those airplanes, rather than the item. The reason for this is simple: making the AD applicable to the airplane models on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents ''unknowing non-compliance'' on the part of the operator.

Interim Action

This is considered to be interim action. The FAA is considering further rulemaking action to supersede this AD to require replacement of all existing RIA–35B ILS receivers with modified parts. However, the planned compliance time for such replacement is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–155–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–14–10 Boeing: Amendment 39–10643. Docket 98–NM–155–AD.

Applicability: Model 747–400, 757, 767, and 777 series airplanes; equipped with AlliedSignal RIA–35B Instrument Landing System (ILS) receivers, part number (P/N) 066–50006–0101; 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, unless accomplished previously.

To detect and correct faulty ILS receivers, and to ensure that the flightcrew is advised of the potential hazard of performing ILS approaches using a localizer deviation from a faulty ILS receiver and also advised of the procedures necessary to address that hazard, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

Any Instrument Landing System (ILS) or Localizer approach with only one operative AlliedSignal ILS receiver, P/N 066–50006–0101, installed is prohibited.

Note 2: On Model 747–400 and 777 series airplanes, the existence of only one operative ILS receiver is indicated by the Engine Indication and Crew Alerting System advisory message, ''SNGL SOURCE ILS.'' On Model 757 and 767 series airplanes, failure of an ILS receiver is indicated by an ILS flag on the display of the Electronic Flight Instrument System when approach mode is selected.

(b) Within 30 days after the effective date of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD.

(1) Perform a visual inspection of the 64 flight legs of the internal fault memory of all AlliedSignal RIA–35B ILS receivers, P/N 066–50006–0101, for fault codes ''Nl'' (glide slope antialias fault) or ''Nm'' (localizer antialias fault). Repeat the inspection thereafter at intervals not to exceed 64 flight cycles. If any fault code ''Nl'' or ''Nm'' is found, prior to further flight, replace the existing ILS receiver with a new or serviceable ILS receiver having the same P/N; or with an ILS receiver that has been modified to P/N 066–50006–1101 in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998. Installation of an ILS receiver that has been modified (and the P/N converted) in accordance with the service bulletin constitutes terminating action for the inspection requirement of paragraph (b)(1) of this AD for that part.

(2) Accomplish the actions required by paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Revise the Limitations Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

Category II and III operations are prohibited with AlliedSignal ILS receiver P/N 066–50006–0101 installed.

(ii) Install a placard on the forward instrument panel of the cockpit in clear view of the pilots, which states:

''Category II and III operations are prohibited.''

(c) Replacement of all existing RIA–35B ILS receivers, P/N 066–50006–0101, with RIA–35B ILS receivers that have been modified in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998; and that have had their P/N's converted to 066–50006–1101; constitutes terminating action for the requirements of this AD. After the replacement has been accomplished, the AFM limitations required by paragraphs (a) and (b)(2)(i) of this AD may be removed from the AFM, and the placard required by (b)(2)(ii) may be removed from the cockpit.

Note 3: Modification of all AlliedSignal RIA–35B ILS receivers, P/N 066–50006–0101, prior to the effective date of this AD in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), dated December 1997; Revision 1, dated January 1998; or Revision 2, dated April 1998; is considered acceptable for compliance with the applicable action specified in this amendment.

(d) As of the effective date of this AD, no person shall install on any airplane an RIA–35B ILS receiver, P/N 066–50006–0101, that has been found to be discrepant (that is, on which fault codes ''Nl'' or ''Nm'' were found during an inspection of the internal fault memory) unless the discrepancy has been corrected by modifying the ILS receiver in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(g) The modification, if accomplished, shall be done in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 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 AlliedSignal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 22, 1998.

Issued in Renton, Washington, on June 29, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17914 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–139–AD; Amendment 39–10648; AD 98–14–15]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes, and Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes, that requires revising the Airplane Flight Manual to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: Effective August 11, 1998.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes, was published in the **Federal Register** on March 20, 1998 (63 FR 13569). That action proposed to require revising the FAA-approved Airplane Flight Manual to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight.

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

Request to Install Automatic Flight Idle Stop Mechanical System

The commenter supports the proposed rule, but remarks that, as an added measure of safety, the FAA should consider the addition of a mechanical means to preclude such selection. The mechanical means referenced by the commenter would be in the form of an automatic flight idle stop. The FAA acknowledges the commenter's concern, and may consider additional rulemaking to address that concern in the future on certain airplanes. However, until such final action is identified, the FAA considers it appropriate to proceed with issuance of this final rule. No change to the final rule is required.

Conclusion

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

Interim Action

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

Cost Impact

The FAA estimates that 49 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,940, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

98–14–15 Fokker Services B.V.: Amendment 39–10648. Docket 97–NM–139–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, and Model F27 Mark 050 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 loss of airplane controllability caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. This action may be accomplished by inserting a copy of this AD into the AFM.

(1) For Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, insert the following:

''Warning: Ground fine pitch must not be selected in flight. This may lead to loss of

control from which recovery may not be possible.''

(2) For Model F27 Mark 050 series airplanes, insert the following:

''Warning: Do not attempt to select ground idle in flight. In case of failure of the flight idle stop, this would lead to loss of control from which recovery may not be possible.''

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

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

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

(d) This amendment becomes effective on August 11, 1998.

Issued in Renton, Washington, on June 30, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17948 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–72–AD; Amendment 39–10647; AD 98–14–14]

RIN 2120–AA64

Airworthiness Directives; Turbopropeller-Powered McDonnell Douglas Model DC–3 and DC–3C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–3 and DC–3C series airplanes, that requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: August 11, 1998.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Frank Hoerman, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 527–5371; fax (562) 625–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–3 and DC–3C series airplanes was published in the **Federal Register** on January 8, 1998 (63 FR 1072). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Comments

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

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

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

Cost Impact

There are approximately 21 turbopropeller-powered McDonnell Douglas Model DC–3 and DC–3C series airplanes of the affected design in the worldwide fleet. The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $300, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

98–14–14 McDonnell Douglas: Amendment 39–10647. Docket 97–NM–72–AD.

Applicability: All turbopropeller-powered McDonnell Douglas Model DC–3 and DC–3C series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) For turbopropeller-powered McDonnell Douglas Model DC–3 and DC–3C series airplanes on which Rolls-Royce Dart 510 engines are installed: Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop (i.e., including ground fine pitch) while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition with consequent loss of engine power.''

(b) For turbopropeller-powered McDonnell Douglas Model DC–3 and DC–3C series airplanes other than those identified in paragraph (a) of this AD: Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition with consequent loss of engine power.''

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(d) 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) This amendment becomes effective on August 11, 1998.

Issued in Renton, Washington, on June 30, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17955 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–14]

Revision of Class D Airspace, San Diego, North Island NAS, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action will amend the Class D airspace area operating times at San Diego, North Island Naval Air Station, (NZY) Halsey Field, CA. In April of 1998 the U.S. Navy reduced the hours of operation of the Air Traffic Control Tower (ATCT) at NZY. The reduction of the ATCT hours of operation has made this action necessary. The intended effect of this action is to modify the hours of the NZY Class D airspace area in the legal description of the controlled airspace. This action does not involve a change in the dimensions or operating requirements of that airspace containing Instrument Flight Rules (IFR) operations at NZY.

DATES: EFFECTIVE DATE: 0901 UTC October 8, 1998. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before August 6, 1998.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–14, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION: This action will change the airspace legal description to reflect the new operating hours of the Class D airspace area of NZY. The 1998 reduction of the ATCT hours of operation has made this action necessary. The intended effect of this action is to modify the hours of the NZY Class D airspace area in the legal description of the controlled airspace. Class D airspace areas 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 this Order.

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. 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 and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an 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 a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments are 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this 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 action 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–AWP–16.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; 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; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the 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

* * * * *

AWP CA D San Diego, North Island NAS, CA [Revised]

San Diego, North Island NAS (Halsey Field), CA
(lat. 32°41′57″ N, long. 117°12′55″ W)

That airspace extending upward from the surface to but not including 2,800 feet MSL within a 4.3-mile radius of North Island NAS (Halsey Field), excluding the airspace within the San Diego, CA, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on June 23, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–17858 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 304

Regulatory Review and Regulatory Flexibility Act Review of Rules and Regulations Issued Under the Hobby Protection Act

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission (FTC or Commission) has completed its regulatory review and Regulatory Flexibility Act (RFA) review of the Rules and Regulations Issued Under the Hobby Protection Act. The Rule regulates the marking of imitation political and numismatic items. Pursuant to its regulatory review, the Commission concludes that the Rule continues to be valuable both to consumers and firms. The Commission also certifies, pursuant to the RFA, that the Rule has not had a significant economic impact upon a substantial number of small or other entities or otherwise merits revision.

DATES: This action is effective as of July 7, 1998.

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Special Assistant, Division of Enforcement, Bureau of Consumer Protection, FTC, Washington, DC 20580, (202) 326–3029.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has determined, as part of its oversight responsibilities, to review its rules and guides periodically to seek information about their costs and benefits and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Where appropriate, the Commission will, as it did in this review, combine such periodic general reviews with reviews seeking information about the economic impact of the rule on small business firms as required by the Regulatory Flexibility Act.

II. Background

On November 29, 1973, Congress passed the Hobby Protection Act (Act).[1] The Act requires manufacturers and importers of ''imitation political items'' [2] to mark ''plainly and permanently'' such items with the

[1] 15 U.S.C. 2101–2106.

[2] An imitation political item is ''an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item.'' 15 U.S.C. 2106(2).

''calendar year'' such items were manufactured. The Act also requires manufacturers and importers of ''imitation numismatic items'' [3] to mark ''plainly and permanently'' such items with the word ''copy.'' [4] The Act further provides that the Commission is to promulgate regulations for determining the ''manner and form'' imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word ''copy.'' [5]

In response to that requirement, in 1975 the Commission issued Rules and Regulations under the Hobby Protection Act (Rule).[6] The Rule tracks the definitions of terms used in the Act and implements the Act's ''plain and permanent'' marking requirements by establishing the sizes and dimensions of the letters and numerals to be used, the location of the marking on the item, and how to mark incusable (*i.e.*, those that can be impressed with a stamp) and nonincusable items. The Commission amended the Rule in 1988 to provide additional guidance on the minimum size of letters for the word ''copy'' as a proportion of the diameter of coin reproductions.[7]

As discussed below, the comments received in this review appear to reflect a high level of compliance as to the two products covered by the Act and Rule (*i.e.*, imitation political and numismatic items). Many comments also proposed that the Commission expand coverage of the Act and Rule to address problems involving the selling (passing off) as originals of reproductions of antiques and collectibles not covered by the Act and Rule. The Commission does not propose amending the Rule as requested because it does not have authority under the Act to expand coverage of the Act or Rule. In addition, existing laws and informational material currently available address many of the concerns raised by these comments.

[3] An imitation numismatic item is ''an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item.'' 15 U.S.C. 2106(4).

[4] 15 U.S.C. 2101(b).

[5] 15 U.S.C. 2101(c).

[6] 16 CFR Part 304.

[7] 53 FR 38942 (1988). Prior to the amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer had to individually request from the Commission a variance from those requirements. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the placing of the word ''copy'' on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

III. Regulatory Review and Regulatory Flexibility Questions and Comments

The Commission received a total of 1,145 comments in response to its March 25, 1997 **Federal Register** request for comments.[8] Of that number, nearly 1,000 comments were form letters that advocated expanding coverage of the Act and Rules to all antiques and collectibles.[9] Of the other comments, four were from national associations,[10] four from hobby newspapers,[11] one from a private mint,[12] one from the United States Mint,[13] and the remaining were from individual collectors,[14] dealers,[15] and local associations.[16]

The Commission discusses the comments in two section: In section A, the Commission analyzes the comments relating to the products covered by the Act and Rule (''covered products''); and, in section B, the Commission discusses the comments relating to alleged problems with products outside the coverage of the Act and Rule.

A. Comments Relating to Covered Products

1. Support for the Rule

As noted previously, the Act and Rule's scope are limited to imitation political and numismatic items. The comments uniformly stated that there is a continuing need for the Rule and that is has been successful in protecting consumers from the passing off of reproductions of the covered items.[17] Indeed, two comments indicated that the Rule's protective value may have increased over the years as technological changes that have made it easier to make high quality reproductions of political and numismatic items have also made it easier to deceive consumers.[18]

The few comments addressing the issue of what costs the Rule imposes on purchasers indicated that the costs are slight and outweighed by the benefits. For example, one commenter wrote that, ''[a]ssuming that the costs of affixing the word 'copy' or the date is reflected in the selling price, it would appear that the increase per item would be an insignificant amount that any purchaser would be willing to pay by reason of the protection afforded by the rule.'' [19] Another commenter stated that the process of stamping the word ''copy'' on coins ''has no significant bearing on the price of any individual piece.'' [20] One commenter noted that the Rule saves purchasers money because it lessens that chance of purchasing a fake.[21]

In addition, the comments indicated that the Rule does not impose significant burdens or costs on firms subject to its requirements. The comments addressing this issue uniformly stated that the Rule has not imposed significant costs on subject firms [22] and in fact has benefitted them. [23] No comment suggested any changes in the Rule to reduce costs. [24]

[8] 62 FR 14049 (1997). The comments have been filed on the Commission's public record as Document Nos. B21938200001, B21938200002, etc. The comments are cited in this notice by the name of the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, e.g., Daugherty, 493, 1. All Rule review comments are on the public record and are available for public inspection in the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC, from 8:30 a.m. to 5:00 p.m., Monday through Friday, except federal holidays.

[9] Seven hundred twenty-one comments were form letters cut out or photo-copied from an Antique Week newspaper or based thereon (e.g., Lubitz, 61, 1), 223 were form letters from collectors and dealers of Nippon porcelain (e.g., Dersheimer, 59, 1), and 34 comments used or were based upon an Antiques Journal form letter (e.g., Mercier, 4, 1).

[10] American Numismatic Association (ANA), 94; American Political Items Collectors (APIC), 515; Antique & Collectibles Dealers Association, Inc., 495; and Appraisers Association of America, Inc., 494 and 526.

[11] Antique & Collectors Reproduction News, 497; Antique Week, 499 and 540; Antiques Journal, 4; and Coin World, 514.

[12] Gallery Mint Museum (Gallery Mint), 398.

[13] U.S. Mint, 511.

[14] See, e.g., Barrie, 19.

[15] See, e.g., Dilinger, 103.

[16] See, e.g., Wayne County (PA) Antique Dealers Assoc., 517.

[17] See, e.g., APIC, 7, 1; Mint, 511, 1; Prestwood, 512, 1; and Peeling, 254, 1. For example, APIC stated that, ''We still have some reproductions today, but the problem is not serious, thanks to the Hobby Protection Act, and enforcement of the Act. Further, most campaign items reproduced since the early 1970's are in compliance with the Act, marked in accordance with the regulations.'' APIC, 7, 1. The United States Mint similarly favored continued coverage of imitation numismatic items because, ''[t]he numismatic area is prone to opportunism, and sanctions for objectionable behavior are hard to impose. The Hobby Protection Act works as a preventive to counter attempts to pass off reproductions as genuine coins.'' Mint, 511, 1. Other comments similarly agree that the current Act protects the political memorabilia and numismatic collecting areas and should be continued. See, e.g., Lubitz, 61, 1.

[18] APIC pointed out that the advent of color copying machines, color computer technology, and digital image creation and enhancement has increased the capability of individuals to ''create, maintain, use, transfer, and reproduce high quality images.'' APIC, 515, 7. ANA stated that, ''[a]ny change in relevant technology would only increase the ability to manufacture more deceiving replicas.'' ANA, 94, 3.

[19] ANA, 94, 2.

[20] Gallery Mint, 398, 2.

[21] APIC, 515, 3.

[22] See e.g., APIC: ''The costs imposed, if any, have been *de minimis.* The cost of adding a few more letters to a printing job * * * when the job is going to be undertaken regardless is negligible.'' APIC, 515 6. See also ANA, 94, 2; Coin World, 514, 3; and Gallery Mint, 398, 3.

[23] APIC, 515 6; and ANA, 94, 2.

[24] A few comments noted that the Rule technically overlaps with certain federal

Commenters that addressed the issue of whether the Rule imposes significant costs on small businesses indicated that the Rule imposes only *de minimis* costs on small firms [25] and several commenters stated there is no difference in the cost of compliance for small or large firms, [26] and that these costs are no different than a small business would incur under standard and prudent business practices. [27] For this reason, no commenters believed changes to the Rule were needed to reduce small business costs. [28]

Some comments indicated that the Rule is valuable to manufacturers and firms. One commenter stated that, ''The rules * * * have benefitted firms which intend to be good players. The rules have provided a standard means of denoting lawful status as a 'copy' which in turn has been recognized and accepted in the hobby and consumer marketplace.''[29] Similarly, another commenter noted the addition of the word ''copy'' or the date of manufacture may avoid litigation costs resulting from the intentional or unintentional sale of unmarked items as originals.[30]

2. Proposed amendments regarding covered products

a. Double-sided marking of ''copy'' on numismatic items.

One comment suggested amending the Rule to require that the word ''copy'' be marked on both sides of imitation numismatic items.[31] The Rule currently requires that the word ''copy'' be marked on either side of the coin (i.e., either the obverse or the reverse side of the item).[32] The comment argued that marking ''copy'' on only one side does not let potential buyers know that a replica on exhibit with only one side displayed or in an advertisement is an imitation because ''copy'' may be on the side not displayed.

The Commission has concluded that a requirement that ''copy'' be marked on both sides of an imitation coin is not warranted. The comments indicate that the current requirement for marking coins on only one side is highly successful. Regarding exhibited coins, the potential buyer would normally have the opportunity to fully view and physically handle the item, thus affording the opportunity to see the ''copy'' marking prior to purchase.

Regarding the concern that the word ''copy'' may not be displayed in advertising,[33] the Commission believes that coin depictions in advertising are likely to be small, making any ''copy'' marking proportionately even smaller. Double-sided marking of a coin is therefore unlikely to result in a prominent disclosure of the word ''copy,'' and thus would not remedy the alleged problem raised in the comment.

The Commission also believes that double-sided marking would not be without costs. Although the costs of marking ''copy'' on an additional side of the item might be slight, there would still be some cost to manufacturers. In addition, double-sided marking might detract from the esthetic appeal of the replica and could have adverse effects on the market for imitation numismatic items.

b. Require that all political items be marked with year of manufacture.

The Rule currently requires that *imitation* political items be marked with the date of manufacture. One comment recommended broadening the Rule to require that *all* political items, both original and imitation, be permanently and prominently marked with the year that the manufacturing process was completed.[34] According to the comment, requiring that the date of manufacture appear on all political items would prevent the consumer confusion and deception that occurs with certain types of political buttons. According to this comment, manufacturers routinely print excess ''button papers'' so that if they receive additional orders during the campaign they will not need to print additional papers. These excess papers may not be manufactured into finished political buttons, however, until years later. For example, the comment described a situation in which paper sheets of images created and printed in 1920 for the 1920 Cox-Roosevelt campaign were not put on buttons until 1997.

The Commission does not propose to expand the Rule to require the marking of original political items. First, the Commission does not have the authority to require such marking under the Act, which requires the marking of only imitation items. Second, the problem raised by the comment is already covered by the Act and Rule. The Act and Rule define ''Original political item'' as including ''any political button * * * produced for use in any political cause.'' [35] Until button paper is incorporated into a political button, a political button cannot have been ''produced'' for use in any political cause. A subsequently produced political button therefore would not be an ''original political item'' as defined in the Act and Rule. The type of button described by the comment would thus be an imitation political item that, under the current Rule, must be marked with the year of manufacture.

c. Replace minimum size requirements for required markings with a performanced-based standard.

The Rule currently mandates the font style and minimum size for the markings required by the Rule [36] but allows the minimum marking size for imitation numismatic items to be proportional to the size of the item.[37] The FRN asked whether the Commission should amend the Rule to replace the mandated minimum sizes with a performance-based standard, for example, with a clear and prominent disclosure requirement.[38]

Five commenters involved in the numismatic field addressed this issue. Three of those five favored keeping the existing size standards because they believe that the precise requirements of the current standard provide clear guidance as to what is lawful. According to these comments, a performance standard would introduce uncertainty that could cause delay, additional costs, or lead to litigation.[39] Two comments appeared to favor a performance-based standard, although both comments also noted the benefits of mandated size requirements.

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counterfeiting laws (Gallery Mint, 398, 3; and Ganz, 1, 1) and a consumer protection law in California (APIC, 515, 6). These comments, however, did not state that the Rule conflicted with these laws or that overlaps caused additional costs or burdens to small entities or other companies, or in any other way adversely affected businesses or consumers. The Commission, therefore, concludes that these minor overlaps do not warrant modification of the Rule.

[25] The Gallery Mint commented that while compliance with the Rule involves more time in production or die set-up, this is ''just the nature of the business'' and the requirements are ''very easy to adhere to.'' Gallery Mint, 398, 4. See also APIC, 515, 7; and Coin World, 514, 3.

[26] See, e.g., ANA: ''The cost of affixing the word 'copy' or the date would be the same for large and small firms.'' ANA, 94, 3.

[27] Coin World, 514, 3, and APIC, 515, 8.

[28] See. e.g., APIC. 515, 8; ANA, 94, 3; and Coin World, 514, 3.

[29] See. e.g., APIC, 515, 6.

[30] ANA, 94, 2.

[31] Coin World, 514, 3.

[32] 16 CFR 304.6(b)(2).

[33] The Act and Rule do not have requirements that address the advertising of covered products. The requirements address only the marking of the imitation numismatic or political item. Of course, misrepresenting a copy as an original in advertising would constitute a ''deceptive'' practice in violation of § 5 of the FTC Act. 15 U.S.C. 45.

[34] APIC, 515, 4.

[35] 15 U.S.C. 2106; and 16 CFR 304.1.

[36] *See* 16 CFR 304.5(3) and (4) (imitation political items) and 304.6(3) and (4) (imitation numismatic items).

[37] For example, the minimum total horizontal dimension of the word ''copy'' should be six millimeters or ''not less than one-half of the diameter of the reproduction.'' 16 CFR 304.6(3).

[38] 62 FR 14049.

[39] ANA, 94, 3; *Coin World*, 514, 3; and, Ganz, 1, 1.

Although one comment noted that in general mandated disclaimers are often so small as to render them worthless,[40] this comment also stated that the current Rule, with its mandated size standard, has materially lessened the amount of counterfeit political items in the marketplace.[41] This comment voiced support for modification of the current standard to a performance-based standard coupled with a ''though not smaller than'' requirement, with the caveat that ''the result must be at least as effective as the status quo.'' [42] Another comment supported adoption of a performance-based standard, specifically a clear and prominent standard, while at the same time expressing concern that ''there is too much room for individual translation'' without specific size requirements.[43]

The Commission has determined to keep the present minimum size standard. As noted previously, the comments indicated generally that the current standard is working well and does not impose significant costs on small entities or others. Second, several comments indicated that the certainty provided by the current standard allows them to plan and anticipate costs, and that a performance-based standard would eliminate these benefits and could cause confusion. Finally, the current standard already addresses a concern of those suggesting that the Commission consider a performance-based standard by allowing a minimum size for the word ''copy'' that is proportional to the size of the imitation numismatic item.

B. Comments Relating to Expanding Coverage of the Act and Rule to Antiques and Collectibles in General

As previously noted, the scope of the Act and Rule is limited to imitation political and numismatic items. This section discusses the numerous comments that related to products not presently covered by the Act and Rule.[44] In essence, these comments state that reproductions of many types of antiques and collectibles are being passed off as originals, causing economic harm to collectors and dealers. Because of improvements in technology, the comments alleged, even knowledgeable persons have difficulty differentiating the reproductions from the originals. The comments suggested two amendments to the Rules to address these problems. First, some comments proposed that the coverage of the Act and Rule be expanded to all reproductions of antiques and collectibles. Second, many comments also recommended that the Commission require permanent country-of-origin labeling for all reproductions of antiques and collectibles.

After carefully considering these proposals, the Commission has determined not to amend the Rule as suggested. First, as discussed above, the Hobby Protection Act applies only to imitation political and numismatic items. The Act does not provide the commission with authority to expand the Rule beyond the Congressionally mandated scope of the Act to cover all reproductions. The Commission also notes that existing laws and other resources address many of the problems discussed in the comments. In particular, country-of-origin marking for imports is under the jurisdiction of the U.S. Customs Service. Because many comments indicated that foreign-made reproductions pose the greatest problems, the Commission has brought the issues raised in this proceeding to the attention of the Customs Service, which has authority to take action where goods fail to bear a required country-of-origin marking.

1. The Scope and Source of the Passing-Off Problem

The comments suggested that there are many categories of collectibles subject to being passed off,[45] and that the volume of reproductions being offered for sale as originals may be large.[46] The comments provided several explanations for the passing-off problems. First, the comments uniformly stated that the quality of reproductions has greatly improved to the point that reproductions can be virtually indistinguishable from the originals.[47] Several comments noted that even experts may not be able to distinguish originals from reproductions.[48]

The comments appeared to agree that the quality of reproductions has improved, but were not in agreement regarding how these reproductions come to be passed off as originals. According to one commenter, the problem is not with reproductions being made for decorative purposes and sold in retail stores, where it is likely that purchasers are aware that they are buying reproductions. The problem begins when a reproduction subsequently enters the secondary market and may be passed off as an original.[49] Other commenters, however, argued that reproductions are intentionally sold as originals.[50]

The comments indicated that reproductions are made both overseas and domestically.[51] Although the comments do not present quantitative data that establishes the number of foreign-made reproductions being sold as originals in the United States, the majority of the commenters indicated that they believe the problems lie chiefly in overseas production.[52]

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[40] APIC, 515, 10.

[41] *Id.* at 2.

[42] *Id.* at 10.

[43] Gallery Mint, 398, 5.

[44] As described above, the Commission received over 1,000 letters advocating that the Act or Rule be expanded to cover all antiques and collectibles. *E.g.*, Sprowls, 276, 1; Bucher, 244, 1; Anderson, 58, 2; and Whitehouse, 20, 1. Many comments also described specific examples of individual instances involving the passing off of a reproduction as an original.

[45] As one comment stated, ''Fake and Repros exist in almost every sector of the collecting hobby.'' Donaldson, 11,1. The comments cite the passing off of the following products, among others: Nippon porcelain (Puckett, 45 1 and 223 form letter comments); Cambridge glassware (Upton, 505, 1); Griswold cast iron cookware (Smith, 498, 1); Coca Cola memorabilia and postcards (Wildman, 40, 1; Rutledge, 43, 1); antique quilts, transferware, majolica, and ironstone (Nickel, 18, 1); Tiffany lamps (Curry, 575, 1); calendars, calendar plates, almanacs and calendar art (Moses, 74, 1); Parrish and Nutting prints, powder horns and scrimshaw, Shaker items, Sterling Victorian match safes and lockets, Brilliant period cut glass patterns, Galle art glass, and perfume and scent bottles (Donaldson, 11, 1); and confederate veteran reunion badges and medals (Finlayson, 240, 1).

[46] See, e.g., Berndt, 52, 1; and LaBatt, 366, 1. These comments state that the commenter has visited many venues that allegedly sell reproductions as originals.

[47] See, e.g., Chervenka, 497, 2; ''Now, antique reproduction importers are manufacturing goods that are virtually identical copies of old originals including factory names, artist signatures and trademarks. Many of these new pieces * * * are cast in molds taken directly from old originals. This means new pieces do not just loosely resemble the original, they are an exact clone of the original.''

[48] Thoe, 540, 2; and Skeim, 225, 1.

[49] Billings, 22, 1.

[50] See, e.g., Tucker, 495, 1, who states that reproductions are made overseas, shipped to the United States with country-of-origin labels attached which then are removed somewhere in the distribution system and sold as originals. According to the commenter ''[t]his is fraud and * * * [t]he manufacturers of these items are well aware of what happens.'' Another commenter claims that, ''[m]ost of these items [reproductions] are expressly made to fool the general public as to authenticity.'' Porta, 572, 1.

[51] One comment noted that both domestic and overseas companies have mastered techniques for making pottery, wood, metals, and glass appear to be hundreds of years old. Thoe, 540, 1.

[52] See, e.g., Tucker, 495, 1. The comments state that a variety of countries are the sources of reproductions. For example, one comment states that Brazil, France, Italy, and several Far East countries export all types of reproductions of antiques and collectibles while the Philippines manufactures ''antique'' oak furniture which is imported into the United States and sold as authentic antiques. Sprowls, 276, 1. Another comment alleges that Galle glassware reproductions are ''being mass produced'' in Romania, China, and Japan while Roseville pottery is being produced in China. Chervenka, 497, 2.

Several comments also cite the domestic production of replicas that are passed off as originals. See, e.g., Finlayson, 240, 1.

The comments present numerous anecdotes regarding the harm caused by passing off. Although these anecdotes do not present information sufficient to quantify or determine the amount of economic and other harm caused, the following is a summary of the adverse effects noted in the comments: That the individual buyer pays considerably more than the product is worth;[53] that owners of original antiques or collectibles which are heavily reproduced lose the value of their investment;[54] that the uncertainty regarding the genuineness of antiques and collectibles dissuade persons from purchasing originals or from becoming collectors, which also adversely affects businesses that deal in originals.[55]

2. Proposals To Expand Coverage of the Rule to Non-Covered Products

Many comments propose that the coverage of the Act be expanded to all antiques and collectibles.[56] A number of comments suggest, as an alternative to expanding the coverage of the Act or in addition to such expansion, that both foreign and domestic reproductions be marked permanently with the country-of-origin. The comments generally suggested that foreign reproductions with country-of-origin labels that are non-permanent are the primary source of the passing-off problem.[57] For several reasons, however, the Commission does not propose to adopt the remedies suggested by the comments.

First, the Act does not provide the Commission with legal authority to expand the coverage of the Act to all antiques and collectibles. The plain language of the Act encompasses only numismatic and political items and directs the Commission to promulgate rules regarding the marking of only these covered products. For this reason, the Commission cannot amend the Rule to include products not itemized in the Act to require the marking of items not covered by the Act.

Second, the Commission believes that existing federal and state laws adequately address the key issues raised in the comments. For example, the majority of comments cited imported reproduction as the most significant source of passed-off goods. Well-established laws and regulations already in existence address country-of-origin markings for goods imported into the United States. Specifically, country-of-origin marking for imports is under the jurisdiction of the U.S. Customs Service, which enforces the Tariff Act.[58] Under the Tariff Act, every article of foreign origin must be legible, indelibly, and permanently marked in a conspicuous place to indicate the country of origin. The Act also allows the container of an imported good to bear the origin marking rather than the good itself, as long as the good reaches the ultimate purchaser in the container. Under the Tariff Act, then, a permanent marking is a marking that will remain on the article or container until it reaches the ultimate purchaser, although the marking may be removed by the ultimate purchaser and need not be of a permanence to remain affixed once in his or her possession. This marking may not be removed prior to delivery to the ultimate purchaser, however, and anyone who removes this marking prior to such delivery could be subject to prosecution and criminal penalties.

Commission staff has brought the concerns regarding foreign origin marking raised in this proceeding to the attention of the Customs Service because Customs regulations have an impact on several of the problems discussed in the comments. For example, several comments indicated their belief that country-of-origin labels are deliberately removed.[59] The Customs Service urges persons with information regarding the violative removal of required country-of-origin markings to write to: Office of Field Operations, ATTN: Commercial Enforcement Branch, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Washington, DC 20229 or to call Customs' toll free Commercial Fraud Hotline, 1–800–ITS–FAKE.

In addition to the deliberate removal of country-of-origin labels, many comments suggested that the lack of truly permanent country-of-origin labels on reproductions results in these reproductions being passed off as originals in the secondary market.

The Commission declines to prohibit the legal removal or loss of country-of-origin labels and does not have authority under the Act to require the origin marking of domestic reproductions. Other legal remedies are available, however. For example, passing off can be prosecuted as criminal fraud[60] or as civil fraud in a lawsuit by the buyer.[61] Additionally, if the passing off involves illegal trademark infringement, it may be actionable in a private lawsuit under the Lanham Act.[62] Further, a pattern or practice of significant affirmative misrepresentations or failures to disclose material information relating to reproductions passed off as originals may violate Section 5 of the Federal Trade Commission Act.[63]

[53] See, e.g., Chervenka, 497, 2, describing circumstances in which buyers mistook new Galle glassware for old and paid $10,000 for a reproduction which cost about $500 wholesale and paid $3,500 for a different reproduction which cost $450 wholesale. Another example mentioned was a buyer allegedly spending ''tens of thousands'' of dollars for a Tiffany lamp at ''one of the better known auction houses that employed in-house experts'' only to find out later that it was not genuine and worth less. Craig, 575, 1.

[54] Due to the glut of reproductions, ''[m]any older people who wish to sell their antiques and collectible are not getting the full value'' (Dillinger, 103, 1) while some collections ''will never recover their value because of the flood of * * * reproductions.'' Nickel, 18, 1.

[55] The comments allege that uncertainties of investment value caused by reproductions ''scare off novices who might otherwise collect these items [original antiques and collectibles]'' (Billings, 22, 1) and make collectors not buy ''for fear of reproductions.'' Skeim, 225, 1. Dealers have commented that customers' fear of buying reproductions have adversely affected their business. Vierling, 532, 1; and Craven, 508, 1.

[56] The 721 comments generated from the Antique Week form comment stated that the Act should be expanded to all antiques and collectibles and that the Commission recommend such expansion to Congress. E.g., Lubitz, 61, 1. The 223 comments using or based on the Nippon Collector's Club form letter as well as the 34 comments using or based upon the Antiques Journal form letter urged the extension of the regulatory powers of the Act to require permanent, non-removable marking for collectibles other than those currently covered. E.g., Dersheimer, 59, 1; and Mercier, 4, 1. Additionally, numerous non-form comments suggested the expansion of coverage of the Act to other antiques and collectibles. E.g., Gregory, 5, 1; Ritchie, 9, 1; Nickel, 18, 1; SeGall, 26, 1; Castle, 295, 1; James, 381, 1; Reid, 415, 1; Fendelman, 494, 1; and Curry, 575, 1. Presumably, these comments intend that all antiques and collectibles would be marked with the word ''copy'' or the date of manufacture.

[57] See, e.g., Brady, 47, 1. See also Reynolds, 169, 1; Barrie, 19, 2; Cotton, 21, 1; Berndt, 52, 1; and Carner, 213, 1.

[58] 19 U.S.C. 1304. The Tariff Act of 1930, as amended, and implementing regulations (19 CFR 134) are available at Customs Website: ''www.customs.ustreas.gov''.

[59] See note 50 supra.

[60] *E.g.*, Castle, 295, Attachment 1 (describing a criminal law enforcement inquiry regarding reproduction ''acid cutback'' lamps and vases and bronze statues being sold as antiques).

[61] Section 2–721 of the Uniform Commercial Code provides civil remedies for material misrepresentation and fraud in sales transactions;

[62] 15 U.S.C. 1125. See also Goshe, 528, 1 (describing collector's club successful law suit against manufacturer of reproductions that had illegally obtained logo trademark).

[63] Section 5 of the Federal Trade Commission Act prohibits deceptive acts or practices in commerce. 15 U.S.C. 45. A deceptive act or practice is one that is likely to mislead consumers acting reasonably under the circumstances. See Cliffdale Associates, Inc., 103 F.T.C. 110 (1984). As a matter of policy, however, the Commission does not generally intervene in individual disputes. Generally, the instances of passing off described in the comments reflect specific individual transactions, rather than a pattern or practice of passing off. Where the Commission obtains evidence of such a pattern or practice, however, it can take action. For example, the Commission recently sued a company that had telemarketed purportedly rare ''error'' postage stamps to consumers as valuable, safe, and liquid investments, at highly inflated prices. *FTC* v. *Equifin International, Inc.*, Financial Frontiers, and F. Jerold Hildreth, No. CV–97–4526–DT (CWx) (C.D. Cal. Dec. 11, 1997).

In addition to legal remedies, the record indicates that there are non-legal resources available to educate consumers about antiques and collectibles and thus reduce consumers' susceptibility to the practice of passing off. For example, several newsletters and hobby newspapers regularly warn and advise buyers of antiques and collectibles about reproductions of specific items and classes of items [64] Many comments also indicate that there are collector clubs for many categories of collectibles that provide members with similar information. Commission staff will explore whether there is a role for the Commission in these efforts to increase consumer awareness.

IV. Conclusion

The comments uniformly favor retention of the Rule and state that there is a continuing need for the Rule with regard to currently covered products, i.e., imitation numismatic and political items; that the Rule provides benefits to consumers and industry; that the Rule does not impose substantial economic burdens; and that the benefits of the Rule outweigh the minimal costs it imposes. Although the comments addressing the impact of the Rule on small entities were minimal, these comments, including comments from major national associations in the numismatic and political items trade, indicate that the Rule does not place significant burdens on small entities. Accordingly, the Commission certifies that the Rule has not had a significant impact on a substantial number of small entities.

Although many comments recommended that the Act and Rule be expanded to cover all antiques and collectibles, the Commission does not have the authority under the Act to expand the Rule in this manner. In addition, there are a variety of legal and non-legal resources that address many of the issues raised by the commenters favoring expansion of the Act's coverage. Accordingly, the Commission has determined to retain the current Rule and is terminating this review.

List of Subjects in 16 CFR Part 304

Hobbies, Labeling, Trade practices.

Authority: The Federal Trade Commission Act, 15 U.S.C. 41–58 and the Regulatory Flexibility Act, 5 U.S.C. 601.

[64] See Chervenka, 497, 3 (publisher of Antique & Collectors Reproduction News) and Antique Week, 499, attachments.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–17929 Filed 7–6–98; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE53

Administrative Review Process; Identification and Referral of Cases for Quality Review Under the Appeals Council's Authority To Review Cases on Its Own Motion

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are amending our regulations to include rules under which a decision or order of dismissal that is issued after the filing of a request for a hearing by an administrative law judge (ALJ) may be referred to the Appeals Council for possible review under the Appeals Council's existing authority to review cases on its own motion. These final rules codify identification and referral procedures that we currently use to ensure the accuracy of decisions that ALJs and other adjudicators make at the ALJ-hearing step (hearing level) of the administrative review process. The rules also codify new quality assurance procedures to ensure the quality of dispositions at the hearing level.

DATES: This rule is effective August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243 for information about this notice. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

Under procedures set forth in §§ 404.967 ff. and 416.1467 ff., and pursuant to a direct delegation of authority from the Commissioner of Social Security, the Appeals Council, a component in our Office of Hearings and Appeals (OHA), reviews hearing decisions and orders of dismissal issued by ALJs and decisions issued by certain other adjudicators. The Appeals Council may review an ALJ's decision or dismissal of a hearing request at the request of a party to the action or, pursuant to §§ 404.969 and 416.1469, on its own motion. Through the exercise of its authority to review cases, the Appeals Council is responsible for ensuring that the final decisions of the Commissioner of Social Security in claims arising under titles II and XVI of the Social Security Act (the Act), as amended, are proper and in accordance with the law, regulations, and rulings.

The Appeals Council's authority to review cases on its own motion also applies, at present, to two types of hearing-level cases that do not result in decisions by ALJs. Under §§ 404.942 and 416.1442, attorney advisors in OHA are authorized until July 1, 1998, to conduct certain prehearing proceedings and to issue, where warranted by the documentary evidence, wholly favorable decisions. Under the provisions of §§ 404.942 (e)(2) and (f)(3) and 416.1442 (e)(2) and (f)(3), such decisions are subject to review under the own-motion authority of the Appeals Council established in §§ 404.969 and 416.1469. In addition, under §§ 404.943 and 416.1443, adjudication officers are authorized, for test purposes, to conduct certain prehearing proceedings and to issue, where warranted by the documentary evidence, wholly favorable decisions. Under the provisions of §§ 404.943(c)(2)(ii) and 416.1443(c)(2)(ii), such decisions are also subject to review on the Appeals Council's own motion.

Under our regulations on the Appeals Council's procedures, if the Appeals Council decides to review a case in response to a request for review or on its own motion, it may issue a decision or remand the case to an ALJ. The Appeals Council may also dismiss a request for hearing for any reason that the ALJ could have dismissed the request.

A decision by the Appeals Council ''to review'' a hearing-level decision means that the Appeals Council assumes jurisdiction and causes that decision not to be the final decision of the Commissioner of Social Security. A decision that the Appeals Council ''reviews'' will be replaced by a new final decision or dismissal order of the Appeals Council or, if a hearing or other hearing-level proceedings are required, by a decision or dismissal order issued following remand of the case from the Council to an ALJ.

A decision by the Appeals Council to review a case is made when, following a consideration of the case to determine if review is appropriate, the Council issues a notice of its decision to review. The Council's standard notice of review

advises the parties of the reasons for the review and (unless the Council issues a wholly favorable decision upon taking review) the issues to be considered in proceedings before the Council or before an ALJ on remand. In instances in which the Council reviews a hearing level decision that has been issued based on the documentary evidence without the holding of an oral hearing by an ALJ, the parties have the right to such a hearing, except where the parties waive that right in writing.

The existing provisions in §§ 404.969 and 416.1469 on the Appeals Council's authority to review cases on its own motion provide that the Appeals Council itself may decide to review a case within 60 days after the date of the hearing decision or dismissal and that, if the Council does review a case under this authority, it will provide notice to the parties to the hearing decision or dismissal action. Sections 404.969 and 416.1469 do not currently address the procedures used in identifying and referring cases to the Appeals Council for it to consider for possible review on its own motion.

The Appeals Council *may* review any case on its own motion pursuant to §§ 404.969 and 416.1469. The conditions under which the Appeals Council *will* review a case, on request for review or on its own motion, are set forth in §§ 404.970 and 416.1470. Those sections provide that the Council will review a case if: (1) There appears to be an abuse of discretion by the ALJ; (2) there is an error of law; (3) the action, findings or conclusions of the ALJ are not supported by substantial evidence; or (4) there is a broad policy or procedural issue that may affect the general public interest. Sections 404.970 and 416.1470 further provide that the Council will also review a case if new and material evidence is submitted that relates to the period on or before the date of the ALJ's decision and the Council finds, upon evaluating the evidence of record and the additional evidence, that an action, a finding or a conclusion of the ALJ is contrary to the weight of the evidence currently of record as a whole.

In fiscal year 1996 (FY '96), the Appeals Council received 99,735 requests for review. In FY '97, the number of requests for review received by the Appeals Council rose to 112,528. Most of these requests were for review of unfavorable decisions and dismissal actions; some concerned partially favorable decisions; and a few concerned decisions that were wholly favorable regarding the benefits claimed, but were found by a party to the decision to be less than fully satisfactory for some other reason.

In FY '96, the Appeals Council considered 8,502 cases for possible review under its own-motion authority; in FY '97, the Council considered 8,012 cases for possible review under that authority. Almost all of these cases involved favorable hearing-level decisions that were referred to the Appeals Council under one of two types of identification and referral procedures we currently use—random sample procedures, which generated the majority of this workload, and ''protest'' procedures.

Existing Identification and Referral Procedures

The Appeals Council considers, for possible review on its own motion, a national random sample of favorable ALJ decisions that have not been implemented, and, as resources permit, a random sample of unappealed denial decisions and dismissals. We conduct these random sample procedures pursuant to sections 205(a), 702(a)(4) and 1631(d) of the Act, which give the Commissioner of Social Security general responsibility and authority for program administration and oversight.

The Appeals Council also considers, for possible review on its own motion, a random sample of wholly favorable decisions issued by attorney advisors under the provisions of §§ 404.942 and 416.1442. Wholly favorable decisions issued by adjudication officers under the provisions of §§ 404.943 and 416.1443 are also identified by random sampling for referral to the Appeals Council for possible own-motion review. These procedures have been established in accordance with commitments we made, in publishing the final rules for the attorney advisor and adjudication officer provisions, to assess carefully the quality of the decisions issued by the attorney advisors and the adjudication officers (see 60 FR 34126, 34127 (1995) and 60 FR 47469, 47471 (1995), respectively).

Our existing identification and referral procedures also include those under which the SSA components responsible for effectuating hearing-level decisions—SSA Processing Centers (PCs) and Field Offices (FOs)—refer (''protest'') certain cases to the Appeals Council for possible review under its own motion authority. The PCs, which include our Program Service Centers and the Office of Disability and International Operations, refer cases directly to the Appeals Council; FOs forward cases to a PC or an SSA Regional Office, which decides if the PC or the Regional Commissioner should make a referral to the Council.

Decisions by ALJs, attorney advisors and adjudication officers are all subject to referral to the Appeals Council under our protest procedures. Almost all protested decisions are favorable decisions because almost all of the ALJ decisions that require implementation are wholly or partially favorable decisions under which benefit payments are to be effectuated (initiated or continued), and because all decisions issued by attorney advisors and adjudication officers are wholly favorable. In protesting a decision, an effectuating component may recommend that the decision be made more or less favorable or unfavorable. The Appeals Council, however, will decide whether to review such a case, and the appropriate disposition if it decides to review a case, based on its consideration of the record and the hearing-level decision.

Effectuating components refer a case if they believe the need for referral is clear (not dependent on a judgment factor) because: (1) the decision contains a clerical error which affects the outcome of the claim; (2) the decision is contrary to the Act, regulations or rulings; or (3) the decision cannot be effectuated because its intent is unclear as to an issue affecting the claim's outcome.

Effectuating components refer cases to the Appeals Council by written memoranda. If the Council decides to review a referred case, it provides the parties a copy of the effectuating component's referral memorandum with the notice by which it advises the parties that it will review the case.

We are amending our regulations to include rules on the existing random sample and protest procedures discussed above. We have decided to codify these procedures in connection with the decision we made, in furtherance of the *Plan for a New Disability Claim Process* (59 FR 47887 (1994) (henceforth, the *Disability Redesign Plan*)), to strengthen the Appeals Council's own-motion functions by establishing a new process for identifying and referring cases for possible review under the Council's existing own-motion authority.

New Identification and Referral Procedures

The Appeals Council currently considers only a small percentage of all favorable decisions issued at the hearing level for possible review under its own-motion authority. (The Council's workload in this area represented fewer than 3 percent of such decisions in FY

'96 and FY '97.) In addition, the processes currently used to select decisions for possible review on the Appeals Council's own motion are generally not designed to identify, in any systematic way, hearing-level decisions that are more likely to be incorrect. The random sample processes bringing cases before the Appeals Council do not identify cases other than by techniques designed to assure randomness of selection within broadly identified categories (i.e., allowances, unappealed denials, and dismissals). The identification of ''protest'' cases that occurs in the effectuation process is a secondary function of a process that is principally focused on the prompt payment of benefits.

Based on the above considerations, we are establishing procedures under which our Office of Quality Assurance and Performance Assessment (OQA), the SSA component that oversees SSA's quality assurance function, will examine certain allowance decisions at the hearing level that have been selected through statistical sampling techniques. OQA will refer to the Appeals Council for possible review the decisions it believes meet the criteria for review by the Council. Decisions that have been issued at the hearing level will initially be included in this examination process by random sampling. As we develop the computer systems and other technical capacities needed to support this function, we will use selective sampling techniques that rely on case profiling and other sampling methods that can identify cases which involve problematic issues or fact patterns that increase the likelihood of error.

Under the new process, upon referral of a case by OQA, the Appeals Council will consider the case and OQA's reasons for believing that the decision should be reviewed. The Appeals Council will decide whether to review the case in accordance with §§ 404.969–404.970 and/or 416.1469–416.1470. If it decides to review the case, the Appeals Council will provide the parties a copy of OQA's referral, which will be in writing, with its notice of review. The 60-day time limit for the Appeals Council to initiate review of a case under the authority and standards provided in §§ 404.969–404.970 and 416.1469–416.1470 will apply to cases the Council considers for review in response to referrals from OQA.

The Act does not specify how SSA should review hearing-level decisions. We believe that the new procedures we are establishing, in combination with the existing identification and referral procedures that we are including in our regulations, are appropriate procedures for carrying out the program oversight responsibilities of the Commissioner of Social Security.

An important purpose of the new procedures is to increase our ability to identify policy issues that should be clarified through publication of regulations or rulings. We plan to monitor how our policies are understood and implemented through a post-adjudicative evaluation process in which we will analyze differences of view between the Appeals Council and OQA concerning cases referred under the new procedures. We believe this post-adjudicative process, in conjunction with the new OQA referral process, will increase our ability to identify needed policy clarifications.

Regulatory Provisions

As revised in these final rules, §§ 404.969 and 416.1469 set forth the Appeals Council's own-motion authority and state that we refer cases to the Appeals Council for it to consider reviewing under that authority. Sections 404.969 and 416.1469 also describe the identification and referral procedures we will follow and the actions the Appeals Council will take in cases it considers for possible review on its own motion. These sections apply to all cases that our regulations make subject to own-motion review by the Council.

Sections 404.969(b) and 416.1469(b) specify that we will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. These sections provide that we will identify cases for referral through random and selective sampling techniques, that we may examine cases identified by sampling to assess whether the criteria for review by the Appeals Council are met, and that we will also identify cases for referral through the evaluation of cases we conduct in order to effectuate decisions.

Under §§ 404.969(b)(1) and 416.1469(b)(1), we may conduct random and selective sampling of cases involving all types of actions that occur at the hearing level of the administrative review process (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of title II or title XVI benefits (i.e., different types of benefits based on disability and benefits not based on disability). Our decision to adopt these rules rests on our conclusion that we should increase the number of favorable disability decisions the Appeals Council considers for possible review on its own motion to better balance the Council's review of favorable and unfavorable decisions. However, the Council's existing authority to review cases on its own motion covers all types of title II and title XVI cases adjudicated at the hearing level, and these final rules will allow use of the identification and referral procedures being set forth with respect to all such cases.

Sections 404.969(b)(1) and 416.1469(b)(1) specify that we will use selective sampling to identify cases that exhibit problematic issues or fact patterns that may increase the likelihood of error. Under these provisions, the factors considered in random and selective sampling shall not include the identity of the decisionmaker or the identity of the office issuing the decision.

Sections 404.969(b)(1) and 416.1469(b)(1) also authorize, but do not require, that we examine cases that have been identified through random or selective sampling. Cases may be identified for referral by random or selective sampling. The purpose of the examination of cases that we may conduct is to refine the identification of cases in which one or more of the criteria for own-motion review by the Appeals Council may be met.

Sections 404.969(b)(2) and 416.1469(b)(2) provide that effectuating components will identify cases for referral under criteria they presently use to identify cases that they believe exhibit clear error and other circumstances preventing effectuation of a decision. Any type of decision requiring effectuation may be identified for referral under these provisions.

Under §§ 404.969(c) and 416.1469(c), we will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Sections 404.969(c) and 416.1469(c) also provide that referrals resulting from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral, and that referrals resulting from random sampling without a case examination will only identify the case as a random sample case. A statement of the issue(s) or fact pattern identified in selective sampling may be computer generated.

Sections 404.969(d) and 416.1469(d) specify that the Appeals Council's notice of review will include a copy of any written referral provided to the Appeals Council. These provisions also include language clearly stating our long-standing policy that issuance of the notice of review establishes when a decision to conduct a review occurs (see

Hearings and Appeals Litigation Law Manual (HALLEX), section I–3–301).

Sections 404.969(d) and 416.1469(d) also state our policy that when the Appeals Council is unable to decide whether to review a case on its own motion within the 60-day period in which it may do so, it may consider whether the decision should be reopened under the provisions of §§ 404.987 and/or 416.1487, which authorize the Council to reopen a decision that has become administratively final on its own initiative or at the request of a party to the decision, if a condition for reopening stated in §§ 404.988 or 416.1488 is present. Inclusion of this statement in the regulations clarifies our long-standing policy that the Appeals Council may also reopen final decisions in accordance with §§ 404.987, 404.988, 416.1487, and 416.1488 after the 60 days for initiating review under §§ 404.969 and 416.1469 have expired (see Social Security Acquiescence Ruling (AR) 87–2(11)).

Sections 404.969(d) and 416.1469(d) also state, finally, that if the Appeals Council decides to review a decision on its own motion or to reopen a decision as provided in these rules, the notice of review or the notice of reopening issued by the Appeals Council will include, where appropriate, information concerning the interim benefit provisions of section 223(h) or section 1631(a)(8) of the Act, as appropriate. This provision reflects existing practices we follow under these statutory provisions.

Public Comments

These regulatory provisions were published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 25, 1997 (62 FR 50266). We received statements in response to the NPRM from 15 individuals and organizations. The individuals responding included ALJs employed by SSA and attorneys who represent individuals claiming rights under the Social Security and supplemental security income (SSI) programs. The organizations responding included a number of legal aid groups and four professional associations: The Association of Administrative Law Judges, Inc., the National Association of Disability Examiners, the National Council of Disability Determination Directors, and the National Organization of Social Security Claimants' Representatives.

Some commenters endorsed the proposed rules, with or without recommending changes in the rules; others opposed the rules, with or without recommending changes in the event of their adoption. Other commenters accepted the general appropriateness of rules like those proposed while also recommending changes in the final rules or requesting assurances about how the rules would be applied. Generally, the commenters who opposed the rules raised issues about the bases for the proposed rules and contended that they were intended to intimidate ALJs and would be unfair to claimants in general and to individuals whose cases were included in the new procedures. Comments favoring adoption of the rules generally emphasized the appropriateness of better balancing the review of favorable and unfavorable decisions issued at the ALJ-hearing step of the administrative review process.

The NPRM referred to the component that would perform the case examinations included in the proposed new quality assurance procedures as the ''Office of Program and Integrity Reviews.'' (*See* 62 FR 50266, 50268.) Since publication of the NPRM, this component's name has been changed to the ''Office of Quality Assurance and Performance Assessment.'' We have used the new name and its acronym, ''OQA,'' in the above discussion of these final rules and in the following discussion of the public comments and our responses.

Because some of the comments were detailed, we have condensed, summarized or paraphrased them. We have, however, tried to summarize the commenters' views accurately and to respond to all of the significant issues raised by the commenters that are within the scope of the proposed rules. For the reasons explained below in our responses to specific comments, we have not adopted the recommendations against promulgating these final rules or some of the specific recommendations we received for changing the rules as proposed. However, in response to the comments, as discussed below, we are clarifying the intent of the rules in several respects and making five clarifying changes in the regulatory language. For reasons discussed following the discussion of the comments and our responses, we are also making one editorial change in the regulatory language that is not in response to a specific comment.

Comment: One commenter thought that the proposed rules would blur the roles of the Appeals Council and OQA and shift to the Appeals Council trend-spotting and policymaking functions that should be performed by OQA.

Response: The Appeals Council has traditionally used its adjudicative experience as a basis for providing comments and recommendations in SSA's policymaking processes. An important purpose of the new procedures is to make better use of the Council's adjudicative experience for policymaking purposes. If the case disposition the Appeals Council makes in response to a referral from OQA indicates that the case may pose a significant policy or program issue, a post-adjudicative evaluation will be performed. OHA will participate in such evaluations to assure that the Council's adjudicative experience is reflected in the assessment of the policy and program issues the cases present. These procedures represent a new way to make use of the Appeals Council's experience in our policymaking processes; the procedures do not, in our judgment, blur the Council's role as an adjudicative body.

Comment: One commenter stated that we should specify, as we have already done with respect to our selective sampling procedures, that the identity of the decisionmaker or the office issuing a decision will also not be a factor in our random sampling and ''protest'' procedures.

Response: Because the random sampling procedures we are adopting may be applied to variously defined categories of cases (e.g., unfavorable decisions issued between given dates), we believe it would be appropriate to specify, in accordance with our intent, that the identity of the decisionmaker or of the office issuing the decision will not be a factor in either our random or our selective sampling procedures. Accordingly, we have modified the provisions of §§ 404.969(b)(1) and 416.1469(b)(1), and the description of these regulatory provisions set forth above, to make this point clear.

We believe that the identity of the decisionmaker or office would clearly not be a factor that might be encompassed within the criteria stated in §§ 404.969(b)(2) and 416.1469(b)(2) for identifying cases for referral as a result of the effectuation process. Therefore, we are not modifying the language of those provisions in response to this comment.

Comment: Several commenters were concerned about the proposed provisions of §§ 404.969(d) and 416.1469(d) that stated: ''If it is unable to decide within the applicable 60-day period whether to review a decision or dismissal, the Appeals Council may consider the case to determine if the decision or dismissal should be reopened pursuant to § 404.987 [416.1487].'' These commenters expressed views to the effect that these

provisions would effectively do away with the 60-day limit on own-motion review and make the grounds for own-motion review applicable for reopening purposes.

Response: As we discussed in the preamble to the NPRM and in the above description of the regulatory provisions, the language in question in this comment is intended to allow the Appeals Council to ''consider whether the decision should be reopened under the provisions of §§ 404.987 and/or 416.1487, which authorize the Council to reopen a final decision on its own initiative or at the request of a party to a decision, if a condition for reopening stated in §§ 404.988 and/or 416.1488 is present.'' The regulatory provisions as proposed reflected that intent by stating that the Council will consider if it should reopen the decision or dismissal action ''pursuant to § 404.987 [416.1487]'', because those sections make reopening contingent on satisfaction of the requirements set forth in §§ 404.988 and 416.1488. However, to make it unmistakably clear that we intend this provision to allow a decision to be reopened only if a condition for reopening described in §§ 404.988 or 416.1488 is present and the time limits established in those sections are also satisfied, we have modified the regulatory language to provide that the Appeals Council may determine if a decision or dismissal received under §§ 404.969 or 416.1469 ''should be reopened pursuant to §§ 404.987 and 404.988 [416.1487 and 416.1488].''

Comment: Several commenters thought that the intent of the proposed provisions concerning reopening in §§ 404.969(d) and 416.1469(d) should be clarified relative to the decision of the United States Court of Appeals for the Eleventh Circuit in *Butterworth* v. *Bowen,* 796 F.2d 1379 (11th Cir. 1986).

Response: In *Butterworth,* the Court of Appeals for the Eleventh Circuit held that the Appeals Council could reopen an ALJ's decision only if the case is ''properly before'' the Council, and that the circumstances in which the Council would have an ALJ's decision properly before it did not include those in which it had considered, but not timely taken, own-motion review. The court concluded that: ''[W]e have not held that the Secretary is precluded from initiating the reopening and revising of cases. We have only given section 404.969 its necessary force and recognized that it limits somewhat the reopening jurisdiction of the Appeals Council.''

We acquiesced in the holding in *Butterworth* by publishing AR 87–2(11). We issued this ruling because we determined that the court's holding conflicted with our longstanding policies that the Appeals Council may reopen any ALJ decision if the requirements in §§ 404.987 and 404.988 or 416.1487 and 416.1488 are met, and that such reopening actions are subject only to the time limits set forth in those regulations and not to time limits in any other regulations, including the 60-day time limit in §§ 404.969 and 416.1469.

In accordance with the provisions of 20 CFR § 404.985(e)(4) and 416.1485(e)(4), we are rescinding AR 87–2(11). Sections 404.985(e)(4) and 416.1485(e)(4) provide that an AR may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the AR was issued. As explained in a notice of the rescission of AR 87–2 that we are publishing concurrently with these final rules (*see* the notices section of this **Federal Register**), we are rescinding this AR as obsolete based on the language that we are including in §§ 404.969(d) and 416.1469(d) in these final rules to clearly state our policy that the Appeals Council has authority to reopen, in accordance with the requirements of §§ 404.987, 404.988, 416.1487, and 416.1488, ALJ decisions that come before it for possible own-motion review. This language establishes that a case that has come before the Appeals Council under the provisions of §§ 404.969 or 416.1469, and for which the 60-day period for taking own-motion review has lapsed, is properly before the Council for the purpose of considering reopening under the existing regulations on reopening. This language also establishes that it is our intent that the Appeals Council's authority to reopen an ALJ's decision in accordance with the provisions of those regulations, which establish conditions for reopening that differ from the conditions for own-motion review, should not be subject to the 60-day time limit in §§ 404.969 and 416.1469.

Comment: Several commenters believed that fundamental fairness requires the Agency to accord ALJ decisions such finality as to preclude the Appeals Council from reopening ALJ decisions referred to it for possible own-motion review.

Response: Our regulations on reopening and revising determinations and decisions allow us to reopen final, favorable and unfavorable determinations and decisions under stated conditions, on our initiative and at the request of claimants. These regulations enable us to provide relief to individuals whose claims should not have been denied and to protect the integrity of the Social Security and SSI programs by reopening favorable determinations and decisions that should not have been made. If an individual is dissatisfied with a revised determination or decision made after reopening, the individual may request further administrative or judicial review, as appropriate. We believe that our rules on reopening are fundamentally fair and that they do not deny appropriate finality to ALJ decisions or to any of our final dispositions, all of which are subject to the same rules of reopening.

Comment: Two commenters thought that, since these rules contemplate that the number of favorable decisions reviewed by the Appeals Council will increase, the rules should provide for informing claimants of their rights to interim benefits under sections 223(h) and 1631(a)(8) of the Act.

Response: Sections 223(h) and 1631(a)(8) of the Act provide that, where an ALJ has determined after a hearing that an individual is entitled to Social Security benefits based on disability or is eligible for SSI benefits based on disability or blindness, and the Commissioner of Social Security has not issued a final decision within 110 days after the date of the ALJ's decision, such benefits shall be currently paid for the months during the period specified in section 223(h) or section 1631(a)(8), as appropriate. Any benefits paid under these sections will not be considered overpayments unless the benefits were fraudulently obtained. We have implemented sections 223(h) and 1631(a)(8) through guidance provided in our Program Operations Manual System (POMS), sections DI 42010.205 ff. and SI 02007.001 ff., and in our HALLEX, section I–3–655. We pay interim benefits under our procedures if an ALJ has issued a favorable decision in a claim for initial or continuing benefits based on disability or blindness, the Appeals Council has either initiated review of the decision under its own-motion authority or reopened the decision pursuant to our reopening regulations, 110 days have elapsed since the date of the ALJ's decision, and the Commissioner has not issued a final decision.

The notice the Appeals Council issues upon initiating own-motion review or reopening of a decision covered by section 223(h) or section 1631(a)(8) advises claimants of the interim benefit provisions of those sections. However, we believe it would be appropriate, in response to this comment, to include language in §§ 404.969(d) and 416.1469(d) to inform claimants that they will be advised of the interim

benefit provisions of section 223(h) or section 1631(a)(8), if appropriate, where the Appeals Council reviews a favorable ALJ decision on its own motion or reopens such a decision as provided in the regulations. Accordingly, we have added such language and modified the description of these regulatory provisions set forth above to reflect this addition.

Comment: One commenter stated that the proposed rule changes were being made ''pursuant to'' section 304(g) of Pub. Law 96–265, the provision of the Social Security Disability Amendments of 1980 commonly referred to as the Bellmon Amendment. Two other commenters also thought that the proposed rules relied on this statutory provision for their basis or authority.

Response: As discussed above and in the preamble to the NPRM, we are amending our regulations to include these new quality assurance procedures to further the goals of the *Disability Redesign Plan*. More specifically, we are including these procedures to better balance the Appeals Council's review of favorable and unfavorable decisions and to increase our ability to identify policy issues that should be clarified through publication of regulations or rulings.

The statutory authority under which we are adopting these rules includes sections 205(a), 702(a)(5), and 1631(d) of the Act, which give the Commissioner of Social Security broad authority to establish rules and procedures governing the process for determining claims for benefits under titles II and XVI. We are also proceeding under sections 205(b) and 1631(c)(1) of the Act, which, in addition to directing the Commissioner to hold hearings and render decisions on the basis of evidence adduced at the hearing, also provide that: ''[t]he Commissioner * * * is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this title.''

These rules are not being promulgated to carry out the provisions of section 304(g) of Pub. Law 96–265 although this provision remains in effect and supports the general proposition that SSA should conduct some form of own-motion review of disability decisions issued by ALJs. Because authority beyond that provided in the Act is not required for the purposes of these rules, we have decided not to revise the authority citations for Subpart J, Part 404, and Subpart N, Part 416, to include references to section 304.

Comment: One commenter thought that the new quality assurance procedures would misinterpret section 304(g) of Pub. Law 96–265 to justify focusing exclusively on allowance decisions.

Response: In promulgating these rules, we are interpreting section 304(g) of Pub. Law 96–265 to be consistent with the Commissioner of Social Security exercising his discretion to design and implement a program, like that established in these rules, for having the Appeals Council consider for review, on its own motion, disability decisions issued by ALJs. We believe this interpretation comports with the intent of section 304(g).

As discussed above and in the NPRM, these rules are intended to achieve a better balance in the Appeals Council's review of favorable and unfavorable decisions. While more than half of the unfavorable decisions issued by ALJs in recent years have been made subject to possible review by the Appeals Council as a result of claimant appeals, the number of favorable decisions the Council considers for possible review has represented less than three percent of the favorable decisions of ALJs (see above). We believe that we can achieve a better balance in the review of favorable and unfavorable decisions by including in the workload of favorable decisions the Council considers a relatively small number of cases that have been referred to the Council because they involve problematic issues or fact patterns that may increase the likelihood of error. As previously discussed, we believe that post-adjudicative evaluation of such cases can increase our ability to identify significant policy and program issues and to make appropriate improvements in our policies. Under these new rules, the Council's review functions should be better balanced in the sense that the amount of meaningful information they generate concerning issues and fact patterns that cause erroneous allowances will more nearly balance the extensive information that is already available, as a result of the request for review process and judicial review, about issues and fact patterns that cause erroneous disallowances.

The preambles to the NPRM and these final rules specify that the Appeals Council's existing authority to review cases on its own motion covers all types of title II and title XVI cases. These rules will allow use of the identification and referral procedures they set forth with respect to all such cases. Sections 404.969(b)(1) and 416.1469(b)(1), as proposed and as adopted, state: ''We may use random and selective sampling to identify cases involving any type of action (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (i.e., benefits based on disability and benefits not based on disability).'' Thus, while we currently see a need to better balance the review of favorable disability decisions by ALJs with the review of unfavorable disability decisions by ALJs, we are not preoccupied with the review of the former type of cases and are, instead, mindful of the need to ensure that we will have the flexibility in the future to use these new random and selective sampling techniques to bring to the Council's attention any mix of cases that it needs to consider to contribute in the most meaningful manner possible to our ability to assure the quality of our decisionmaking.

Comment: One commenter referred to the proposed procedures as the ''Bellmon Review Program II'' and contended that the ''selective sampling'' procedures proposed in the NPRM were actually ''targeting'' procedures.

Response: The issues and controversies that arose concerning the Bellmon Review Program of the 1980s are beyond the scope of the NPRM by which we proposed these new quality assurance procedures. However, for the reasons discussed below, we believe that it is important to distinguish these new procedures from that earlier program.

In *Association of Administrative Law Judges* v. *Heckler,* 594 F.Supp. 1132, 1143 (D.D.C. 1984), the court concluded that an incautiousness which it perceived in the Agency's use of terms such as ''targeting'' could have ''tended to corrupt'' the ability of the ALJs to decide cases impartially. It is our intent, in promulgating these new procedures, to use terminology that properly reflects the appropriate purpose of these rules and to avoid using terms, such as ''targeting,'' that could incorrectly cause the procedures to seem intimidating. Given the controversy that came to be associated with the Bellmon Review Program, the new program we are establishing could also be made incorrectly to seem intimidating by referring to it as the ''Bellmon Review Program II.''

Comment: One commenter contended that the distinction between ''targeting'' ALJs and ''targeting'' profile cases is immaterial because selective sampling is necessarily ''chilling'' if it is associated with allowance rates or ''targeting'' of any sort, especially in the ''close'' cases that ALJs are called on to decide.

Response: We believe that there are multiple, meaningful differences

between case-selection procedures that identify case samples based on case profiles, while also excluding the identity of the ALJ or the hearing office as factors that may be considered in the selection of cases, and case-selection procedures that use the identity of the ALJ or the hearing office in the selection of cases. We also believe that the case-selection procedures we are establishing will have no chilling effect on the ability of ALJs to decide cases impartially, free from Agency influence.

In the Bellmon Review Program of the 1980s, favorable decisions of individual ALJs were initially included in the program based on the rate at which the ALJ allowed cases. The rate at which the Appeals Council reviewed an ALJ's decisions on its own motion was thereafter used to determine both the percentage of the ALJ's decisions included in the ongoing program and the time during which the ALJ's decisions would continue to be subject to possible review under the program. By contrast, under the program we are now establishing, no case will be included in the program based on the ALJ's allowance rate, or any other characteristic of the ALJ or of his or her record in deciding cases, because this program excludes the identity of the ALJ as a selection factor. These final rules will not cause the favorable decisions of any ALJ to be included in our random or selective sampling procedures, either at the start of the program or through its operation, at a higher rate than are the favorable decisions of any other ALJ, except as chance in random selection or in the distribution of cases presenting problematic issues or fact patterns causes minor variations.

Under the new program, we will not advise adjudicators of the particular case profiles that we are using at any given time to identify cases for possible inclusion in the selective sampling portion of the new procedures. Our selective sampling of cases will also typically involve one or more random elements as a result of the techniques used in gathering and controlling the size of samples. For example, from all the cases that exhibit a profile, we might actually select only those in which the final digit of the Social Security number is odd and/or the decision is issued between certain dates. Thus, even if an ALJ becomes aware of the use of a particular profile, the ALJ will not necessarily know that a decision fitting that profile will be included in the sample we gather concerning it. The ALJ will also not know whether a case that is included in a selective sample will be referred by OQA to the Appeals Council for possible own-motion review. By contrast, under the Bellmon Review Program of the early 1980s, an ALJ could know that 100%, 75%, 50%, or 25% of his or her favorable decisions would be subject to consideration for possible own-motion review by the Appeals Council. To appreciate the contrast between the new procedures we are establishing and past practices, it should also be noted that, prior to 1975, the Appeals Council, through its staff, routinely considered *all* ALJ favorable decisions for possible review on the Council's own motion.

Under the current process, the unfavorable decisions of ALJs are substantially more likely than their favorable decisions to be reviewed (by the Appeals Council or a Federal court). Our decision to better balance the Appeals Council's review of favorable and unfavorable decisions by establishing these new procedures will lessen this existing imbalance in a non-threatening way and, we believe, promote independence and impartiality in decisionmaking.

Comment: One commenter thought the proposed procedures would be ''chilling'' based on the view that no need exists to affect actual cases and that the Agency could improve decisionmaking sufficiently through education, training and improved policymaking.

Response: We believe it is necessary to have the Appeals Council review and act on cases referred to it under these procedures, where a condition warranting review is present. The Appeals Council's issuance of decisions reversing an adjudicator's decision and orders of remand serves to correct error in individual cases. The Council's actions also instruct individual adjudicators in the correct application of Agency policy. We believe we cannot commit resources to increasing the Appeals Council's consideration of favorable decisions without also making the fullest possible use of its review functions to improve decisionmaking. While we also intend to use knowledge and information gained through the new procedures to improve policymaking (and to train adjudicators in the resulting policy improvements), that intent does not obviate the need to use the Appeals Council's review functions in all appropriate ways.

We do not believe the independence of ALJs to issue favorable decisions will be ''chilled'' by subjecting such decisions to possible change as a consequence of these identification and referral procedures. The Commissioner's responsibility to administer the Social Security and SSI programs and to make final decisions determining eligibility for benefits imposes on the Commissioner a duty to ensure consistency and impartiality in the decisionmaking process. The decisionmaking authority of ALJs is an authority to decide cases impartially in a manner consistent with Agency policy; that authority is not such that it should be ''chilled'' by any appropriate action the Commissioner may take to ensure that his final decisions, favorable as well as unfavorable, comply with the law, regulations and rulings. Establishing quality assurance procedures that make it possible for the Appeals Council to better balance its review of favorable and unfavorable decisions is an appropriate action by the Commissioner of Social Security.

Comment: Citing a memorandum that the Appeals Council recently issued in connection with a specific case, one commenter contended that SSA intends to pressure ALJs through feedback mechanisms reminiscent of a feedback system associated with the Bellmon Review Program.

Response: In addition to providing feedback to ALJs through decisions and remand orders of the Appeals Council, the Bellmon Review Program of the early 1980s included, as a controversial element that was never fully implemented, a companion, multi-stage system that was intended to provide individualized, extra-adjudicative feedback and counseling on the results of own-motion review under the program and, thereby, to promote long term improvement in the decisionmaking of the affected ALJs. We have not proposed, either in the *Disability Redesign Plan* or in the NPRM for these rules, to establish any ongoing, systematic process for providing ALJs extra-adjudicative, individualized feedback in which we would try to use the results of own-motion review by the Appeals Council to change an ALJ's decisionmaking practices. These final rules intend that the quality of ALJ decisionmaking should be improved principally through the instructional effect of the remand orders and reversal decisions that the Appeals Council will issue to individual ALJs under its own-motion authority, and through the publication of clarifying regulations and rulings that we will develop based on these new quality assurance procedures and make available to all adjudicators, with additional training as appropriate.

These rules establish no program for providing individualized feedback and contemplate no feedback activities that could properly be viewed as threatening by individual ALJs or the Corps of ALJs as a whole. The memorandum cited in this comment was issued in a trial-run

we conducted of these new procedures in which the Appeals Council did not actually exercise its own-motion authority. The memorandum was issued to provide some feedback in a situation in which the Appeals Council had not exercised its own-motion authority and, thus, could not provide feedback in the form of an order of remand or a reversal decision.

Comment: One commenter contended that the elimination of the request for Appeals Council review step in the administrative review process contemplated in the *Disability Redesign Plan* will greatly reduce the number of appealed denial decisions, and that SSA's past practices provide a convincing basis for concluding that the vast majority of decisions subject to selective sampling will be allowance decisions.

Response: The *Disability Redesign Plan* contemplates that favorable and unfavorable decisions would be subject to review on the Appeals Council's own motion in a redesigned disability claims process in which the request for review step is eliminated. We have recently begun testing elimination of that step of the existing process in a limited number of disability claims in which an ALJ issues a decision that is less than fully favorable (62 FR 49598 (1997)). If we eliminated the request for review step as it is presently constituted in the disability claims process (as we would do only after we have completed the above test, evaluated the test results, consulted with key stakeholders, and promulgated the necessary regulations through public notice and comment procedures), we would seek to refer to the Appeals Council, for possible review on its own motion, that mix of favorable and unfavorable decisions that would best ensure, through their consideration by the Council, the overall quality of ALJ decisionmaking. Considering our responsibility to assure the accuracy of unfavorable as well as favorable decisions, and the adverse effects on our ability to manage the Social Security and SSI programs effectively that could be expected to arise if we did not assure the quality of the unfavorable decisions subject to judicial review, we would have important reasons to refer to the Appeals Council a sufficient number of unfavorable decisions to permit us to provide meaningful Agency feedback to the ALJs and to identify policy issues that should be clarified through publication of regulations or rulings.

Comment: Pointing out that the time the Appeals Council currently requires to process its large request-for-review workload is high, several commenters expressed the view that it would be unconscionable to devote limited resources to the Council's own-motion workloads and thereby subject claimants who have requested review to additional delays.

Response: We recognized in the *Disability Redesign Plan* (59 FR 47889–47890) that placing additional resources into the existing disability claim process is not a viable alternative for increasing our ability to provide high-quality, responsible service to the public, and that we need to undertake longer-term strategies to address the service delivery problems affecting the disability process. We are adopting these final rules to take a step in accomplishing the goals of the disability redesign, the effectuation of which will inevitably entail acceptance of some temporary reductions in some aspects of service delivery in exchange for achieving long-term improvements. However, it should also be noted that the rules we are adopting give us substantial flexibility to determine the number of cases the Appeals Council considers for possible own-motion review as a result of random and selective sampling, and that we expect the rules to result in no change in the number of cases that are ''protested'' to the Council by effectuating components. Therefore, we anticipate that we will be able to manage the implementation of the new procedures in a way which minimizes any temporary reductions in service.

Comment: One commenter stated that use of statistical case profiles in selecting cases to be brought before the Appeals Council is not within the Appeals Council's ''own-motion jurisdiction,'' that the ''mindset'' associated with use of such a procedure is one that easily allows for disregarding the established administrative review process.

Response: Under section 702(a)(7) of the Act, which accords the Commissioner of Social Security full authority to assign duties and delegate authority to officers and employees of SSA, the Commissioner has delegated to the Appeals Council exclusive authority to decide to conduct and to perform own-motion review of hearing-level decisions. However, there are other functions that must be accomplished for SSA to carry out head-of-agency, own-motion review of hearing-level decisions issued nationwide. Such other functions include identifying and referring to the Appeals Council cases that the Council may consider for possible review under its own-motion authority. SSA has heretofore assigned identification and referral functions to various components, including those that perform random sampling and those that ''protest'' ALJ decisions. Under these final rules, the responsibility for identifying and referring cases to the Council is expanded to include OQA and the components that will perform operational-support functions in our new selective sampling and examination procedures.

The use of case profiles in selective sampling is a function within the Agency's authority that may properly be assigned to the Appeals Council, OHA, and other SSA components. Promulgating regulations to include such procedures in the set of procedures SSA uses to exercise the Commissioner's own-motion authority does not denote a mindset prone to disregard the administrative appeals process. Instead, that action constitutes an appropriate initiative to improve the disability claims process through rulemaking.

Comment: One commenter stated that the proposed quality review program would likely ignore the substantial evidence rule as related to the findings and conclusions of ALJs, and that the proposed program will allow the Appeals Council to ''second guess'' the ALJ's findings and conclusions concerning the credibility of evidence based on ''factors outside the record.'' Another commenter stated that we must make it clear that the standard for review will be the substantial evidence standard.

Response: The Appeals Council retains authority under §§ 404.969, 404.970, 416.1469 and 416.1470 to review a case, on request for review or on its own motion, for any reason. It is the practice of the Appeals Council, generally, to deny a request for review, or to decline to review a case on its own motion, if the case does not meet at least one of the criteria for review stated in §§ 404.970 and 416.1470, which set forth the reasons for which the Appeals Council ''will'' review a case. (*See* HALLEX sections I–3–301–I–3–307.)

Under the provisions of §§ 404.970(a) and 416.1470(a), the Appeals Council will review a case if the ALJ's decision is not supported by substantial evidence or if another of the criteria for review stated in those sections is met. Under the provisions of §§ 404.970(b) and 416.1470(b), if new and material evidence is submitted to the Appeals Council that relates to the period on or before the date of the hearing-level decision, the Appeals Council will consider the ''entire record'', including the new and material evidence submitted, and will decide to review the case if ''it finds that the [ALJ's] action, findings, or conclusion is contrary to the

weight of the evidence currently of record.''

The additional evidence that the Appeals Council considers under §§ 404.970(b) and 416.1470(b) (if the evidence is new and material and relevant to the period at issue) is typically submitted by claimants or their representatives. In addition, under our existing ''protest'' procedures, effectuating components sometimes attach to their memoranda to the Appeals Council potential evidentiary items encountered in the activities these components conduct to effectuate decisions. Thus, for example, if an updated earnings report that has been secured to determine benefit amounts appears to show that the claimant engaged in substantial gainful activity after the date on which the hearing-level decision found that disability began, the effectuating component may submit the earnings report to the Appeals Council as an attachment to a protest memorandum. Under these final rules, effectuating components will attach such items to the written referrals they make under §§ 404.969(c) and 416.1469(c).

Evidence that the Appeals Council considers under §§ 404.970(b) and 416.1470(b) to determine whether to review a case is not part of the record of the decision that has been made at the hearing level, of course, but it is part of the administrative record in any further proceedings that may occur in the case. If the Council reviews the case and a new decision is issued, any evidentiary items received under these provisions are made part of the record for decision that is established, either by an ALJ following remand or, if the Appeals Council is able to issue a fully favorable decision, by the Council.

When a case-examination is conducted by OQA under the new quality assurance procedures established by these final rules, the OQA analyst who conducts the examination may consult with a medical or psychological consultant to gain insight into whether the decision at the hearing level was supported by the record upon which it was based. Insights gained through such consultations may be reflected in the written referrals that OQA will prepare, as provided in §§ 404.969(c) and 416.1469(c), to state its reasons for believing that the Appeals Council should review the decision on its own motion. However, the written referrals made by OQA will attach no statement or writing by a consultant that could activate the additional-evidence provisions of § 404.970(b) or § 416.1470(b). Those provisions will also not be activated by the written referral itself, which will document the procedural history of the case and express OQA's reasons for believing the case should be reviewed. The written referral will not constitute an evidentiary item to be weighed in decisionmaking. In deciding whether to review cases referred by OQA, the Appeals Council will apply the criteria set forth in §§ 404.970(a) and 416.1470(a). If the Council reviews the case, OQA's written referral will be included in the procedural portion of the overall administrative record of the case, but will not be part of the evidentiary record upon which any subsequent decision is based.

Comment: Several commenters thought that the selective sampling of allowance decisions would be unfair to individuals whose cases meet an applicable case profile. The reasons given for this view included that such individuals would effectively face a higher standard of proof than other individuals (as a result of the chilling effect on ALJ readiness to reach a favorable decision and the existence of a pre-judgment in favor of denial), and that the decisions of these individuals would be placed at special risk by being subjected to procedures that other favorable decisions do not face.

Response: We have already discussed our reasons for believing that these new procedures will not intimidate ALJs or chill their decisional independence. We further note here that use of selective sampling to identify cases based on the presence of problematic issues or fact patterns involves, not a pre-judgment that these cases should be denied, but a judgment that the chance of error in the cases so identified is elevated as compared to the chance of error in cases that do not involve such issues and patterns, and that consideration of the cases presenting such issues and patterns provides an increased opportunity to identify error and policy issues that should be clarified through publication of regulations or rulings.

It is true, of course, that the cases of claimants whose allowance decisions are selected for consideration for own-motion review will be subjected to an examination not given to other cases and/or possible review by the Appeals Council. However, for the reasons discussed below, we believe that these rules minimize the number of cases we need to expose to possible review on the Council's own motion.

Cases selected for possible own-motion review will be equally affected whether chosen by random or selective sampling procedures. The effects of own-motion procedures (which can include providing some individuals who receive unfavorable decisions additional administrative consideration through no action of their own) could not be wholly eliminated except by subjecting all cases to own-motion consideration or by eliminating own-motion functions altogether. The first of these options is not currently feasible, and the second would be inconsistent with the responsibility of the Commissioner of Social Security to ensure consistency and uniformity in the allocation of benefits through his final decisions.

Our decision to promulgate these rules rests on the judgment that use of selective sampling procedures, together with our existing random sampling and ''protest'' procedures, represents the best way to minimize the number of cases we need to subject to possible own-motion review while also maximizing the use we can make of our own-motion capacities to identify erroneous decisions and to monitor operation of the claims process effectively. Use of case examinations by OQA in conjunction with selective sampling refines the identification of cases that should be subjected to consideration by the Appeals Council for own-motion review and reduces the number of cases that we need to subject to such consideration.

In our judgment, the procedures we are adopting in these final rules to improve the disability claims process are in accord with the following views the United States Supreme Court expressed in *Califano* v. *Boles,* 443 U.S. 282, 285 (1979), concerning how fairness can best be assured to individuals seeking Social Security benefits:

> * * * the Court has been sensitive to the special difficulties presented by the mass administration of the social security system. After the legislative task of classification is completed, the administrative goal is accuracy and promptness in the actual allocation of benefits pursuant to those classifications. The magnitude of that task is not amenable to the full trappings of the adversary process lest again benefit levels be threatened by the costs of administration. *Mathews* v. *Eldridge,* 424 U.S. 319, 343–349, 96 S.Ct. 893, 906–910, 47 L.Ed.2d. 18 (1976); *Richardson* v. *Perales,* 402 U.S. 389, 406, 91 S.Ct. 1420, 1430, 28 L.Ed.2d. 842 (1971). Fairness can best be assured by Congress and the Social Security Administration through sound managerial techniques and quality control designed to achieve an acceptable rate of error.

Comment: Several commenters expressed concern that SSA has not specified the case profiles that will be used in selective sampling. One commenter contended that this

omission violated the principle that regulations should not be vague and indefinite. Another commenter contended that SSA would expose ALJs to claims of bias by not identifying through notice and comment procedures the types of cases to be ''targeted.''

Response: We are not specifying the problematic issues or fact patterns that will be used in defining the case profiles to be employed in selective sampling because these issues and fact patterns will change over time and we will need flexibility to address such changes. In addition, as we explained above in discussing the distinctions between ''targeting'' and the selective sampling procedures we are establishing, we do not plan to advise adjudicators of the particular case profiles we are using at any given time. Considering that it will also always be clear that neither the identity of the decisionmaker nor the identity of the office issuing the decision has been a factor in the selection of a case, we believe that these rules will not in any way expose decisionmakers to charges of bias.

Comment: One commenter believed that the proposed rules would create ''internal procedures'' and a new layer of administrative ''review'' without providing claimants the right to participate in those procedures/review and to understand the criteria that the examining component and the Appeals Council apply, until a determination to review the favorable decision has been made.

Response: These final rules add no new layer of administrative review. The only ''review'' of an ALJ's decision that can occur under our regulations, as currently established and as amended by these rules, is the ''review'' that occurs if and when, following its preliminary consideration of a case, the Appeals Council decides to review a case and announces its decision to review in a notice of review. For the purposes of the Social Security and SSI claims process, ''own motion'' review means a review that is initiated absent any motion/appeal or input by the claimant. The activities SSA conducts to decide whether to exercise its own-motion authority (*i.e.*, identification and referral procedures and the preliminary consideration of cases that the Appeals Council conducts, with the assistance of its staff) *are* internal functions; they constitute the way this large Agency decides whether to exercise its authority to initiate review of cases unilaterally. Where the claimant has not requested review, the proceedings in which the claimant has a due process right of participation are limited to those that occur if the Appeals Council decides, for the Agency, to review the case.

Under these final rules, the Appeals Council retains exclusive authority to decide to review a hearing-level case. The criteria the Council will apply in deciding whether to review cases will remain, as discussed above, those it currently applies under §§ 404.969, 404.970, 416.1469, and 416.1470. In addition, the examination of cases that OQA conducts under these final rules will be for the purpose of assessing whether the criteria for review by the Appeals Council may be met (or, in OQA'a view, are met). To make this point clear, we have modified the provisions of §§ 404.969(b)(1) and 416.1469(b)(1) that state the purpose of the case examinations. We have also modified the explanation of the case examination set forth above.

Comment: Two commenters likened the procedures proposed in the NPRM to the procedures of the SSA Representation Project, a test project of the 1980s in which an SSA representative could participate in certain ALJ hearings and refer cases to the Appeals Council for possible own-motion review. It was contended that OQA's function in the new procedures would be like that of the SSA representative and would involve the kind of advocacy that was criticized in *Salling* v. *Bowen,* 641 F. Supp. 1046 (W.D.Va. 1986).

Response: Under these final rules, OQA will examine cases that have been initially identified through random and selective sampling procedures to determine if a case should be the subject of a referral and, if that issue is resolved in the affirmative, to state its reasons for believing that the decision is not supported and should be considered by the Appeals Council for possible review under its own-motion authority. OQA, as the SSA component responsible for SSA's quality assurance functions, will examine cases with no prior involvement in those cases that might, even arguably, affect its ability to impartially assess whether a referral is warranted under the applicable law, regulations and rulings. The Appeals Council, which will decide if own-motion review is appropriate, has, like ALJs and all other SSA decisionmakers, no adjudicative duty other than to assure that cases are decided impartially in accordance with Agency policy as established through law, regulations, and rulings.

Based on the above considerations, we see no significant similarity between the SSA Representation Project and the quality assurance procedures we are establishing in these final rules. We also believe that these procedures support our ability to continue to provide informal, nonadversarial adjudication of cases in a high-volume process.

Comment: One commenter indicated that, if SSA did not abandon the proposed rules, it should amend the rules to provide that SSA will not use the data gathered to keep records on ALJs or individual hearing offices regarding allowance or own-motion rates or any similar information, to prohibit the instituting of any form of continuing education for ''targeted'' ALJs, and to provide for publishing any data gathered in the program to all ALJs without mention of the name of any ALJ or hearing office.

Response: As we discussed above, there will be no ''targeting'' of ALJs under these rules, which preclude consideration of the identity of a decisionmaker or of a decisionmaking office and of any data concerning matters such as a decisionmaker's allowance or own-motion rate, in the random sampling, selective sampling, and case-effectuation procedures we are establishing in these final rules. We intend that these rules should improve decisional quality principally through the instructional effects of the Appeals Council's adjudicative actions and through the policy clarifications we will develop based on these new quality assurance procedures. The rules establish no program for providing individualized feedback, contemplate no feedback activities that should be threatening to individual ALJs or the Corps of ALJs as a whole, and do not authorize or contemplate publishing data on named ALJs or hearing offices.

We are not adopting the recommendation of this commenter that we should modify these final rules to prescribe the uses that will be made of data gathered as a result of the quality assurance procedures we are establishing by these rules. The uses of management information is not a matter within the scope of these rules.

Comment: One commenter believed that the new process would be subject to the same harsh criticism as the ''targeted'' reviews of the early 1980s absent satisfaction of the following requirements: ''Both the process for selecting decisions to review and the criteria used in the review must be scrupulously fair and free from bias. Selection of cases must be made randomly. Individual ALJs cannot become targets. Allowance and denial rates have no part in the selection process. Reviewers must be clear that their standard for review is one of substantial evidence supporting the ALJ's decision.''

Response: For reasons discussed above generally in response to other comments, and as we further explain below specifically, we believe that the new quality assurance procedures we are establishing in these final rules exhibit each of the characteristics urged by this commenter. We note that while the new procedures provide for selective as well as random sampling, our selective sampling of cases will typically involve random elements and will be scrupulously fair and free from bias.

Individual ALJs cannot become targets under those procedures and allowance and denial rates have no part in the selection process. The new procedures and these rules cause no change in the criteria for reviewing hearing level decisions and orders of dismissal, or in the practices the Appeal Council follows in applying the substantial evidence standard and other criteria in deciding whether to review a case.

Other Changes

We have modified the provisions of §§ 404.969(b)(2) and 416.1469(b)(2), and the explanation of those provisions set forth above, to emphasize that a referral resulting from the effectuating process rests on the belief of an effectuating component that a decision cannot be effectuated (for a reason stated in those provisions) and does not represent a pre-judgement by the Agency that review of the decision is appropriate. The Appeals Council retains exclusive authority under these final rules to decide for the Agency whether a hearing-level decision should be reviewed.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do meet the criteria for a significant regulatory action under Executive Order 12866. They were therefore submitted to OMB for review. These rules do not adversely affect State, local or tribal governments. The rules are expected to result in administrative costs of less than $5 million annually and to have no significant impact on program costs. Therefore, we have not prepared a cost benefit analysis under Executive Order 12866.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or record keeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.003, Social Security-Special Benefits for Persons Aged 72 and Over; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: May 27, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

20 CFR part 404, Subpart J, is amended as follows:

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.969 is revised to read as follows:

§ 404.969 Appeals Council initiates review.

(a) *General.* Anytime within 60 days after the date of a decision or dismissal that is subject to review under this section, the Appeals Council may decide on its own motion to review the action that was taken in your case. We may refer your case to the Appeals Council for it to consider reviewing under this authority.

(b) *Identification of cases.* We will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. We will identify cases for referral to the Appeals Council through random and selective sampling techniques, which we may use in association with examination of the cases identified by sampling. We will also identify cases for referral to the Appeals Council through the evaluation of cases we conduct in order to effectuate decisions.

(1) *Random and selective sampling and case examinations.* We may use random and selective sampling to identify cases involving any type of action (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (i.e., benefits based on disability and benefits not based on disability). We will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Neither our random sampling procedures nor our selective sampling procedures will identify cases based on the identity of the decisionmaker or the identity of the office issuing the decision. We may examine cases that have been identified through random or selective sampling to refine the identification of cases that may meet the criteria for review by the Appeals Council.

(2) *Identification as a result of the effectuation process.* We may refer a case requiring effectuation to the Appeals Council if, in the view of the effectuating component, the decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim; the decision is clearly inconsistent with the Social Security Act, the regulations, or a published ruling; or the decision is unclear regarding a matter that affects the claim's outcome.

(c) *Referral of cases.* We will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral based on the results of such a case examination or the effectuation process will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Referrals that result from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral. Referrals that result from

random sampling without a case examination will only identify the case as a random sample case.

(d) *Appeals Council's action.* If the Appeals Council decides to review a decision or dismissal on its own motion, it will mail a notice of review to all the parties as provided in § 404.973. The Appeals Council will include with that notice a copy of any written referral it has received under paragraph (c) of this section. The Appeals Council's decision to review a case is established by its issuance of the notice of review. If it is unable to decide within the applicable 60-day period whether to review a decision or dismissal, the Appeals Council may consider the case to determine if the decision or dismissal should be reopened pursuant to §§ 404.987 and 404.988. If the Appeals Council decides to review a decision on its own motion or to reopen a decision as provided in §§ 404.987 and 404.988, the notice of review or the notice of reopening issued by the Appeals Council will advise, where appropriate, that interim benefits will be payable if a final decision has not been issued within 110 days after the date of the decision that is reviewed or reopened, and that any interim benefits paid will not be considered overpayments unless the benefits are fraudulently obtained.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR Part 416, Subpart N, is amended as follows:

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

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. Section 416.1469 is revised to read as follows:

§ 416.1469 Appeals Council initiates review.

(a) *General.* Anytime within 60 days after the date of a decision or dismissal that is subject to review under this section, the Appeals Council may decide on its own motion to review the action that was taken in your case. We may refer your case to the Appeals Council for it to consider reviewing under this authority.

(b) *Identification of cases.* We will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. We will identify cases for referral to the Appeals Council through random and selective sampling techniques, which we may use in association with examination of the cases identified by sampling. We will also identify cases for referral to the Appeals Council through the evaluation of cases we conduct in order to effectuate decisions.

(1) *Random and selective sampling and case examinations.* We may use random and selective sampling to identify cases involving any type of action (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (i.e., benefits based on disability and benefits not based on disability). We will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Neither our random sampling procedures nor our selective sampling procedures will identify cases based on the identity of the decisionmaker or the identity of the office issuing the decision. We may examine cases that have been identified through random or selective sampling to refine the identification of cases that may meet the criteria for review by the Appeals Council.

(2) *Identification as a result of the effectuation process.* We may refer a case requiring effectuation to the Appeals Council if, in the view of the effectuating component, the decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim; the decision is clearly inconsistent with the Social Security Act, the regulations, or a published ruling; or the decision is unclear regarding a matter that affects the claim's outcome.

(c) *Referral of cases.* We will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral based on the results of such a case examination or the effectuation process will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Referrals that result from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral. Referrals that result from random sampling without a case examination will only identify the case as a random sample case.

(d) *Appeals Council's action.* If the Appeals Council decides to review a decision or dismissal on its own motion, it will mail a notice of review to all the parties as provided in § 416.1473. The Appeals Council will include with that notice a copy of any written referral it has received under paragraph (c) of this section. The Appeals Council's decision to review a case is established by its issuance of the notice of review. If it is unable to decide within the applicable 60-day period whether to review a decision or dismissal, the Appeals Council may consider the case to determine if the decision or dismissal should be reopened pursuant to §§ 416.1487 and 416.1488. If the Appeals Council decides to review a decision on its own motion or to reopen a decision as provided in §§ 416.1487 and 416.1488, the notice of review or the notice of reopening issued by the Appeals Council will advise, where appropriate, that interim benefits will be payable if a final decision has not been issued within 110 days after the date of the decision that is reviewed or reopened, and that any interim benefits paid will not be considered overpayments unless the benefits are fraudulently obtained.

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DEPARTMENT OF STATE

22 CFR Part 140

[Public Notice 2840]

Bureau for International Narcotics and Law Enforcement Affairs; Prohibition on Assistance to Drug Traffickers

AGENCY: Department of State (Bureau for International Narcotics and Law Enforcement Affairs).

ACTION: Final rule.

SUMMARY: The Department of State issues these regulations to implement Section 487 of the Foreign Assistance Act of 1961, as amended (''FAA'') (22 U.S.C. 2291f).

Section 487(a) directs the President to take all reasonable steps to ensure that assistance provided under the Foreign Assistance Act or the Arms Export Control Act is not provided to or through any individual or entity that the President knows or has reason to believe has been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating to narcotic or psychotropic drugs or other controlled substances; or is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking of any such substance. This rule establishes a single government-wide enforcement mechanism for Section 487. The regulations seek to achieve rigorous statutory enforcement in a

manner consistent with efficient foreign assistance program administration. They also seek to ensure protection of the procedural rights and interests of assistance recipients.

DATES: Effective date: October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Office of Policy, Planning and Coordination, Bureau for International Narcotics and Law Enforcement Affairs, Department of State, 202–647–0457, or Office of Law Enforcement and Intelligence, Office of the Legal Adviser, Department of State, 202–647–7324.

SUPPLEMENTARY INFORMATION: This rule implements Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f). The requirements of Section 487 are described in the Summary, above. The law further directs that regulations be issued to carry out the section and be submitted to Congress before they take effect. The responsibilities of the President under Section 487 have been delegated to the Secretary of State (E.O. 12163). The Secretary of State is issuing these regulations and has delegated the responsibility for their implementation to the Assistant Secretary for International Narcotics and Law Enforcement Affairs. The regulations are set forth in a new part of the Code of Federal Regulations, 22 CFR Part 140. Proposed regulations were published for comment on Feb. 9, 1995 (60 FR 7737) and modifications have been made in light of comments received. The regulations have been submitted to Congress, as required by Section 487(c).

The procedures prescribed by these regulations apply to assistance under the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act. The regulations are set up in three Subparts: General (Subpart A, §§ 140.1–140.3); Applicability (Subpart B, § 140.4); and Enforcement (Subpart C, §§ 140.5–140.14).

The General Subpart (Subpart A) provides a statement of the regulations' purpose (§ 140.1), based upon the language of Section 487 of the Foreign Assistance Act; identifies the authorities for issuance of the regulations (§ 140.2); and defines key terms used in the regulations (§ 140.3). The broad coverage of the regulations is reflected in the definitions of drug trafficking (§ 140.3(e)), money laundering (§ 140.3(f)), and narcotics offense (§ 140.3(g)), which are intended to be comprehensive. As noted in the definition of drug trafficking, it encompasses drug-related money laundering. One commenting agency asked for further definition of the terms ''illicit,'' ''illicitly,'' and ''criminal.'' That comment was not adopted because we believe such definitions are not necessary. We note that the terms encompass activities that are illicit or illegal under the laws applicable to such activities.

Two of the key terms defined in the regulations are ''covered country'' (§ 140.3(d)) and ''covered assistance'' (§ 140.3(c)). The term ''covered country'' corresponds to those countries listed on the ''majors list,'' i.e., the list of major illicit drug producing countries and major drug-transit countries, as determined annually by the President and transmitted to the appropriate Congressional committees as required by section 490(h) of the FAA.

The term ''covered assistance'' is defined broadly, while excluding assessed contributions to an international organization and assistance that by operation of law is not subject to Section 487. The definition further provides that assistance in amounts less than $100,000 is excluded unless it pertains to: recipients of scholarships, fellowships, or participant training; or a covered individual or entity reasonably suspected of being or having been involved in drug trafficking by the agency providing assistance. These definitions are intended to ensure rigorous application of the statutory prohibition on assistance to drug traffickers, while fostering efficient program administration. Several comments requested a more complete listing of assistance that would be excluded from the term ''covered assistance'' by operation of other laws. Because such a list depends on specific statutory exemptions and is subect to change, we have concluded that further guidance in this area is more appropriately left to the implementing regulations of the relevant agency, which will be in a better position to keep the guidance current.

One agency recommended the addition of a definition of the term ''convicted;'' that definition has been added as § 140.3(a).

For ease of reference, the term ''covered individual or entity'' is defined in § 140.4, where it is used, rather than in the definition section. Likewise, the term ''key individual'' is described in § 140.6(a)(3), where it is introduced.

The term ''Country Narcotics Coordinator'' is defined in section 140.3(b). Comments from one agency acknowledged that the definition is drafted to preserve flexibility by not specifying particular positions at U.S. posts abroad but recommended further clarification to ensure that a designated CNC would be qualified to handle sensitive law enforcement information. The definition has not been changed, but we note that the CNC is a key position often held by the Deputy Chief of Mission at a U.S. diplomatic post. In the event that another person were assigned to exercise these functions, that person would necessarily have equally appropriate clearances to handle sensitive law enforcement information.

The Applicability Subpart (Subpart B) explains the scope of the regulations. Their applicability is keyed primarily to ''covered individuals and entities'' that receive or provide direct or first-tier ''covered assistance'' and are located or providing assistance within a ''covered country.'' Concerns were raised that the definition of a ''covered country'' as one on the list of major illicit drug producing or drug-transit countries issued annually pursuant to section 490(h) of the Foreign Assistance Act of 1961, as amended, would preclude action concerning assistance to a portion of a country or to another country on which relevant information is developed after issuance of the list. In response, § 104.4(b) has been rewritten to include coverage of assistance within any other country, or portion thereof, that the Secretary of State or the Secretary's designee may at any time determine should be treated as if it were a covered country in order to fulfill the purpose of the regulations (§ 140.4(b)(1)). Furthermore, the regulations have been drafted carefully to ensure they are given their full statutory scope, *i.e.*, that they are applied whenever an agency providing covered assistance has reasonable grounds to suspect that a proposed recipient individual or entity may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense regardless of the country involved (§ 140.4(b)(2); see also §§ 140.3(c)(2), 140.7(a), 140.9(a) and 140.11).

The regulations are also applicable where a government agency providing covered assistance within a covered country has specifically designated a recipient beyond the first tier (see §§ 140.4(a), 140.7(b)). Additionally, they apply to individuals who receive a scholarship, fellowship, or participant training (unless the assistance is provided through a multilateral institution or international organization and the recipient has not been designated by the agency providing assistance). Further assurance that drug traffickers will not receive assistance is provided by the requirement that where an agency providing covered assistance to a multilateral institution or international organization does not

designate the assistance recipient, the agency's agreement with the multilateral institution or international organization shall stipulate that such entity is to make reasonable efforts to ensure that the assistance is not diverted in support of drug trafficking (§ 140.7(c)).

The factual circumstances that give rise to application of the regulations are highly varied and may, on occasion, have potentially serious or sensitive foreign relations, national security, or law enforcement consequences. In rare circumstances, such potential consequences may require that, in fulfilling the statutory requirements of Section 487, the procedures set forth in the regulations be expanded, modified, utilized in a different manner or not utilized. This necessary flexibility is provided in the initial clause of § 140.4. In response to comments by one agency raising concerns about possible disclosure of law enforcement investigatory information, however, that section has been amended to provide that §§ 140.13 and 140.14 will apply in all cases.

The Enforcement Subpart (Subpart C) contains an overview (§ 140.5), which outlines the Subpart's scope. The applicable determination procedures, criteria to be applied in deciding whether to withhold assistance or take other measures, and procedures concerning violations identified subsequent to the obligation of funds are set forth in the Enforcement Subpart. The applicability of these procedures varies depending on the nature of the proposed recipient. The general framework is set forth in § 140.6, in the context of covered assistance to foreign government entities. Variations of that framework are set forth in separate sections for: multilateral institutions and international organizations (§ 140.7); recipients of scholarships, fellowships, and participant training (§ 140.8); other non-governmental entities and individuals (§ 140.9); and intermediate credit institutions (§ 140.10). (Note: In § 140.9 the use of the phrase ''non-governmental entity'' is meant to encompass a broader category of organizations than might be encompassed by the term ''non-governmental organization'' or its acronym, ''NGO.'' As explained in § 140.9, it includes not only private voluntary agencies and educational institutions, but also for-profit firms and any other non-governmental organizations.)

The determination procedures set forth in the regulations are applied by the Country Narcotics Coordinator (as defined in § 140.3(b)), who is responsible in the first instance for reviewing available information to determine whether a proposed assistance recipient is to be granted or denied assistance or whether other measures are to be taken to structure the provision of the assistance in such a way as to meet the requirements of Section 487 of the Foreign Assistance Act (§ 140.6(a)). Comments from one agency pointed out that agencies providing information that will be used for this purpose have a strong interest in how the system for reviewing information as required under § 140.6(a)(1) is developed and suggested that parameters of such a system be included in the regulations. We have decided not to change the regulations on this point although we will provide guidance to CNCs separately on this matter in order to preserve flexibility in developing and adjusting such a system over time. Nevertheless, the State Department will consult with agencies that supply information in developing that guidance. An agency proposing assistance is responsible for providing the Country Narcotics Coordinator with the name of each key individual within a prospective recipient entity who may be expected to control or benefit from assistance as well as other relevant information that is readily available (§ 140.6(a)(3)). Questions as to who should be included in the group of key individuals will be resolved by the CNC, with review by the Assistant Secretary for INL at the request of the agency.

Section 140.6(a)(6) further provides that it is the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs (rather than the Country Narcotics Coordinator), in consultation with appropriate bureaus and agencies, who ordinarily will make any decision to withhold assistance or take other measures based on information or allegations that a key individual who is a senior government official of a foreign government has been convicted of a narcotics offense or has been engaged in drug trafficking. Personal involvement at or above the Assistant Secretary of State level is appropriate in such a case because it involves inherently sensitive foreign policy issues.

The regulations provide a two-week period, extendable if necessary for another two weeks, within which the Country Narcotics Coordinator, in consultation with the agency proposing the assistance and other appropriate bureaus and agencies, is to make a determination whether assistance is to be provided or withheld, or other measures are to be taken to meet the requirements of section 487. The reference to other appropriate bureaus and agencies was added in response to a comment from one agency noting that the decision would need to be made on the basis of information supplied by other, often law enforcement, agencies. Section 140.6(b) outlines the factors to be considered in determining whether to withhold assistance or take other measures. In response to comments from one agency requesting additional guidance concerning the standard ''reasonable belief,'' we have changed that term as used in 140.6(b) to the exact words of the statute, ''reason to believe'' that a proposed recipient has been engaged in drug trafficking activities. When there is evidence that might lead to such a finding, the CNC will decide whether reports are credible and sources reliable, thus providing a reason to believe rather than merely raising a suspicion.

In response to comments requesting further guidance on implementation, a new subsection (b)(3)(v) has been added to make clear that measures other than denial of assistance may be appropriate in certain cases where a negative determination is made as to one or more key individuals.

The enforcement procedures applicable to recipients of scholarships, fellowships, and participant training (§ 140.8) and to other non-governmental entities and individuals (§ 140.9) include a pre-approval certification process. The regulations specify that false certification may subject the signatory to U.S. criminal prosecution under 18 U.S.C. 1001. (*See* §§ 140.8(b), 140.9(c).) Although this penalty is described in the regulations, it is established independently by the referenced statute. The identification of a penalty in the regulations is not meant to limit the application of any criminal or civil penalty otherwise applicable.

Section 140.10 concerns the procedures applicable to intermediate credit institutions. Such institutions are to be treated as either foreign government entities or non-governmental entities, depending on the nature of the particular institution. Section 140.10 also requires that agreements with such intermediate credit institutions include a contract clause concerning a refund procedure applicable to loans exceeding $1,000 made by any intermediate credit institution.

Section 140.11 clarifies that the enforcement procedures established by §§ 140.6–140.10 are not exhaustive, but represent only the minimum applicable procedures implementing Section 487 of the Foreign Assistance Act.

The remaining provisions of the regulations establish notification and

review procedures. One agency commented that only the law enforcement agency whose investigation may be affected by disclosure of information is in a position to make a determination regarding the appropriateness of notifications and any decision to provide additional information. In response to these comments, § 140.13(a) has been amended to ensure that no information beyond the statutory basis for withholding, suspending or terminating assistance to a foreign government or entity will be provided without the agreement of the originating agency. Special care has also been taken to minimize the risk that notification will interfere with an ongoing criminal investigation (§ 140.13(b)). An agency proposing covered assistance may request review of a Country Narcotics Coordinator's decision that the assistance must be withheld or other measures taken to comply with section 487 (§ 140.12). In addition, where the prospective assistance recipient is a U.S. entity, U.S. citizen, or permanent U.S. resident, a Country Narcotics Coordinator's preliminary decision to withhold assistance is referred to the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs for final determination (§ 140.14). As with § 140.13, in response to comments, § 140.14(a) has been revised to provide that decisions on appropriate action concerning U.S. entities and individuals will be taken in consultation not only with the agency proposing the assistance but also the agency or agencies that provided information reviewed or relied upon in making the preliminary decision. One agency expressed concerns that procedures previously anticipated for review of denials of assistance under this section could be viewed as introducing a standard of proof inconsistent with section 487 and could lead to disclosure of classified materials or law enforcement investigative information. The section has been amended to remove references to pre-existing review procedures which would not ordinarily be applicable in the context of assistance grants. Section 140.14(b) also now states explicitly that the regulations shall not be interpreted to create a right to classified information or law enforcement investigatory information by such entity or individual.

This amendment involves a foreign affairs function of the United States, as well as public grants, benefits and contracts, and is accordingly not subject to the requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. It is also exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof.

List of Subjects in 22 CFR Part 140

Drug traffic control, Foreign aid.

For the reasons set out in the preamble, 22 CFR 140 is added to subchapter N as follows:

PART 140—PROHIBITION ON ASSISTANCE TO DRUG TRAFFICKERS

Subpart A—General

Sec.
140.1 Purpose.
140.2 Authorities.
140.3 Definitions.

Subpart B—Applicability

140.4 Applicability.

Subpart C—Enforcement

140.5 Overview.
140.6 Foreign government entities.
140.7 Multilateral institutions and international organizations.
140.8 Recipients of scholarships, fellowships, and participant training.
140.9 Other non-governmental entities and individuals.
140.10 Intermediate credit institutions.
140.11 Minimum enforcement procedures.
140.12 Interagency review procedures.
140.13 Notification to foreign entities and individuals.
140.14 Special procedures for U.S. entities and individuals.

Authority: 22 U.S.C. 2651a(a)(4).

Subpart A—General

§ 140.1 Purpose.

(a) This part implements Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f).

(b) Section 487(a) directs the President to ''take all reasonable steps'' to ensure that assistance under the Foreign Assistance Act of 1961 (FAA) and the Arms Export Control Act (AECA) ''is not provided to or through any individual or entity that the President knows or has reason to believe'':

(1) has been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating [to] narcotic or psychotropic drugs or other controlled substances; or

(2) is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such substance.

§ 140.2 Authorities.

Authority to implement FAA Section 487 was delegated by the President to the Secretary of State by E.O. 12163, as amended, and further delegated by the Secretary to the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs by Delegation of Authority No. 145, dated Feb. 4, 1980 (45 FR 11655), as amended.

§ 140.3 Definitions.

The following definitions shall apply for the purpose of this part:

(a) Convicted. The act of being found guilty of or legally responsible for a criminal offense, and receiving a conviction or judgment by a court of competent jurisdiction, whether by verdict or plea, and including convictions entered upon a plea of nolo contendere.

(b) Country Narcotics Coordinator. The individual assigned by the Chief of Mission of a U.S. diplomatic post, in consultation with the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, in each foreign country to coordinate United States government policies and activities within a country related to counternarcotics efforts.

(c) Covered assistance. Any assistance provided by an agency of the United States government under the FAA or AECA, except that it does *not* include:

(1) Assistance that by operation of the law is not subject to FAA Section 487, such as:

(i) Disaster relief and rehabilitation provided under Chapter 9 of Part I of the FAA; and

(ii) Assistance provided to small farmers when part of a community-based alternative development program under Part I or Chapter 4 of Part II of the FAA;

(2) Assistance in a total amount less than $100,000 regarding a specific activity, program, or agreement, except that the procedures in § 140.8 for recipients of scholarships, fellowships, and participant training shall apply regardless of amount. However, assistance shall be deemed covered assistance regardless of amount if the agency providing assistance has reasonable grounds to suspect that a covered individual or entity may be or may have been involved in drug trafficking; or

(3) Payments of dues or other assessed contributions to an international organization.

(d) Covered country. A country that has been determined by the President to be either a ''major illicit drug producing'' or ''major drug-transit'' country under Chapter 8 of Part I of the

FAA. The list of covered countries is submitted to Congress annually and set forth in the International Narcotics Control Strategy Report.

(e) Drug trafficking. Any activity undertaken illicitly to cultivate, produce, manufacture, distribute, sell, finance or transport, or to assist, abet, conspire, or collude with others in illicit activities, including money laundering, relating to narcotic or psychotropic drugs, precursor chemicals, or other controlled substances.

(f) Money laundering. The process whereby proceeds of criminal activity are transported, transferred, transformed, converted, or intermingled with legally acquired funds, for the purpose of concealing or disguising the true nature, source, disposition, movement, or ownership of those proceeds. The goal of money laundering is to make funds derived from or associated with illicit activity appear to have been acquired legally.

(g) Narcotics offense. A violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating to narcotic or psychotropic drugs or other controlled substances.

Subpart B—Applicability

§ 140.4 Applicability.

Except as otherwise provided herein or as otherwise specially determined by the Secretary of State or the Secretary's designee (except that decisions on notification and/or disclosure shall in all cases be subject to the provisions of §§ 140.13 through 140.14), the procedures prescribed by this part apply to any ''covered individual or entity,'' i.e., any individual or entity, including a foreign government entity, a multilateral institution or international organization, or a U.S. or foreign non-governmental entity: (a)(1) That is receiving or providing covered assistance as a party to a grant, loan, guarantee, cooperative agreement, contract, or other direct agreement with an agency of the United States (a ''first-tier'' recipient); or

(2) That is receiving covered assistance

(A) Beyond the first tier if specifically designated to receive such assistance by a U.S. government agency; or

(B) In the form of a scholarship, fellowship, or participant training, except certain recipients funded through a multilateral institution or international organization, as provided in § 140.7(c); and

(b)(1) That is located in or providing covered assistance within a covered country or within any other country, or portion thereof, that the Secretary of State or the Secretary's designee may at any time determine should be treated, in order to fulfill the purpose of this part, as if it were a covered country; or

(2) As to which the agency providing assistance or any other interested agency has reasonable grounds to suspect current or past involvement in drug trafficking or conviction of a narcotics offense, regardless of whether the assistance is provided within a covered country.

Examples:

(1) Under a $500,000 bilateral grant agreement with the Agency for International Development providing covered assistance, Ministry Y of Government A, the government of a covered country, enters into a $150,000 contract with Corporation X. Ministry Y is a covered entity. However, Corporation X is *not* a covered entity because the contract is *not* a direct contract with an agency of the United States.

(2) Under a $1,000,000 grant from the Department of State providing covered assistance, Corporation B makes a $120,000 subgrant to University Y for the training of 12 individuals. If Corporation B is located in or providing assistance within a covered country, it is a covered entity and the 12 individuals receiving participant training are covered individuals. University Y is *not* a covered entity.

(3) University C, which is not located in a covered country, receives a $1 million regional assistance research project grant from the Agency for International development, $80,000 of which is provided for research in covered countries. University C is *not* a covered entity. (However, if $100,000 or more were provided for research in a covered country or countries, or if University C were located in a covered country, then University C would be a covered entity.)

Subpart C—Enforcement

§ 140.5 Overview.

This subpart sets forth the enforcement procedures applicable pursuant to § 140.4 to the various types of covered individuals and entities with respect to covered assistance. Section 140.6 establishes the procedures applicable to foreign government entities, including any such entity that is covered by the definition of a ''foreign state'' set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. Sec. 1603(a). Section 140.7 establishes the procedures applicable to multilateral institutions and international organizations. Section 140.8 establishes the procedures applicable to recipients of scholarships and fellowships and participant trainees. Section 140.9 establishes the procedures applicable to non-governmental entities. Section 140.10 sets forth additional procedures applicable to intermediate credit institutions. Sections 140.11 through 140.14 contain general provisions related to the enforcement process.

§ 140.6 Foreign government entities.

(a) *Determination Procedures.* (1) The Country Narcotics Coordinator shall be responsible for establishing a system for reviewing available information regarding narcotics offense convictions and drug trafficking of proposed assistance recipients under this section and, except under the circumstances described in § 140.6(a)(6), determining whether a proposed recipient is to be denied such assistance or other measures are to be taken as a result of the application of FAA Section 487.

(2) Prior to providing covered assistance to or through a proposed recipient, the agency providing the assistance shall provide the Country Narcotics Coordinator in the country in which the proposed recipient is located or, as appropriate, where assistance is to be provided, the information specified in § 140.6(a)(3) in order that the Country Narcotics Coordinator may carry out his or her responsibilities under this part.

(3) In each case, the agency proposing the assistance shall provide to the Country Narcotics Coordinator the name of each key individual within the recipient entity who may be expected to control or benefit from assistance as well as other relevant identifying information (e.g., address, date of birth) that is readily available. If a question arises concerning who should be included within the group of key individuals of an entity, the agency providing the assistance shall consult with the Country Narcotics Coordinator, and the decision shall be made by the Country Narcotics Coordinator. If the agency proposing the assistance disagrees with the Country Narcotics Coordinator's decision regarding who should be included within the group of key individuals, the agency may request that the decision be reviewed by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs in consultation with other appropriate bureaus and agencies. Any such review undertaken by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs shall be completed expeditiously.

(4) Within fourteen calendar days after receiving the name of a proposed recipient and other relevant information, the Country Narcotics Coordinator shall determine whether any available information may warrant withholding assistance or taking other measures under this part, based on the

criteria set forth in § 140.6(b). If, during that period, the Country Narcotics Coordinator determines that available information does not so indicate, he or she shall notify the proposing agency that the assistance may be provided to the proposed recipient.

(5) If, during the initial fourteen-day period, the Country Narcotics Coordinator determines that information exists that may warrant withholding assistance or taking other measures under this part, then the Country Narcotics Coordinator shall have another fourteen calendar days to make a final determination whether the assistance shall be provided or withheld or such other measures taken.

(6) A decision to withhold assistance or to take other measures based on information or allegations that a key individual who is a senior government official of the host nation has been convicted of a narcotics offense or has been engaged in drug trafficking shall be made by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, or by a higher ranking official of the Department of State, in consultation with other appropriate bureaus and agencies. For the purpose of this part, ''senior government official'' includes host nation officials at or above the vice minister level, heads of host nation law enforcement agencies, and general or flag officers of the host nation armed forces.

(b) *Criteria to be Applied.* (1) A decision to withhold assistance or take other measures shall be based on knowledge or reason to believe that the proposed recipient, within the past ten years, has:

(i) Been *convicted* of a narcotics offense as defined in this part; or

(ii) Been *engaged* in drug trafficking, regardless of whether there has been a conviction.

(2) Factors that may support a decision to withhold assistance or take other measures based on reason to believe that the proposed recipient has been engaged in drug trafficking activities within the past ten years when there has been no conviction of such an offense may include, but are not limited to, the following:

(i) Admission of participation in such activities;

(ii) A long record of arrests for drug trafficking activities with an unexplained failure to prosecute by the local government;

(iii) Adequate reliable information indicating involvement in drug trafficking.

(3) If the Country Narcotics Coordinator knows or has reason to believe that a key individual (as described in § 140.6(a)(3)) within a proposed recipient entity has been convicted of a narcotics offense or has been engaged in drug trafficking under the terms of this part, the Country Narcotics Coordinator must then decide whether withholding assistance from the entity or taking other measures to structure the provision of assistance to meet the requirements of section 487 is warranted. This decision shall be made in consultation with the agency proposing the assistance and other appropriate bureaus and agencies. In making this determination, the Country Narcotics Coordinator shall take into account:

(i) The extent to which such individual would have control over assistance received;

(ii) The extent to which such individual could benefit personally from the assistance;

(iii) Whether such individual has acted alone or in collaboration with others associated with the entity;

(iv) The degree to which financial or other resources of the entity itself have been used to support drug trafficking; and

(v) Whether the provision of assistance to the entity can be structured in such a way as to exclude from the effective control or benefit of the assistance any key individuals with respect to whom a negative determination has been made.

(c) *Violations Identified Subsequent to Obligation.* The foregoing procedures provide for a determination before funds are obligated. If, however, subsequent to an obligation of funds an assistance recipient or a key individual of such recipient is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking (e.g., the head of a recipient entity changes during the course of an activity and the new head is found to have been engaged in drug trafficking), appropriate action should be taken, including, if necessary, termination of the assistance. Agreements shall be written to permit termination of assistance in such circumstances.

§ 140.7 Multilateral institutions and international organizations.

Assistance provided to or through multilateral institutions or international organizations is subject to this part as follows:

(a) Where the government agency providing assistance has reasonable grounds to suspect that a recipient multilateral institution or international organization may be or may have been involved in drug trafficking, the provisions of § 140.6 shall apply.

(b) Where the government agency providing assistance designates the recipient of assistance from the multilateral institution or international organization and the designated recipient is a covered individual or entity, the provisions of this part shall apply as if the assistance were provided directly to the designated recipient.

(c) Where the government agency providing assistance does not designate the recipient of assistance from the multilateral institution or international organization, this part do not apply, other than as provided in paragraph (a) of this section, except that the agency's agreement with the multilateral institution or international organization shall stipulate that such entity is to make reasonable efforts, as necessary, to ensure that the assistance is not diverted in support of drug trafficking.

Example:

The State Department provides $600,000 to the United Nations for the United Nations Drug Control Program, specifically designating that Government D of a covered country receive $150,000 and Corporation E receive $60,000 for training programs in a covered country. Individuals who will receive training are not specifically designated by the State Department. The United Nations is a covered entity based on § 140.4(a)(1); Government D is a covered entity based on §§ 140.4(b) and 140.7(b); Corporation E is not a covered entity under §§ 140.4(b) and 140.7(b) because it has been designated to receive less than $100,000 in assistance (§ 140.3(c)(2)). Participant trainees are not covered individuals because they fall under the exception contained in § 140.7(c) (see also § 140.4(a)(2)).

§ 140.8 Recipients of scholarships, fellowships, and participant training.

(a) *Procedures.* Individuals who are located in a covered country and who are proposed recipients of scholarships, fellowships, or participant training, except those falling under the exception contained in § 140.7(c), are subject to the review procedures, criteria, and procedures concerning violations identified subsequent to obligation of funds set forth in § 140.6. Such review of recipient individuals is in addition to the provisions applicable to the recipient entity providing the assistance.

(b) *Certifications.* Individuals who are located in a covered country and who are proposed recipients of scholarships, fellowships, or participant training shall also be required to certify prior to approval that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking, and have not knowingly assisted, abetted, conspired,

or colluded with others in drug trafficking. False certification may subject the assistance recipient to U.S. criminal prosecution under 18 U.S.C. Sec. 1001 and to withdrawal of assistance under this part.

§ 140.9 Other non-governmental entities and individuals.

(a) *Procedures.* Section 140.9 applies to private voluntary agencies, educational institutions, for-profit firms, other non-governmental entities and private individuals. A non-governmental entity that is not organized under the laws of the United States shall be subject to the review procedures and criteria set forth in § 140.6(a) and (b). A non-governmental entity that is organized under the laws of the United States shall not be subject to such review procedures and criteria. However, an agency providing assistance shall follow such review procedures and criteria, as modified by section § 140.14, if the agency has reasonable grounds to suspect that a proposed U.S. non-governmental entity or a key individual of such entity may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense. Procedures set forth in § 140.6(c) concerning violations identified subsequent to obligation shall apply to both U.S. and foreign non-governmental entities.

Examples:

(1) A $100,000 grant to a covered U.S. university for participant training would not be subject to the review procedures and criteria in § 140.6(a) and (b). However, a proposed participant would be subject to the review procedures and criteria in § 140.6(a) and (b) as part of the agency's approval process.

(2) A $100,000 grant to a covered foreign private voluntary agency for participant training would be subject to the review procedures and criteria in § 140.6(a) and (b). In addition, each proposed participant would be subject to the review procedures and criteria in § 140.6(a) and (b) as part of the agency's approval process.

(b) *Refunds.* A clause shall be included in grants, contracts, and other agreements with both U.S. and foreign non-governmental entities requiring that assistance provided to or through such an entity that is subsequently found to have been engaged in drug trafficking, as defined in this part, shall be subject to refund or recall.

(c) *Certifications.* Prior to approval of covered assistance, key individuals (as described in § 140.6(a)(3)) in both U.S. and foreign non-governmental entities shall be required to certify that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking and have not knowingly assisted, abetted, conspired, or colluded with others in drug trafficking. False certification may subject the signatory to U.S. criminal prosecution under 18 U.S.C. Sec. 1001.

§ 140.10 Intermediate credit institutions.

(a) Treatment as Non-Governmental Entity or as a Foreign Government Entity. Intermediate credit institutions (''ICIs'') shall be subject to either the procedures applicable to foreign government entities or those applicable to non-governmental entities, depending on the nature of the specific entity. The Assistant Secretary of State for International Narcotics and Law Enforcement Affairs or the Assistant Secretary's designee, in consultation with the agency proposing the assistance and other appropriate bureaus and agencies, shall determine (consistent with the definition of ''foreign state'' set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. 1603(a) and made applicable by § 140.5) whether the ICI will be treated as a non-governmental entity or a foreign government entity.

(b) *Refunds.* In addition to measures required as a consequence of an ICI's treatment as a non-governmental entity or a foreign government entity, a clause shall be included in agreements with all ICIs requiring that any loan greater than $1,000 provided by the ICI to an individual or entity subsequently found to have been convicted of a narcotics offense or engaged in drug trafficking, as defined in this part, shall be subject to refund or recall.

§ 140.11 Minimum enforcement procedures.

Sections 140.6 through 140.10 represent the minimum procedures that each agency providing assistance must apply in order to implement FAA Section 487. Under individual circumstances, however, additional measures may be appropriate. In those cases, agencies providing assistance are encouraged to take additional steps, as necessary, to ensure that the statutory restrictions are enforced.

§ 140.12 Interagency review procedures.

If the agency proposing the assistance disagrees with a determination by the Country Narcotics Coordinator to withhold assistance or take other measures, the agency may request that the determination be reviewed by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs in coordination with other appropriate bureaus and agencies. Unless otherwise determined by the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, the assistance shall continue to be withheld pending resolution of the review.

§ 140.13 Notification to foreign entities and individuals.

(a) Unless otherwise determined under § 140.13(b), if a determination has been made that assistance to a foreign entity or individual is to be withheld, suspended, or terminated under this part, the agency administering such assistance shall so inform the affected entity or individual. Except as the agency administering such assistance, the Country Narcotics Coordinator, and the agency or agencies that are the source of information that formed the basis for withholding, suspending, or terminating assistance may otherwise agree, the entity or individual shall be notified solely of the statutory basis for withholding, suspending, or terminating assistance.

(b) Before such notification, the Country Narcotics Coordinator shall be responsible for ascertaining, in coordination with the investigating agency, that notification would not interfere with an on-going criminal investigation. If the investigating agency believes that there is a significant risk of such interference, the Country Narcotics Coordinator, in coordination with the investigating agency, shall determine the means of compliance with this statute that best minimizes such risk.

§ 140.14 Special procedures for U.S. entities and individuals.

(a) If the Country Narcotics Coordinator makes a preliminary decision that evidence exists to justify withholding, suspending, or terminating assistance to a U.S. entity, U.S. citizen, or permanent U.S. resident, the matter shall be referred immediately to the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs for appropriate action, to be taken in consultation with the agency proposing the assistance and the agency or agencies that provided information reviewed or relied upon in making the preliminary decision.

(b) If a determination is made that assistance is to be withheld, suspended, or terminated under this part, the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, or the Assistant Secretary's designee, shall notify the affected U.S. entity, U.S. citizen, or permanent U.S. resident and provide such entity or individual with an opportunity to respond before action is taken. In no event, shall this part be interpreted to create a right to classified

information or law enforcement investigatory information by such entity or individual.

Dated: May 31, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–17870 Filed 7–6–98; 8:45 am]

BILLING CODE 4710–08–V

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX NO. DC–25–2010a; FRL–6120–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; 15 Percent Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is granting conditional approval of a State Implementation Plan (SIP) revision submitted by the District of Columbia (the District) to meet the 15 percent reasonable further progress implementation plan (15% plan) requirements of the Clean Air Act (the Act) for the District's portion of the Metropolitan Washington, D.C. ozone nonattainment area. EPA is granting conditional approval because the District's enhanced inspection maintenance (I/M) program, which is one of the many control measures adopted by the District to achieve the 15% reduction in volatile organic compounds (VOC), has only been conditionally approved, the 15% plan must also be conditionally approved. The intended effect of this action is to conditionally approve the 15% plan submitted by the District of Columbia in accordance with the Clean Air Act.

DATES: This direct final rule is effective on September 8, 1998 without further notice, unless EPA receives adverse comment by August 6, 1998. If adverse comment is received, EPA will publish a timely document withdrawing the rule.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. 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 Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, Ozone and Mobile Sources Branch (3AP21), U.S. EPA—Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, or by telephone at (215) 814–2179. Questions may also be addressed via e-mail, at: cripps.christopher@epamail.epa.gov [Please note that only written comments can be accepted for inclusion in the docket.]

SUPPLEMENTARY INFORMATION: On April 16, 1998 the District of Columbia Department of Health (DoH) submitted a revision to its State Implementation Plan (SIP) for the Washington, D.C. ozone nonattainment area. The revision consists of a plan to achieve a fifteen percent reduction from 1990 base year levels in volatile organic compound (VOC) emissions. During the summertime months, VOC emissions contribute significantly to the formation of ground level ozone, and many volatile organic compounds are also toxic or hazardous air pollutants.

I. Background

The Washington, D.C. metropolitan area is classified as a serious ozone nonattainment area. Section 182(b)(1) of the Act requires ozone nonattainment areas classified as moderate or above to develop plans to meet specific reasonable further progress, also known as rate-of-progress (ROP), for the reduction of VOC emissions. Specifically, section 182(b)(1) requires a SIP revision to reduce by 1996 VOC emissions by fifteen percent from 1990 baseline levels in the area while accounting for growth in VOC emissions from 1990 to 1996. These ''15% plans'' were due to be submitted to EPA by November 15, 1993, with the reductions to occur within 6 years (i.e., November 15, 1996). The Act sets limitations on the creditability of certain control measures towards reasonable further progress. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g., new car emissions standards) promulgated prior to 1990; or for reductions stemming from regulations promulgated pursuant to section 211(h) of the Act to lower the volatility [i.e., Reid Vapor Pressure (RVP)] of gasoline. Furthermore, section 182(b)(1) of the Act does not allow credit towards reasonable further progress for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in-place prior to 1990. In addition to these restrictions, a creditable measure must be either in the SIP, result from a national rule promulgated by EPA or be contained in a permit issued under Title V of the Act. Any measure must result in real, permanent, quantifiable and enforceable emission reductions to be creditable toward the 15% goal.

The Washington, D.C. ozone nonattainment area consists of the entire District of Columbia, five counties in Northern Virginia and five counties in Maryland. Virginia, Maryland and the District all must demonstrate reasonable further progress for the Washington, D.C. nonattainment area. The Commonwealth of Virginia, State of Maryland and the District of Columbia in conjunction with municipal planning organizations collaborated on a coordinated 15% plan for the entire Metropolitan Washington, D.C. nonattainment area (regional 15% plan). This was done under the auspices of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and with the assistance of the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning.[1]

Although the plan was developed by a regional approach, each jurisdiction is required to submit its 15% plan to EPA as a revision to its SIP.

Because the reasonable further progress requirements such as the 15% plan affect transportation improvement plans, municipal planning organizations have historically been heavily involved in air quality planning in the

[1]The Act addresses interstate coordination for inter-state nonattainment areas (42 U.S.C. 7504) mainly for nonattainment planning. Because the interstate air quality planning organization involved, the MWAQC, meets the requirements of section 174 of the Act, EPA believes all interstate coordination requirements have been fulfilled. In the absence of an agreement to prepare a nonattainment area-wide plan, each state could have developed and submitted a SIP revision to obtain the 15% reasonable further progress requirement independently of the others. The MWAQC process also ensures that the consultation between air quality and transportation planning agencies is performed as required under the Act (42 U.S.C. 7506(c)) and under EPA's transportation conformity final rule (40 CFR 93.100).

Washington, D.C. area. As explained in further detail below, the regional 15% plan determined the regional target level, regional projections of growth and finally the total amount of creditable reductions required under the reasonable further progress requirement in the entire Washington, D.C. ozone nonattainment area. The three jurisdictions, the State of Maryland, the Commonwealth of Virginia and the District agreed to apportion this total amount of required creditable reductions among the three jurisdictions. EPA is taking action today only on the District's 15% plan submittal, which addresses only the District's responsibility for the 15% plan in the Washington, D.C. metropolitan area.

The 15% plan for the District of Columbia was submitted by the Mayor's designated official, the Director of the District of Columbia DoH, on April 16, 1998. The April 16, 1998 submittal effectively superseded previous submittals. On May 15, 1995, the District submitted a 15% plan SIP for the District's portion of Washington, D.C. ozone nonattainment area. On November 3, 1997 the District submitted a Phase I attainment plan which included revisions to the 1990 base year inventory and to the 15% plan SIP revision. This amended 15% plan SIP revision was based upon the revised 1990 base year emissions inventory and upon revised projections in growth in emissions which came to light during the preparation of the Phase I attainment plan. The November 3, 1997 15% plan SIP revision did not however reflect changes in the District's motor vehicle enhanced inspection and maintenance (I/M) program. The April 16, 1998 15% plan SIP revision does reflect the District's current enhanced I/M program.

EPA has reviewed the District's April 16, 1998 15% plan SIP revision, and a single factor prevents a full approval of the District of Columbia's 15% plan SIP. A detailed discussion of the EPA's analysis of the District's 15% plan SIP revision is included below in the 'Analysis' portion of this rulemaking action and also in the technical support document (TSD) for this action. (Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.) Because this one measure, the District's enhanced I/M program, has been conditionally approved into the District of Columbia's SIP, under section 182(b)(2)(D), EPA can only grant a conditional approval of the emission reduction credits for this measure and, therefore, can only grant conditional approval of the District of Columbia's 15% plan SIP revision. Satisfying the condition for full approval of the enhanced I/M program, namely that the April 30, 1999 start date be met, will satisfy the conditional approval of the District's 15% plan as well.

II. Analysis of the SIP Revision

A. Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15 percent planning is the 1990 base year emission inventory. The inventory is broken down into several emissions source categories: stationary point, area, on-road mobile sources, and off-road mobile sources. The base year inventory includes emissions of all sources within the nonattainment area and certain large point sources within twenty-five miles of the boundary. A sub-set of the 1990 base year inventory is the 1990 rate-of-progress (ROP) inventory which includes only anthropogenic (man-made) emissions actually within the nonattainment area boundaries. The District of Columbia submitted a formal SIP revision containing its official 1990 base year emission inventory on January 13, 1993 and submitted revisions on November 3, 1997. In the Final Rules section of this **Federal Register**, EPA is also approving the District's November 3, 1997 SIP revision consisting of revisions to the 1990 base year emission inventory as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in that direct final rule.

B. Growth in Emissions Between 1990 and 1996

EPA has interpreted the Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% reasonable further progress requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in VOC emissions, in addition to a 15 percent reduction of VOC emissions. Thus, an estimate of growth in VOC emissions and emissions related activity from 1990 to 1996 is necessary for demonstrating reasonable further progress. Growth for all source categories other than on-road mobile sources, is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. For these categories, growth must be determined separately for each source, or by source category, since sources typically grow at different rates. EPA's inventory preparation guidance recommends the following indicators, as applied to emission units in the case of stationary sources or to a source category in the case of area sources, in order of preference: product output, value added, earnings, employment. Population can also serve as an acceptable surrogate indicator.

Growth for on-road mobile sources is determined projecting future year vehicle miles traveled (VMT) and speeds using a traffic demand model that represents the highway network in the Washington, D.C. area. (The same highway network and traffic demand model is also used for conformity determinations.) These results are multiplied by emission factors appropriate for the forecast year that were generated by EPA's Mobile 5.0b emission factor model.

The District's 15% plan contains growth projections for point, area, on-road motor vehicle, and non-road vehicle source categories. For a detailed description of the growth methodologies used by the District, please refer to the TSD for this action. EPA is approving the District's 1990–1996 emissions growth projections.

C. Enhanced Vehicle Inspection and Maintenance (I/M) Program

Section 182(b)(1) of the Act requires that states containing ozone nonattainment areas classified as moderate or above prepare SIP revisions that provide for a 15 percent VOC emissions reduction by November 15, 1996. Most of the 15% plan SIP revisions originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most states experienced substantial difficulties with these enhanced I/M programs, only a few states are currently actually testing cars using their original enhanced I/M protocols.

In September 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in designing I/M programs appropriate for their needs (See 60 FR 48029, September 18, 1995). Subsequently, Congress enacted the National Highway Systems Designation Act of 1995 (NHSDA), which provides states with additional flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by states to re-design enhanced I/M programs in accordance with the guidance contained within the NHSDA,

secure state legislative approval when necessary, and set up the infrastructure to perform the testing program has precluded states that revise their I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

The District submitted a SIP revision amending the District's existing I/M program on July 13, 1995 and supplemented this submittal on March 27, 1996 under the NHSDA. On October 10, 1996, EPA published a proposed disapproval of the July 13, 1995 and March 27, 1996 SIP revisions. The proposed disapproval listed numerous major and minor deficiencies. On November 27, 1997, the District submitted a completely revised enhanced I/M SIP revision. The November 27, 1997 enhanced I/M SIP revision completely revised the testing method from that contained in the earlier SIP revisions. On March 30, 1998 (63 FR 15118), EPA proposed to conditionally approve this enhanced I/M SIP revision. EPA also withdrew its previously proposed disapproval action of an enhanced I/M SIP revision submitted by the District of Columbia on July 13, 1995 and supplemented March 27, 1996 because that action was no longer germane, given that the District's submittal of November 27, 1997 completely replaced those earlier submittals. No comments were received on EPA's proposed conditional approval of the District's enhanced I/M program. On June 2, 1998, EPA published its final conditional approval (63 FR 29955).

Given the heavy reliance by many states upon enhanced I/M programs to help achieve the 15% reduction in VOC emissions required under section 182(b)(1) of the Act, the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA believes that it was not possible for many states to achieve the portion of the 15% reductions that are attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15% plan SIP revisions would serve no purpose. Consequently, under certain circumstances, EPA has allowed states that re-designed their enhanced I/M programs to receive emission reduction credit from these programs within their 15% plans, even though the emissions reductions from the I/M program will occur after November 15, 1996. The provisions for crediting reductions for enhanced I/M programs are contained in two documents: ''Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,'' note from John Seitz and Margo Oge, dated August 13, 1996, and ''Modeling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance,'' memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.

Specifically, EPA is approving SIP revisions if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15% plan SIP measures, will achieve the 15% level as soon after November 15, 1996 as practicable, pursuant to a February 12, 1997 memorandum from John Seitz and Richard Ossias entitled, ''15 Percent VOC SIP Approvals and the 'As Soon As Practicable' Test.'' To make this ''as soon as practicable'' determination, EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. EPA does not believe that measures meaningfully accelerate the date by which the 15% reduction is achieved if they provide an insignificant amount of reductions.

The EPA has examined other available SIP measures to determine if they are practicable for the District's portion of the Washington, D.C. area and if they would meaningfully accelerate the date by which the area reaches the 15% level of reductions. The EPA has determined that the District's SIP does contain the appropriate measures. Measures for which the District took credit in the 15% plan are identified in Table 1, below, as ''In 15% Plan'' and are not available as a possible alternative to enhanced I/M. Measures in Table 1 identified as being ''Pre-1990'' were implemented prior to 1990 under rules adopted by the District and thus are not available as a possible alternative to enhanced I/M. The other programs that the District included in its 15% plan submittal result in less than a 1.3 tons per day reduction and do not deliver in the aggregate, anything close to the reductions achieved by enhanced I/M.

TABLE 1.—VOC CONTROL MEASURES ANALYZED IN THE DISTRICT'S 15 PERCENT PLAN SUBMITTAL PLAN

Measures	VOC reductions (tons/day)
Area Source Measures:	
AIM Coatings—Federal Rule	In 15% Plan
Consumer Solvents—Federal Rule	In 15% Plan
Solvent Cleaning—Substitution	0.1
Graphic Arts—Web Offset Control	0.5
Autobody Refinishing—ACT control	In 15% Plan
Cutback Asphalt—100% Ban	0.0
Other Dry Cleaning	0.2
Stage I Enhancement	0.4
Stage II Vapor Recovery	Pre-1990
Nonroad—Reformulated Gasoline	In 15% Plan
Point Source Measures:	
Flexographic Printing	0.0
Gravure Printing	<0.1
Web Offset Lithography	Pre-1990
Non-mandated On-Road Mobile Measures:	
Reformulated Gasoline	In 15% Plan
I/M Reductions:	
High Enhanced in 15% Plan	In 15% Plan

EPA believes that the enhanced I/M program is the only measure that will significantly accelerate the date by which the 15% reduction requirement will be achieved. EPA is allowing enhanced I/M reductions which occur

out until November 15, 1999 to count toward the 15% emission reduction level for the 15% plan, because in doing so, the District will reach a 15% reduction in VOC emissions as soon as practicable.

The District claimed a total of 3.8 tons per day credit from enhanced I/M in its 15% plan. In the 15% plan, the District evaluated the enhanced I/M program using EPA's Mobile 5.0b model with assumptions that called for implementation of a centralized, IM240 test with pressure and purge testing, and a program start date of April 30, 1999. EPA has determined that the enhanced I/M program for the District's portion of the Washington, D.C. nonattainment area does achieve the credited reductions from enhanced I/M as soon as practicable. The District's enhanced I/M program is a biennial, centralized, test-only program network using EPA's IM240 test. EPA believes that the District cannot accelerate the reductions by initially requiring annual testing because:

(1) Without additional testing stations other requirements of the enhanced I/M rule relating to motorist convenience would suffer. Motorist convenience is one important aspect that affects public acceptance and effectiveness of the I/M program.

(2) Additional infrastructure changes (e.g., more testing equipment, enlarging or building new testing stations, and the hiring and training of additional inspectors) to the enhanced I/M program would not come on-line in time to afford a substantial increase the amount of reductions realized before November 15, 1999.

(3) The cost effectiveness of the program would be adversely affected because the additional costs would not result in a corresponding amount of reductions.

Because the District's revised enhanced I/M program is designed to meet EPA's high-enhanced performance standard, EPA believes that the District's program will achieve 3.8 tons per day of reductions by 1999 credited in the District's 15% plan.

D. Target Level Emissions/Emission Reductions Needs

The regional 15% plan calculates a target level of emissions to meet the 15% reasonable further progress requirement over the entire nonattainment area. The regional 15% plan contains a projection of emissions growth from 1990 to 1996 and in effect apportions among the three jurisdictions the amount of creditable emission reductions that each jurisdiction must achieve in order for the entire nonattainment area to achieve a 15% reduction in VOC emissions net of growth. Each jurisdiction then adopted the regional plan, which identified the amount of creditable emission reductions which that jurisdiction must achieve for the regional plan to get a 15% reduction accounting for any growth. The regional plan calculated the ''target level'' of 1996 VOC emissions, in accordance with applicable EPA guidance.

EPA has interpreted section 182(b) of the Act to require that the base year VOC emission inventory be adjusted to account for reductions in VOC emissions that would have occurred from the pre-1990 FMVCP and RVP programs. To meet EPA's applicable guidance on this requirement, the regional plan contains a calculation of the reductions occurring between 1990 and 1996 from the pre-1990 Tier 0 FMVCP and RVP programs and the result of subtracting these reductions from the 1990 ROP inventory. The net result of this calculation yielded the 1990 ''adjusted base year inventory adjusted to 1996.''

The District's 15% plan relies upon reductions from the District's revised, enhanced I/M programs to achieve the required 15% level as soon after November 15, 1996 as practicable, but not later than 1999. Under EPA's applicable guidance for 15% plans that rely upon reductions from enhanced I/M after 1996, the target level must also incorporate the effects of the pre-1990 Tier 0 FMVCP on 1990 emissions due to turnover in vehicles between 1996 and 1999. To meet EPA's applicable guidance on this requirement the regional plan also contains a calculation of the non-creditable reductions from the pre-1990 Tier 0 FMVCP and RVP programs between 1990 and 1999 and the result of subtracting these reductions from the 1990 ROP inventory. The result of this calculation yielded the 1990 ''adjusted base year inventory adjusted to 1999''. The difference between the 1990 ''adjusted base year inventory adjusted to 1996'' and 1990 ''adjusted base year inventory adjusted to 1999'' yields the ''fleet turnover correction'' (FTC).

The next step is to calculate the base 1996 VOC target level of emissions. This is eighty-five percent (85%) of the 1990 adjusted base year inventory for 1996. This number represents what the emissions inventory should have been in 1996 if the 15% target level in order to achieve the 15% reduction. To account for the effects on VOC emissions due to the Tier 0 FMVCP between 1996 and 1999 the FTC is subtracted from the base 1996 VOC target level of emissions to yield the final, corrected 1996 VOC target level of emissions. The emission reduction needs to achieve the target level is just the difference between the 1996 projected uncontrolled inventory and the final, corrected 1996 VOC target level. Table 2, below, summarizes the calculations for the 1996 VOC target level for the entire Washington, D.C. ozone nonattainment area.

TABLE 2.—REQUIRED REDUCTIONS FOR THE WASHINGTON, D.C. AREA'S 15% PLAN

[In tons of VOC per day]

	Item	District of Columbia	Maryland	Virginia	Washington D.C. area totals
	Washington, D.C. Area Target Level Calculation				
1	1990 ROP Inventory	60.3	241.7	226.5	528.7
2	1990 Adjusted Base Year Inventory adjusted to 1996	51.2	215.1	196.8	463.1
3	1990 Adjusted Base Year Inventory adjusted to 1999	49.9	210.9	193.3	454.1
4	FTC Adjustment (Line 2 minus Line 3)	1.3	4.2	3.5	9.0
5	Base 1996 target Level = 85% of Line 2 (0.85 × Line 2)	43.5	182.8	167.3	393.6
6	Final, Corrected 1996 Regional Target Level (Line 5 minus Line 4)	42.2	178.6	163.8	384.6
7	Projected 1996 Uncontrolled Emissions	48.5	234.7	219.4	502.4
8	Required Regional Emission Reductions (Line 8 minus Line 7)*	.....	.....	.....	117.8
9	Apportioned State Emission Reductions*	8.5	57.5	51.7	117.7

TABLE 2.—REQUIRED REDUCTIONS FOR THE WASHINGTON, D.C. AREA'S 15% PLAN—Continued

[In tons of VOC per day]

Item	District of Columbia	Maryland	Virginia	Washington D.C. area totals
10 Total Reductions Claimed in the District's 15% Plan	9.2	N/A	N/A	.....

*The small discrepancy between values is due to rounding the apportioned emission reductions to the nearest tenth.

The emission reductions required to meet the 15% reasonable further progress requirement equals the difference between the projected 1996 emissions under the current control strategy (''the 1996 uncontrolled emissions'') and the target level. This amount reflects a 15% reduction from the adjusted base year inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996. The Washington, D.C. area's regional VOC target level is 384.8 tons per day. EPA has determined that this regional target level and emission reduction needs for the Metropolitan Washington, D.C. nonattainment area have been properly calculated in accordance with EPA guidance.

E. Control Strategies in the District's 15% Plan

The specific measures adopted (either through state or federal rules) are addressed, in detail, in the District's 15% plan. The following is a brief description of each control measure that the District has claimed credit for in the submitted 15% plan, as well as the results of EPA's review of the use of that strategy towards the Act's rate-of-progress requirement.

F. Fully Creditable Emission Control Strategies

EPA is granting full credit to the District of Columbia's 15% plan SIP with reductions from the following six measures:

1. Reformulated Gasoline (RFG)

Section 211(k) of the Act requires that, beginning January 1, 1995, only reformulated gasoline be sold or dispensed in ozone nonattainment areas classified as severe or above. Gasoline is reformulated to reduce combustion by-products and to produce fewer evaporative emissions. Section 211(k)(6) allows other nonattainment areas to ''opt-in'' to the program. The District submitted a request to opt-in to the reformulated gasoline program, which EPA approved on April 1, 1992 (57 FR 11677). The District claims a reduction of 1.1 tons per day from their 1996 projected uncontrolled on-road mobile source emissions using EPA's Mobile 5.0b emission factor model to determine the emission benefit. EPA has reviewed the District's calculation of the benefits for this measure and finds the amount of reduction the District claims is reasonable and acceptable.

2. Off-Road Use of Reformulated Gasoline

The use of reformulated gasoline will also result in reduced emissions from off-road engines such as outboard motors for boats and lawn mower engines, commonly used in summer months. The District claims a reduction of 0.1 tons per day from their 1996 projected uncontrolled off-road mobile source emissions. The District used guidance provided on August 18, 1993 by EPA's Office of Mobile Sources on the VOC emission benefits for non-road equipment which are in a nonattainment area that uses Federal Phase I RFG. The District has correctly used the guidance to compute the VOC emission reductions for this measure. The EPA agrees with this projected reduction in the District's 15% plan and the 0.1 tons per day emission benefit resulting from this measure are creditable.

3. Post 1990 Federal Motor Vehicle Control Program (FMVCP Tier 1) and Detergent Additives

EPA promulgated a national rule establishing ''new car'' standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Clean Air Act was amended in 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal.

On November 1, 1994, EPA promulgated a national rule establishing Federal standards for detergent additives for gasoline as required by the Act (59 FR 54706). This regulation requires, beginning January 1, 1995, that gasoline sold nationwide contain additives to prevent accumulation of deposits in engines and fuel systems. Preventing such deposits maintains the efficiencies of engine systems and reduces VOC emissions resulting from engine efficiency degradation.

The District claimed a reduction of 1.5 tons per day from the Tier 1 Federal Motor Vehicle Control Program and the Gasoline Detergent Additive Rule using EPA's Mobile 5.0b emission factor model to determine the emission benefits. EPA has reviewed the District's methodology used in calculating of the benefits for this measure and finds the amount of reduction that the District claims is reasonable and acceptable. EPA believes this measure and the 1.5 tons per day emission benefit is fully creditable in the District's 15% plan.

4. Architectural and Industrial Maintenance Coatings (AIM)

Emission reductions have been projected for AIM coatings due to the expected promulgation by the EPA of a national rule. VOC emissions emanate from the evaporation of solvents used in the coating process. In EPA's most recent policy memorandum on AIM credits, ''Update on the Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coatings Rule'', dated March 7, 1996, EPA allowed states to claim a 20% reduction of total AIM emissions from the national rule. The District claimed a 20% reduction in AIM emissions under its 15% plan, which is a reduction of 1.6 tons per day from their 1996 projected uncontrolled AIM coating emissions. In the March 7,1996 memorandum, EPA allowed states to continue to claim a 20% reduction of total AIM emissions from the national rule in their 15% plans although the emission reductions were not expected to occur until April 1997. As a result of legal challenges to the proposed national rule, EPA has negotiated a compliance date of no earlier than January 1, 1998. If the final rule does not provide the amount of credit indicated in the memorandum that states can claim in their 15% plans, the District is responsible for developing measures to make up the shortfall. With this caveat, EPA believes use of emissions reductions from EPA's expected national AIM rule is acceptable towards the 15% plan target. Therefore, the 1.6 tons per day are an acceptable credit claim in the District's 15% plan.

5. Consumer and Commercial Products

Section 183(e) of the Act required EPA to conduct a study of VOC emissions from consumer and commercial products and to compile a regulatory priority list. EPA is then required to regulate those categories that account for 80% of the consumer product emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule, including personal, household, and automotive products. EPA intends to issue a final rule covering these products in the near future. EPA policy allows states to claim up to a 20% reduction of total consumer product emissions towards the reasonable further progress requirement. The District claimed a 20% reduction or the equivalent reduction of 0.6 tons per day from their 1996 projected uncontrolled consumer and commercial products emissions in its 15% plan. For the reasons discussed above under the AIM rule, EPA believes the 0.6 tons per day projected reduction in the District's 15% plan is creditable. Again, if this final rule does not provide the amount of credit indicated in the memorandum that states can claim in their 15% plans, the District is responsible for developing measures to make up the shortfall.

6. Automobile Refinishing

EPA is in the process of adopting a national rule to control VOC emissions from solvent evaporation through reformulation of coatings used in auto body refinishing processes. These coatings are typically used by industry and small businesses, or by vehicle owners. VOC emissions emanate from the evaporation of solvents used in the coating process. In a November 29, 1994 memorandum, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' EPA set forth policy on the creditable reductions to be assumed from the national rule for auto body refinishing. That memorandum allowed for a 37% reduction from current emissions with an assumption of 100% rule effectiveness (presuming the coating application instructions were being followed). The District's approach was consistent with EPA's guidance to determine the creditable emissions from this rule and claimed a reduction of 0.5 tons per day from their 1996 projected uncontrolled auto body emissions in its 15% plan. For the reasons discussed above under the AIM rule, the EPA believes the 0.5 tons per day projected reduction in the District's 15% plan is creditable. Again, if this final rule does not provide the amount of credit indicated in the memorandum that states can claim in their 15% plans, the District is responsible for developing measures to make up the shortfall.

G. Conditionally Creditable Emission Control Strategies

EPA is conditionally granting credit to the District's 15% plan SIP with reductions from the District's enhanced vehicle inspection and maintenance (I/M) Program. The District claimed a total of 3.8 tons per day credit for this measure. In the 15% plan, the District evaluated the I/M program using EPA's Mobile 5.0b emission factor model with a program start date of April 30, 1999. The effect of the April 30, 1999 start date was factored by interpolating the results of two runs of EPA's Mobile 5.0b emission factor model. The first run used assumptions that called for implementation of a centralized, test-only, IM240 test with pressure and purge testing and an anti-tampering program inspection. The second run used assumptions that reflected implementation of the District's 1990 program which was a centralized, test-only using an idle test. The District used the same highway network model that was used to determine the 1990 base year inventory, and the adjusted base year inventories, and the 1996 on-road VOC emissions budget used for transportation conformity purposes.

EPA has determined that the I/M program for the District's portion of the Washington, D.C. nonattainment area does achieve reductions from I/M as soon as practicable for the reasons discussed previously in this notice under ''Enhanced Vehicle Inspection and Maintenance (I/M) Program.'' The District's I/M program is a biennial, centralized, test-only program network using EPA's IM240 test.

Because the District's revised I/M program is designed to meet EPA's high-enhanced performance standard and will implement the same number of testing cycles between start-up and November 1999 as that modeled for credit in the 15% plan, EPA believes that the District's program will achieve the claimed 3.8 tons per day of reductions by 1999. EPA has also determined that the credits from the enhanced I/M program were determined in accordance with applicable EPA guidance.

However, section 182(b)(2)(D) requires that EPA grant credit for measures approved into the SIP. Because EPA's approval of the District's enhanced I/M SIP is conditioned upon the District meeting the April 30, 1999 start date, EPA can only approve the reduction credits claimed from enhanced I/M conditioned upon the District meeting the April 30, 1999 start date.

H. Reasonable Further Progress

Table 3 below summarizes the proposed creditable measures from the District's 15% plan for the Washington, D.C. area.

TABLE 3.—CREDITABLE REDUCTIONS IN THE DISTRICT'S 15 PERCENT PLAN FOR THE WASHINGTON, D.C. AREA

[Tons VOC per day]

CREDITABLE REDUCTIONS	
Tier 1 FMVCP and gasoline Detergent Additive Rule	1.5
Reformulated Gasoline:	
On-Road	1.1
Off-Road	0.1
Auto Refinishing	0.5
AIM	1.6
Consumer/Commercial Products	0.6
Sub-Total Creditable	5.4
CONDITIONALLY CREDITABLE REDUCTIONS	
Enhanced Inspection & Maintenance	3.8

TABLE 3.—CREDITABLE REDUCTIONS IN THE DISTRICT'S 15 PERCENT PLAN FOR THE WASHINGTON, D.C. AREA—Continued

[Tons VOC per day]

Sub-Total Conditionally Creditable	3.8
Total Fully and Conditionally Creditable Reductions	9.2

The District's 15% plan SIP revision contains reductions of 9.2 tons per day which exceeds the District's needs of 8.5 tons per day. Of these 9.2 tons per day EPA is proposing to fully credit the District of Columbia's 15% plan SIP with 5.4 tons per day of reductions and credit the 15% plan SIP with 3.8 tons per day conditioned the District meeting the conditioned listed in the June 2, 1998 conditional approval of the enhanced I/M testing program.

I. Transportation Conformity Budgets

Under EPA's transportation conformity rule the 15% plan is a control strategy SIP. This plan establishes a budget of 133.7 tons per day of VOC emissions for on-road mobile sources throughout the entire Metropolitan Washington, D.C. ozone nonattainment area and does not establish a budget for nitrogen oxides (NO_X) emissions. However, on November 3, 1997 the District of Columbia submitted a complete, SIP revision which included reasonable further progress plan to achieve a nine percent reduction in VOC and NO_X emissions after 1996 (post-1996 plan). This November 3, 1997 SIP revision also established a VOC budget for 1999 of 123.3 tons per day for on-road mobile sources for the entire Metropolitan Washington, D.C. ozone nonattainment area and also establishes a NO_X budget for 1999. Under the conformity rule, EPA believes that the VOC and NO_X budgets established by the November 3, 1997 post-1996 plan are currently the controlling budgets for conformity determinations for 1999 and later years. The next conformity determination in the Washington, D.C. area will consider only 1999 and later years. The budget in the post-1996 plan specifically addresses the 1999 reasonable further progress milestone year whereas the 15% plan establishes a budget for the prior reasonable further progress milestone year of 1996. The time period for the budget in the 15% plan has passed. The post-1996 plan also establishes more stringent VOC budget than the 15% plan.

J. Summary

EPA's review of this material indicates that the District's 15% plan SIP revision meets the requirements of the Act and applicable EPA guidance. EPA is conditionally approving the District of Columbia's SIP revision for a 15% reduction in VOC emissions, which was submitted on April 16, 1998.

EPA is approving 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 adverse or critical comments be filed. This rule will be effective September 8, 1998 without further notice unless the Agency receives adverse comments by August 6, 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. EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 8, 1998 and no further action will be taken on the proposed rule.

III. Final Action

EPA is conditionally approving the revision to the District of Columbia SIP submitted on April 16, 1998 consisting of its 15% plan. EPA's approval is conditioned upon the District meeting the April 30, 1999 start date committed to and contained in its November 27, 1997 enhanced I/M SIP revision submittal. The conversion from conditional approval to full approval or to disapproval will be dependent upon whether or not the District meets the start date of April 30, 1999 committed to in the enhanced I/M SIP revision. If the District starts the enhanced I/M testing program on or before April 30, 1999, then any final conditional approval shall convert to a full approval of the SIP revision. If the District fails to fully implement enhanced I/M testing in the District by April 30, 1999, EPA would notify the District by letter that the condition has not been met and that any final conditional approval has converted to a disapproval, and the clock for imposition of sanctions under section 179(a) of the Act would start as of the date of the letter. Subsequently, a notice would be published in the **Federal Register** announcing that the 15% plan SIP revision has been disapproved.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation 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 Orders 12866 and 13045

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

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

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, 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. Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA 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, EPA certifies 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 CAA, preparation of a flexibility

analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

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 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 the rule in the **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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 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 or action. This action regarding approval of the District of Columbia's 15% plan SIP revision 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, Ozone.

Dated: June 23, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart J of chapter I, title 40 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 J—District of Columbia

2. Section 52.473 is amended by designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 52.473 Conditional Approval.

* * * * *

(b) EPA is conditionally approving as a revision to the District of Columbia State Implementation Plan the 15 Percent Rate of Progress Plan for the District of Columbia's portion of the Metropolitan Washington, D.C. ozone nonattainment area, submitted by the Director of the District of Columbia Department of Public Health on April 16, 1998. EPA's approval is conditioned upon the District meeting the April 30, 1999 start date committed to and contained in its November 27, 1997 enhanced I/M SIP revision submittal. The conversion from conditional approval to full approval or to disapproval will be dependent upon whether or not the District meets the start date of April 30, 1999 committed to in the enhanced I/M SIP revision. If the District starts the enhanced testing program on or before April 30, 1999, then any final conditional approval shall convert to a full approval of the SIP revision. If the District fails to fully implement enhanced I/M testing in the District by April 30, 1999, EPA would notify the District by letter that the condition has not been met and that this final conditional approval has converted to a disapproval, and the clock for imposition of sanctions under section 179(a) of the Act would start as of the date of the letter. Subsequently, a notice would be published in the **Federal Register** announcing that the 15% plan SIP revision has been disapproved.

[FR Doc. 98–17966 Filed 7–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH115–2; FRL–6120–7]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is finalizing a May 21, 1998, proposal to approve an Ohio State Implementation Plan (SIP) revision to remove the air quality triggers from each of the following Ohio maintenance area contingency plans: Canton (Stark County), Cleveland (Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage Counties), Columbus (Franklin, Delaware and Licking Counties), Steubenville (Jefferson County), Toledo (Lucas and Wood Counties), Youngstown (Mahoning and Trumbull Counties) as well as Clinton County, Columbiana County and Preble County.

EFFECTIVE DATE: This action will be effective on July 7, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location:

Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Please contact Scott Hamilton at (312) 353–4775 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4775.

SUPPLEMENTARY INFORMATION:

I. Background

On May 21, 1998, USEPA published a proposed rule proposing to approve an April 27, 1998, request from Ohio to remove the air quality triggers from contingency plans in the Ohio areas subject to the first round of one hour ozone standard revocations. The areas subject to the first round of revocations attained the one hour ozone standard based on air monitoring data from 1994–1996. The May 21, 1998, proposal solicited written comments from May 21, 1998 to June 22, 1998. No comments were received regarding this proposal.

On June 5, 1998, a final rulemaking was published revoking the one hour ozone standard for the following Ohio maintenance areas (63 FR 31013): Canton (Stark County), Cleveland (Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage Counties), Columbus (Franklin, Delaware and Licking Counties), Steubenville (Jefferson County), Toledo (Lucas and Wood Counties), Youngstown (Mahoning and Trumbull Counties) as well as Clinton County, Columbiana County and Preble County.

II. Response to Public Comments

The public comment period on USEPA's proposal to approve Ohio's request ended on June 22, 1998. No public comments were received on USEPA's proposed approval.

III. USEPA Final Action

USEPA is approving in final the maintenance plan revisions to remove the air quality triggers in the Ohio ozone maintenance areas listed in the Summary section of this document.

Nothing in this action should be construed as permitting, 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.

IV. Administrative Procedure Act

This action will be effective immediately upon publication in the **Federal Register** pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(1) and (3) (APA) for good cause. A delayed effective date is unnecessary due to the nature of this action, which removes certain SIP measures related to the 1-hour ozone standard, which has been revoked. The thirty day delay of the effective date of this action generally required by the Administrative Procedure Act is unwarranted in that it does not serve the public interest to unnecessarily delay the effective date of this action.

V. Administrative Requirements

(A) Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

(B) Executive Order 13045

This rule is not subject to Executive Order 13045, titled ''Protection of Children's Health from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

(C) Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

(D) Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with 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. This Federal action approves the removal of pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

(E) Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70—3745.73 of the Ohio Revised Code). USEPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio 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 Ohio Clean Air Act 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 for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

(F) Congressional Review Act

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. USEPA 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).

(G) Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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)).

VI. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Implementation plans.

Dated: June 25, 1998.

William E. Muno,

Acting Regional Administrator.

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 KK—Ohio

2. Section 52.1885 is amended by adding paragraph (a)(8) to read as follows:

§ 52.1885 Control Strategy: Ozone

(a) * * *

(8) Approval—On April 27, 1998, Ohio submitted a revision to remove the air quality triggers from the ozone maintenance plans for the following areas in Ohio: Canton (Stark County), Cleveland (Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage Counties), Columbus (Franklin, Delaware and Licking Counties), Steubenville (Jefferson County), Toledo (Lucas and Wood Counties), Youngstown (Mahoning and Trumbull Counties) as well as Clinton County, Columbiana County, and Preble County.

[FR Doc. 98–17972 Filed 7–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6119–9]

Washington: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Washington has applied for Final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Washington's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Unless adverse written comments are received during the review and comment period provided in this direct final rule, EPA's decision to approve Washington's hazardous waste program revision will take effect as provided below. Washington's application for program revision is available for public review and comment.

DATES: This Final authorization for Washington shall be effective October 5, 1998, if EPA receives no adverse comment on this document by August 6, 1998. Should EPA receive adverse comments, EPA will withdraw this rule before the effective date by publishing a notice of withdrawal in the **Federal Register**. Any comments on Washington's program revision application must be filed by August 6, 1998. Written comments may also be provided to the address below by August 6, 1998. If no adverse comments are received by August 6, 1998, the immediate final rule will take effect and no further action will be taken on the companion proposal, which appears in the proposed rules section elsewhere in this issue of the **Federal Register**.

ADDRESSES: Copies of the Washington program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying during normal business hours at the following addresses: U.S. Environmental Protection Agency, Region 10, Library, 1200 Sixth Avenue, Seattle, WA 98101, contact at (206) 553–1259; and the Washington Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, contact Patricia Hervieux, (360) 407–6756. Written comments should be sent to Nina Kocourek, U.S. Environmental Protection Agency, Region 10, WCM–122, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–6502.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WCM–122, Seattle, WA 98101, (206) 553–6502.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

The revision requested by Washington in its current application is not a result of a change to EPA's rules or regulations, nor is it a result of changes to Washington's rules and regulations. Washington's application for revision results from unique agreements between Washington, the United States and the Puyallup Tribe of Indians. Washington seeks revision of its authorized program to include ''non-trust lands'' within the exterior boundaries of the Puyallup Indian reservation (hereafter referred to as the ''1873 Survey Area'' or ''Survey Area'') pursuant to a settlement agreement finalized in 1988 and ratified by Congress in 1989, which allows Washington to seek authorization for such lands after consultation and communication with the Puyallup Tribe.

B. Washington

The State of Washington initially received Final Authorization on January 30, 1986 (51 FR 3782), effective January 31, 1986 (51 FR 3782), to implement its base hazardous waste management program. Washington received authorization for revisions to its program on November 23, 1987 (52 FR 35556, 9/22/87), October 16, 1990 (55 FR 33695, 8/17/90), November 4, 1994 (59 FR 55322, 11/4/94), and April 29, 1996 (41 FR 7736, 2/29/96)

On June 16, 1998, Washington submitted a final complete program application to revise its program to include non-trust lands within the 1873 Survey Area of the Puyallup Tribe reservation. Today, Washington is

seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

The EPA reviewed Washington's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Washington's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization to Washington for the revision.

As provided in the Proposed Rules section of today's FR, the public may submit written comments on EPA's proposed final decision until August 6, 1998. Copies of Washington's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

If EPA does not receive adverse written comment on Washington's program revision by the end of the comment period, the authorization of Washington's revision shall become effective 90 days from the date this document is published and EPA will take no further action on the companion document appearing in the Proposed Rules section of today's **Federal Register**. If the Agency does receive adverse written comment, it will publish a notice withdrawing this immediate final rule before its effective date. EPA then will address the comments in a later final rule based on the companion document appearing in the Proposed Rules section of today's **Federal Register**. EPA may not provide additional opportunity for comment. Any parties interested in commenting should do so in accordance with the time frame provided in today's **Federal Register**.

1. State's Revision Request

The State of Washington applied to the EPA to revise its authorized hazardous waste program to include ''non-trust lands within the 1873 Survey Area of the Puyallup Reservation,'' as defined in the Washington Indian (Puyallup) Land Claims Settlement, 25 U.S.C. 1773 *et seq.*, also cited as the Puyallup Tribe of Indians Settlement Act (hereafter ''Settlement Act''), as part of the State's authorized program. The Settlement Act allocates jurisdiction according to an ''Agreement between the Puyallup Tribe of Indians, local Governments in Pierce County, the State of Washington, the United States of America, and certain private property owners,'' (August 27, 1988), hereafter referred to as the ''Settlement Agreement.'' See 25 U.S.C. 1773–1773j. Relying on the Congressional ratification provided in the agreement, the State of Washington is seeking authorization to include non-trust lands within the 1873 Survey Area as part of its authorized program. The State of Washington is not requesting authorization for any new federal rules with this program revision.

2. Analysis of State Submission on Revision of Program

In support of its original interim base program application, Washington asserted it had jurisdiction generally over all lands within state borders. However for the limited purpose of supporting its request for this revision, the State relied solely on the Settlement Act, 25 U.S.C. 1773 *et seq.*, as the basis for its assertion of jurisdiction over non-trust lands within the 1873 Survey Area.

The Settlement Act ratified and confirmed the 1988 Settlement Agreement. Pursuant to the Settlement Act, the ''Tribe shall retain and exercise jurisdiction, and the United States and the State and political subdivisions thereof shall retain and exercise jurisdiction, as provided in the Settlement Agreement and Technical Documents and, where not provided therein, as otherwise provided by Federal law.'' 25 U.S.C. 1773g. The Settlement Agreement provides, for the purposes of the Agreement, that ''the federal, state and local governments have exclusive jurisdiction for the administration and implementation of federal, state and local environmental laws on non-trust lands within the 1873 Survey Area.'' Settlement Agreement, Section VIII(A)(3).

The Settlement Agreement defines the 1873 Survey area as the ''area which is within the area demarked by the high water line as meandered and the upland boundaries, as shown on the plat map of the 1873 Survey of the Puyallup Indian Reservation conducted by the United States General Land Office and filed in 1874.'' 25 U.S.C. 1773j(1). ''Trust lands'' are defined in the Settlement Agreement to include both ''trust land'' or ''land in trust status,'' meaning ''land or any interest in land the title to which is held in trust by the United States for an individual Indian or Tribe,'' as well as ''restricted land'' or ''land in restricted status,'' meaning ''land the title to which is held by an individual Indian or Tribe and which can be alienated or encumbered by the owner only with the approval of the Secretary of the Interior.'' Settlement Agreement, Section VIII(A). ''Non-trust lands'' exclude those lands defined as ''trust lands'' under the Settlement Agreement.

Pursuant to the Settlement Agreement, ''any federal delegation under the federal environmental laws within the 1873 Survey Area for non-trust lands will be solely to the State of Washington or its political subdivisions, and any federal delegation under the federal environmental laws within the 1873 Survey Area for trust lands will be solely to the Tribe.'' Settlement Agreement, Section VIII(A)(3). All parties to the Settlement Agreement concur that the term ''delegation'' was intended to encompass ''authorization'' as well as ''delegation'' of federal programs.

Washington's application to extend its authorized program to the non-trust lands within the Survey Area, like its predecessor base program application, attempts to reach into Indian country without limiting that reach to non-Indians. Washington relies on the Settlement Act which ratifies the Settlement Agreement, a document which itself is silent on the issue of jurisdiction over Indians in Indian country on non-trust lands in the Survey Area. In analyzing Washington's application, EPA's starting place is the Settlement Agreement.

The EPA believes the language in the Settlement Agreement with respect to the retention of Federal jurisdiction and the deference given to Federal law in the absence of other controlling law is significant to clarifying the authorization EPA is granting to Washington. Neither the EPA nor the Puyallup Tribe of Indians believes the Settlement Agreement changed operative federal law or superseded relevant case law on the issue of authority over Indians or Indian activities. In *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465 (9th Cir. 1985), the Ninth Circuit held that states generally were precluded from exercising jurisdiction over Indians in Indian country unless Congress clearly expressed an intention to permit such jurisdiction. Both EPA and the Puyallup Tribe of Indians believe the case is relevant to the issues of state jurisdiction related to this authorization.

In that case, the Court held that ''EPA reasonably interpreted RCRA not to grant state jurisdiction over the activities of Indians in Indian country.'' *Id.* at 1469. The Court found this conclusion to be well grounded in federal Indian law and went on to say: ''States are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it.'' *Id.* Moreover, ''the United States in its role as primary guarantor of Indian interests legitimately may decide that * * * tribal concerns can best be addressed by maintaining federal

control over Indian lands. EPA's interpretation of RCRA permits this option.'' *Id.* at 1470. The Court expressly did not decide ''the question of whether Washington is empowered to create a program reaching into Indian country when that reach is limited to non-Indians.'' *Id.* at 1467. Washington's proposed program, which was the basis of the lawsuit, clearly attempted to reach Indians in Indian country. *Id.*

The Settlement Agreement provides for federal environmental laws within the 1873 Survey Area on non-trust lands to be delegated solely to the State of Washington or its political subdivisions. Settlement Agreement Section VIII.A.3. In carrying out delegated authority, the State and Tribe agree to involve each other in a consultative manner. *Id.* The Settlement Agreement also provides that ''the State and its political subdivisions will retain and exercise all jurisdiction and governmental authority over all non-trust lands and the activities conducted thereon and as provided in federal law over non-Indians.'' Settlement at Section VIII. A.4. Based on the language of the Settlement Agreement as it was ratified by Congress in the Settlement Act, EPA believes that Washington can be authorized for the RCRA program over the non-trust lands within the 1873 Survey Area with limitations.

EPA finds the Settlement Act is not a clear expression of congressional intent to permit the state to exercise jurisdiction over Indians or Indian activities on non-trust lands in the Survey Area. The Settlement Act ratifies the Settlement Agreement, including its provisions for retaining federal jurisdiction, and does not change applicable case law and federal Indian law concerning State jurisdiction over Indians and Indian activities. *See* Settlement Agreement at Section VIII.A.3 and 4. Without a clear expression of intent in the Settlement Agreement as ratified by the Settlement Act to confer jurisdiction on the State over Indians or Indian activities within the 1873 Survey Area, EPA finds that Washington has not adequately demonstrated jurisdiction over Indians or Indian activities within the 1873 Survey Area. The authorization will therefore be limited to non-trust lands within the Survey Area and will not extend to Indians or Indian activities on those non-trust lands. EPA will retain jurisdiction over trust lands and over Indians and Indian activities on non-trust lands within the Survey Area. EPA believes this is consistent with the language and intent of both the Settlement Act and Settlement Agreement and is otherwise consistent with federal Indian law.

A final issue to be addressed in today's rule is the State of Washington's Regulatory Reform Act of 1995 (''Act''). By letters dated June 10, 1997 and November 20, 1997, EPA expressed its belief that the State's Act conflicted with the necessary enforcement authority required for authorization of federal environmental programs to the State. The Act provided that if a conflict existed between the Act and federal program delegation requirements, conflicting provisions could be rendered inoperative upon notice to the Governor. The Attorney General for the State of Washington acknowledged that the Act precluded the State from assessing a civil penalty except where a violation either was of a specific permit term or condition, was a repeat violation, was a violation for which the violator did not come into compliance within a specified period of time, or had a probability of placing a person in danger of death or bodily harm, causing more than minor environmental harm, or causing physical damage to the property of another in excess of one thousand dollars. Subsequently, on December 10, 1997, in accordance with State law, RCW 43.05.902, the State formally notified the Governor of Washington that a conflict existed with the Act and certain federal laws and programs. As a result of the determination of an existing conflict, sections 605, 606, 607(3) and 608 of the Act (prohibiting the State from issuing civil penalties) were deemed to be inoperative to several State programs including the Hazardous Waste Program. In reliance on this determination, EPA believes the conflict has been addressed by rendering inoperative those portions of the Act that conflicted with the State's authorized RCRA program and with this revision request. In addition, EPA is relying on the State's interpretation of another technical assistance law, RCW 43.21A.085 and .087, finding that the law does not conflict with federal authorization requirements because it is a discretionary program, to conclude that the law does not impinge on the State's authority to administer federal environmental programs, including the RCRA program. EPA understands from the State's interpretation that technical assistance visits conducted by the State will not be conducted under the authority of RCW 43.21A.085 and .087.

C. Decision

EPA has reviewed Washington's application and has made a decision that the State's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. EPA has determined that the State of Washington has submitted a sufficient analysis to support its assertion of authority over the non-trust lands within the 1873 Survey Area of the Puyallup Reservation, as defined in the Settlement Act, except over Indians or Indian activities. Consequently, EPA intends to grant final authorization revising Washington's hazardous waste program to include the non-trust lands within the 1873 Survey Area of the Puyallup Reservation but limiting the authorization so that the revised program does not extend to Indians or Indian activities within the Survey Area.

Washington will implement the revised authorized program in the same manner that the program is implemented elsewhere in the State. This includes all aspects of the authorized program such as waste designation requirements; generator, transporter, and recycling requirements; treatment, storage and disposal (TSD) facility requirements; all permitting procedures; corrective action requirements; and compliance monitoring, and enforcement procedures.

All permits issued by U.S. EPA Region 10 on non-trust lands within the 1873 Survey Area prior to final authorization of this revision will continue to be administered by U.S. EPA Region 10 until the issuance or reissuance after modification of a State RCRA permit. Upon the effective date of the issuance, or reissuance after modification to incorporate authorized State requirements, of a State RCRA permit, those EPA-issued permit provisions which the State is authorized to administer and enforce will expire. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit. EPA will continue to implement and enforce HSWA provisions for which the state is not authorized.

I conclude that Washington's application for a program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted Final Authorization to operate its hazardous waste program as revised. Washington now has responsibility for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA and excluding from its revised program authority over Indians or Indian activities within the 1873 Survey Area. Washington also has

primary enforcement responsibilities for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the 1873 Survey Area. EPA will retain jurisdiction over trust lands and over Indians and Indian activities on non-trust lands within the Survey Area. EPA retains the right to conduct inspections under section 3007 of RCRA, 42 U.S.C. 6927, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6928, 6934 and 6973.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Washington's program and for incorporation by reference of those provisions of the State's authorized statutes and regulations EPA will enforce under sections 3008, 3013 and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart WW, until a later date.

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 sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, 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. The section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local and/or tribal governments in the aggregate, or the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program. Today's rule effects an administrative change by authorizing the State to implement its hazardous waste program in lieu of the Federal RCRA program for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the 1873 Survey Area. To the extent that the State's hazardous waste program is more stringent than the Federal program, any new requirements imposed on the regulated community apply by virtue of state law; not because of any new Federal requirement imposed pursuant to today's rule.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act or any other statute, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is not required, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities. Today's rule does not impose any federal requirements on regulated entities, whether large or small. Instead, today's rule effects an administrative change by authorizing the State to implement its hazardous waste program in lieu of the Federal RCRA program for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the 1873 Survey Area. Today's rule carries out Congress' intent under both RCRA and the Settlement Act that states should be authorized to implement their own hazardous waste programs as long as those programs are equivalent to, and no less stringent than, the Federal hazardous waste program. In this case, to the extent that the State's hazardous waste program is more stringent than the Federal program, any new requirements imposed on the regulated community apply by virtue of state law; not because of any new Federal requirement imposed pursuant to today's rule.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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 today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Compliance With Executive Order 12875

Executive Order 12875 restricts, to the extent feasible and permitted by law, the promulgation of any regulation that is not required by statute and that creates a mandate upon a state, local or Tribal government, subject to criteria provided in the order. Today's rule does not impose a mandate upon a State, local or Tribal government. Today's rule effects an administrative change by authorizing the State to implement its hazardous waste program in lieu of the Federal RCRA program for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the Area. As such, the final rule is not subject to the requirements of Executive Order 12875.

Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is ''economically significant,'' as defined under Executive Order 12866, and where EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and is not a health or safety risk-based determination. Today's rule effects an administrative change by authorizing the State to implement its hazardous waste program in lieu of the Federal RCRA program for the non-trust lands within the 1873 Survey Area except over Indians and Indian activities within the 1873 Survey Area. As such, the final rule is not subject to the requirements of Executive Order 13045.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272), directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 24, 1998.

Chuck Clarke,

Regional Administrator.

[FR Doc. 98–17682 Filed 7–6–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 5, 15, 18, 21, 22, 24, 26, 73, 74, 78, 80, 87, 90, 95, 97, and 101

[ET Docket No. 97–94; FCC 98–58]

Streamlining the Equipment Authorization Process

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to simplify the equipment authorization processes, deregulate the authorization requirements for certain types of equipment, and begin implementation of an electronic filing system for equipment authorization applications. These actions will greatly reduce the complexity and burden of the Commission's equipment authorization requirements so that products can be introduced to the market more rapidly. We believe these actions will greatly benefit both large and small manufacturers and encourage the development of innovative products that best meet consumers' needs.

EFFECTIVE DATE: October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl, (202) 418–7506 or Julius P. Knapp, (202) 418–2468, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket 97–94, FCC 98–58, adopted April 2, 1998, and released April 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Report and Order

1. On March 13, 1997, the Commission adopted a *Notice of Proposed Rule Making* (*Notice*) 62 FR 24383, May 5, 1997, in the above captioned proceeding. The *Notice* proposed to amend parts 2, 15, 18 and other rule parts to: (1) simplify our existing equipment authorization processes; (2) deregulate the equipment authorization requirements for certain types of equipment; and (3) provide for electronic filing of applications for equipment authorization. The proposals were designed to reduce the burden of the equipment authorization program on manufacturers.

2. We are adopting many of the proposed changes to simplify the authorization process and relax the equipment authorization requirements for certain devices, as well as making the rule changes necessary to implement an electronic filing system for applications.

Simplification of Existing Equipment Authorization Processes

3. There are currently five different equipment authorization procedures specified in Subpart J of Part 2 of the Commission's Rules. The following is a brief description of each procedure:

Type acceptance calls for the manufacturer or importer to submit a written application for review and approval by the Commission. The application must include a complete technical description of the product and a test report showing compliance with the technical requirements. The type acceptance procedure has traditionally been applied to radio transmitters that are used in authorized radio services, such as commercial and private mobile radio services.

Certification is similar to type acceptance. The manufacturer or importer must submit a written application that includes a technical description of the product and a test report showing compliance with the Commission's technical standards. Certification has traditionally been used for low power, unlicensed consumer devices that operate under Parts 15 and 18 of the rules.

Notification requires submittal of a written application, but no test report is required unless specifically requested by the Commission. Notification has been used for a variety of products that demonstrated a good record of compliance, but the Commission found it appropriate to maintain some degree of oversight.

Declaration of Conformity (DoC) is a relatively new self-approval procedure that was established in connection with the Commission's deregulation of the certification requirements for personal computer equipment. The DoC procedure calls for the manufacturer or importer to test the equipment to determine compliance with the FCC standards. The laboratory performing

the measurements must be accredited by either the National Institute of Standards and Technology (NIST) or the American Association for Laboratory Accreditation (A2LA). A copy of the declaration of conformity, listing the party responsible for compliance, must be included in the literature furnished with the product.

Verification is also a manufacturer self-approval procedure, but unlike the DoC procedure does not require use of an accredited test laboratory and does not require a declaration of compliance to be supplied with the equipment. Verification has been used primarily for certain non-consumer devices operating under parts 15 and 18 of the rules, such as business computers and industrial heating and welding equipment that use radio frequency energy.

4. In order to reduce the complexity of having so many authorization procedures, we proposed to reduce the number to three, which we believe to be the minimum necessary for an effective program. Specifically, we proposed to eliminate the notification procedure, and to combine the type acceptance procedure with certification. We proposed to retain the two self-authorization procedures, verification and declaration of conformity, although we requested comments on the possibility of combining them.

Elimination of the Notification Procedure

5. The notification procedure requires the filing of an application form with the Commission, but it does not require the submittal of any measurement results. This procedure provides us with a record of the equipment being marketed, but we do not review any test data to confirm the compliance of the equipment. We are eliminating the notification procedure. Equipment currently under the notification procedure will be placed in the less stringent DoC or verification procedure.

Combining of Type Acceptance and Certification

6. The current certification and type acceptance procedures are very similar, in that both require the filing of an application form and technical report, and the filing procedure is the same for both. The primary difference is that certain technical information filed with the application is different. In light of this, we believe that it is more efficient to combine them into a single category. We have found in our dealings with the public, parties that are less familiar with the equipment authorization program frequently are confused by the multiple authorization procedures currently contained in the rules. Having a single procedure for equipment that must be authorized by the Commission will make the rules more understandable and thereby promote compliance. Moreover, we note that the term ''certification'' is generally used worldwide for a system requiring a third-party product approval. Accordingly, we are simplifying the rules by combining the type acceptance and certification procedures into a single procedure called ''certification''.

Retention of Verification and Declaration of Conformity as Separate Processes

7. We believe there is merit to retaining verification and DoC as separate procedures. Verification is clearly appropriate for equipment that has an excellent record of compliance, where the measurement methods are well known and understood, and where it is relatively easy to determine the party responsible for compliance. The Declaration of Conformity procedure provides added safeguards that are necessary to ensure compliance for certain products that have a greater potential for causing interference or where issues about the proper measurement method may arise. Accordingly, we are making no changes to the verification and DoC procedures.

Relaxation of the Equipment Authorization Requirements for Certain Devices

8. Section 302(a) of the Act states, ''* * * *governs the interference potential of devices which in their operation are capable of emitting radio frequency energy* * * *'' Section 302(a) of the Act is not intended to require a Commission approval for every type of radio frequency equipment before it can be imported or marketed in the United States. Rather, it gives the Commission authority to make *reasonable* regulations governing the interference potential or radio frequency devices, *consistent with the public interest.* We note that the *Notice* did not propose to change the technical standards governing radio frequency devices; only the methods of authorizing certain devices.

Part 15 Devices

9. The current part 15 rules require TV interface devices and certain receivers to be authorized through the certification procedure. Other receivers and Cable System Terminal Devices (CSTDs) are required to be authorized through the notification procedure. The *Notice* proposed to change the authorization requirement for TV interface devices and receivers, except scanning receivers, to DoC. The *Notice* also proposed to change the authorization requirement for CSTDs from notification to certification.

10. VCRs and many receivers are widely deployed, mass-marketed consumer devices. VCRs that do not comply with the technical standards have the potential for causing interference to television reception, because they generate a signal on television frequencies. In addition, we have occasionally found receivers on the market that do not comply with the rules. We note that both VCRs and receivers require measurements of radio emissions that require considerable skill. For these reasons, we believe that the authorization process for VCRs and receivers should be relaxed to the DoC procedure, rather than verification. However, for the time being we will continue to allow receivers that are contained in a transceiver subject to certification to be authorized under the verification procedure. We will for now also provide the option of obtaining a grant of certification for VCRs and receivers. Any laboratory accredited to perform DoC testing of personal computers and peripherals may perform DoC testing of VCRs and receivers, since the ANSI C63.4–1992 measurement procedure is used for testing all of these devices. We note that there are already many laboratories accredited to perform such testing.

11. The *Notice* proposed to tighten the authorization requirement for CSTDs from notification to certification. We proposed that action in recognition of the fact that there is a large market for ''pirate'' cable boxes, which allow the viewing of scrambled cable channels without payment to the cable provider.

12. While we recognize that cable signal theft is a serious concern, upon review we believe that attempts to address this problem through our equipment authorization program would likely create substantial administrative burdens and delays in the availability of cable system terminal devices. We believe that our proper focus with regard to CSTDs should be on compliance with our radio emissions standards. Accordingly, we are relaxing the equipment authorization requirement for CSTDs to the DoC procedure, consistent with the requirements for receivers and VCRs.

Part 18 Devices

13. Part 18 consumer ISM equipment has had a reasonably good record of compliance with the FCC requirements. However, these devices could easily cause interference if they did not

conform with our standards because significant radio energy can be radiated into the airwaves. We also note that the measurement of radio emissions from these products requires considerable skill. We believe that relaxing the authorization requirement to the DoC procedure is appropriate, because it relieves manufacturers of the burden of obtaining an approval, but still provides a degree of certainty that the equipment will comply with the standards. We will, for now, allow the option of obtaining certification. We recognize that there are currently no laboratories accredited specifically for part 18 testing, but we are working with the appropriate organizations to establish such accreditation provisions. We note that there are certain similarities between part 15 and part 18 compliance testing. Therefore, until such time as an accreditation procedure is established for part 18 testing, we will accept measurement results from a laboratory accredited for part 15 testing for the purpose of a part 18 DoC.

14. We believe that a compliance statement and a label are necessary to allow identification of equipment that has been tested for compliance, and for identification of the responsible party. Accordingly, we are adopting a requirement for a short compliance statement and simple label on the device. We will require part 18 equipment authorized under the DoC procedure to be labelled with the FCC logo, as we currently require for part 15 equipment authorized under the DoC procedure. The FCC logo was selected to be a recognizable indicator that the device complies with the FCC standards, similar to the use of the ''UL'' logo to show compliance with Underwriters Laboratory standards, or the ''CE'' logo to indicate compliance with European standards. We decline to change the requirements contained in § 18.213 since they serve a useful purpose in informing users of the interference potential of the device and any maintenance that may be required for continued compliance with the rules. Finally, we are taking this opportunity to remove the provisions of § 18.205 requiring the filing of a description of the measurement facility used for testing part 18 equipment. This is merely an editorial change, because § 2.948 already requires the same information.

Licensed Transmitters

15. We proposed to change the authorization procedure from notification to either verification or DoC for transmitters operating in licensed services as listed:

- Wildlife tracking and ocean buoys operating under part 5.
- Part 101 point-to-point microwave transmitters.
- Part 73 AM transmitters, FM transmitters, television transmitters, and antenna phase monitors.
- Part 74 Auxiliary Broadcast aural STLs, aural intercity relays, aural STL boosters, aural intercity relay boosters, TV STLs, TV intercity relays, TV translator relays and TV microwave boosters.
- Part 78 Cable Television Relay fixed transmitters.
- Part 80 INMARSAT equipment.
- Part 87 406 MHz emergency locator transmitters.

16. We continue to believe that the authorization requirements for these transmitters may be relaxed, due to the excellent record of compliance compiled thus far. While we initially proposed DoC for certain parts 74, 78 and 101 transmitters in the *Notice*, we now believe that verification would be more appropriate. These transmitters are operated under the terms of a license. Therefore, we can locate and contact a licensee to resolve any interference problems that may develop. In addition, there is currently no laboratory accreditation program for laboratories testing parts 74, 78 and 101 transmitters. Therefore, we are eliminating the notification requirement for all transmitters on the list delineated above, including those under parts 74, 78 and 101, and replacing it with a verification requirement. We will continue to monitor the compliance of this equipment, and may revisit our decision to eliminate the authorization requirements if significant compliance problems develop.

Authorization Changes for Other Devices

17. We requested comments on whether there are other devices not covered above for which the authorization requirements could be relaxed. Motorola requested that we move Family Radio Service transmitters operating under part 95 from certification to DoC, because the equipment is low powered and is based on established designs. The Family Radio Service is a relatively new service, established only in 1996. *See Amendment of Part 95 of the Commission's Rules to Establish a Very Short Distance Two-way Voice Radio Service* in WT 95–102, 11 FCC Rcd 12977 (1996), 61 FR 28768, June 6, 1996. We do not feel that there has been sufficient time to demonstrate a history of compliance which would warrant relaxing the authorization requirements for the equipment used in the service. Accordingly, we decline to place Family Radio Service transmitters under DoC at this time.

18. Ericsson requested that part 22 and part 90 analog base stations be subject to verification, and that part 22 and part 90 analog mobile equipment be subject to DoC since the test procedures are widely known and the equipment has an excellent record of compliance. We have concerns about deregulating the equipment authorization requirements for part 22 and part 90 transmitters due to the need to ensure compliance with recent changes to the technical rules. Also, certain parts 22 and 90 mobile and portable transmitters are subject to recently adopted requirements for routine evaluation for RF exposure. We therefore do not believe that verification is appropriate for the base stations, nor do we believe DoC is appropriate for the mobile stations. However, we will monitor the situation and, if appropriate, will consider relaxing the equipment authorization requirements for the aforementioned equipment in the future.

19. We have concerns about keyless entry transmitters used on automobiles. They are widely deployed, and therefore have a high potential for causing interference if they do not comply with the technical standards. While we do not believe it is appropriate to relax the authorization requirements for keyless entry and passive antitheft devices at this time, we will reevaluate this finding in the future.

Electronic Filing

20. The *Notice* proposed that the Commission adopt an electronic filing system for equipment authorization applications. We believe that the implementation of an electronic filing system will significantly reduce the processing time of equipment authorization applications. Such a system will eliminate the delays associated with filing applications in Pittsburgh, transporting them to the FCC Laboratory and manually logging them in. Also, an electronic system will allow parallel processing of applications, so the administrative and technical reviews can be done simultaneously, thus further reducing the processing time.

21. The Commission has hired a contractor to do the programming of the electronic filing system. Testing of the system began in March, 1998, and we expect that it will soon be fully operational. *See* Public Notice, ''OET Prototype Electronic Form 731'', released February 27, 1998.

22. We will require all equipment authorization applications to be filed electronically one year after the effective date of these rules. Prior to that date, we will accept both paper and electronically filed applications while manufacturers become familiar with the new system. We will be amenable to consideration of waiver requests from small businesses that find it a hardship to file applications electronically. We are adding a new paragraph to Section 2.911 indicating that the electronic equivalent of a signature will be accepted in electronically filed applications.

Filing Fees

23. The filing fees for equipment are set at a level based upon the amount of time that is necessary to review applications. Applications for certification of equipment under parts 15 and 18 often require greater review time in comparison to applications for equipment under other rule parts. Consequently, there is a higher fee for those applications. We see no reason to change the current fee of $450 for transmitters used in licensed services. Accordingly, we will set the filing fees as proposed in the *Notice*.

Radio Equipment List

24. The *Notice* proposed to eliminate the Radio Equipment List, since the information in the list is available through other sources. Information on transmitters that have been approved is available electronically from the FCC Internet site and the Public Access Link (PAL) system. In addition, inquiries can be made by telephone to the ''status desk'' at the Commission's Laboratory. The Commission also releases monthly Public Notices announcing the grants of applications. Because this information is available from various sources, we do not see a need to continue the Radio Equipment List. We disagree that elimination of the list will make it more difficult to locate the manufacturer of equipment which has caused interference, since the information is readily available. We are not making any changes to Section 101.103(d)(2)(ii) of the rules.

Submission of Samples

25. Parties marketing equipment are required to supply a sample to the Commission for testing within 60 days of a request by the Commission. However, in cases involving harmful interference or safety of life, a sample must be supplied within 14 days. We believe that 60 days, or even 30 days, is more time than necessary for supplying a sample in most cases, and could therefore result in noncompliant equipment remaining on the market for a longer period of time. Accordingly, we are adopting a 14 day time limit for supplying test samples to the Commission as proposed in the *Notice*. We recognize that 14 days may not be sufficient in some cases when there are difficulties in supplying a sample. We will continue to consider extensions of time upon submission of a showing of good cause in those cases, as the rules currently allow. We decline to establish a procedure for vouchers or reimbursement of sample purchase costs at this time, due to the complexities involved.

Transfers of Control

26. The *Notice* proposed to clarify the rules that apply to corporate mergers, buyouts and acquisitions involving grantees of equipment authorization. We proposed to combine Sections 2.929, 2.934 and 2.935 of the rules to clarify when an equipment authorization may be assigned or transferred to another party, and when new applications must be filed.

27. Prior to 1989, the Commission's rules required the filing of a new application whenever a change was made to the trade name under which equipment is marketed. In 1989, the Commission eliminated that requirement. However, it appears that Section 2.929 was inadvertently not updated at that time to reflect that change. We are adopting the revised rule on transfers and assignments proposed in the *Notice*, but we are eliminating the reference to filing a new application for name changes.

Transition Provisions

28. The changes adopted here simplify and streamline the equipment authorization procedures. Since they are deregulatory in nature, only a short transition period is necessary. Accordingly, we are making the rules effective October 5, 1998. However, in order to allow manufacturers to obtain the maximum benefit from the changes, equipment may be authorized under the relaxed procedures (i.e.—Declaration of Conformity or verification) effective September 8, 1998.

29. Accordingly, It Is Ordered that parts 0, 1, 2, 5, 15, 18, 21, 22, 24, 26, 73, 74, 78, 80, 87, 90, 95, 97 and 101 of the Commission's Rules and Regulations Are Amended, as specified in the Rule Changes attachment and are effective October 5, 1998. This action is taken pursuant to sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

Final Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act (''RFA''),[1] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in ''*Amendment of Parts 2, 15, 18 and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment'', Notice of Proposed Rule Making* (''*Notice*''), in ET Docket No. 97–94, 62 FR 24383, May 5, 1997. The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order conforms to the RFA.[2]

31. *Need For and Objective of the Rules*.

The Commission is amending parts 2, 15, 18 and other parts of its rules to simplify the equipment authorization processes, deregulate the equipment authorization requirements for certain types of equipment, and begin implementation of an electronic filing system for equipment authorization applications. These actions will greatly reduce the complexity and burden of the Commission's equipment authorization requirements. They will also improve the efficiency of the equipment authorization process so that products can be introduced to the market more rapidly. They will reduce the number of applications required to be filed with the Commission annually from about 3500 to approximately 1800, significantly reducing paperwork requirements on manufacturers. We expect that this action will result in savings of at least $100 million to manufacturers of the products covered by the changes. The provision for electronic filing of applications should significantly reduce the current applications time. We believe these actions will greatly benefit both large and small manufacturers and encourage the development of innovative products that best meet consumer's needs.

32. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA*.

In the IRFA we stated that proposals in this proceeding would result in a significant decrease in equipment authorization applications that must be

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA).

[2] *See* 5 U.S.C. 604.

filed with the Commission. We believe that small entities will benefit from these proposals because in many cases they will no longer be required to file applications with the Commission. Also, small entities will benefit from the simpler regulations and streamlined process for equipment that continues to require authorization by the FCC. We solicited comments regarding these conclusions. No comments were submitted directly in response to the IRFA.

33. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.*

The RFA generally defines small entity as having the same meaning as the terms ''small business'' ''small organization,'' and ''small governmental jurisdictions.'' [3] In addition, the term ''small business'' is the same meaning as the term ''small business concern'' under the Small Business Act (''SBA''), 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[4] Under the SBA, a ''small business concern'' is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any individual criteria established by the Small Business Administration (SBA).[5]

34. The Commission has not developed a definition of small entities applicable to RF Equipment manufacturers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of ''Radio and Television Broadcasting and Communications Equipment.'' According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.[6] Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would classified as small entities.[7] We believe that many of the companies that manufacture RF equipment may qualify as small entities.

35. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.*

There are currently five different equipment authorization procedures. They are type acceptance, certification, notification, verification and Declaration of Conformity (DoC). We are proposing to eliminate the notification procedure, and to combine the type acceptance procedure with the certification procedure. Equipment currently under the notification procedure will be placed in the less stringent DoC or verification procedure, as appropriate. Both verification and DoC are self-authorization procedures, which allow equipment to be marketed without approval from the FCC once it has been tested and found to comply with the FCC rules. However, the DoC procedure has an additional requirement to test the equipment at an accredited laboratory, which provides a higher degree of confidence that a device will be measured correctly. It also has additional requirements for labelling and information supplied with the product, which allows the Commission to more easily locate the manufacturer in the event the equipment causes interference.

36. Applications for equipment authorization will be required to be filed electronically one year after the effective date of the rules. The equipment required to file will typically consist of a personal computer with an internet connection, a document scanner, a digital camera and software to convert data to the proper format. The equipment is readily available, or applicants can contract with others (e.g.—equipment testing laboratories) who have the equipment.

37. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.*

Simplification of Equipment Authorization Categories

38. The Commission requested comments on its proposal to eliminate the notification category of equipment authorization, and to combine the type acceptance with the certification category of authorization. It also requested comments on whether to combine the DoC and verification procedures.

39. There was no opposition to eliminating the notification procedure, but the Commission received comments concerning combining type acceptance with certification. Motorola stated that the change could be a source of confusion, and Rockwell had concerns that the structure of the proposed rules could be improved. The Commission believes that having three different authorization procedures for equipment requiring approval is an even greater source of confusion than the proposal, particularly for small entities which may not be familiar with the rules. Accordingly, the Commission is eliminating the notification procedure, and combining type acceptance and certification into a single procedure called ''certification'' for equipment requiring an approval. The structure of the proposed rules is being modified as recommended by Rockwell to make them simpler for both large and small entities to understand.

40. The comments did not support combining the DoC and verification procedures. The DoC procedure is relatively new, and the Commission has expended resources educating small entities about it, so making changes to it at this point would cause confusion. Also, since there is a need to maintain a higher degree of confidence that certain equipment complies with standards to reduce the potential for causing harmful interference, the Commission believes it is necessary to keep the DoC procedure separate from the verification procedure.

Deregulation of Equipment Authorization Requirements

41. The Commission proposed to relax the authorization requirement for equipment operating under various parts of the rules. The comments generally supported relaxing the requirements, and several parties supported even further relaxation than the Commission proposed. Rockwell requested that we place most part 15 receivers under verification, and CEMA requested that we place VCRs under verification. Ford recommended that we move certain Part 15 low power transmitters to DoC and Motorola recommended that we move part 95 Family Radio Service transmitters to DoC. Finally, Ericsson requested that certain parts 22 and 90 transmitters be moved to DoC or verification.

42. The further relaxation in the authorization requirements proposed in the comments would reduce the burden on small entities manufacturing those devices. However, in relaxing the authorization requirements for equipment, the Commission must also consider whether there is an increased likelihood of harmful interference being caused. The Commission has carefully considered the requests made in the comments, and is concerned that relaxing the authorization requirement for these devices beyond what was proposed would result in too great a risk of interference to communication services. The authorization requirements selected by the

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

[5] 15 U.S.C. 632.

[6] *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 3663.

[7] *See* U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663.

Commission for each type of equipment are believed to be the least burdensome necessary to minimize the risk of interference, and will therefore have the least impact on small entities.

Electronic Filing

43. The Commission proposed to implement an electronic filing system for equipment authorization applications. It also solicited comments on whether the system should be mandatory or whether paper applications should continue to be accepted. The comments supported developing an electronic filing system, but some parties expressed concern about whether the Commission would mandate electronic filing, which could be burdensome for some entities.

44. The Commission believes that the implementation of an electronic filing system will significantly reduce the processing time of equipment authorization applications. Such a system would eliminate the delays associated with filing applications in Pittsburgh, transporting them to the Commission's Laboratory and manually logging them in. It would also allow parallel processing of applications, so the administrative and technical reviews can be done simultaneously, thus further reducing the processing time. Such a system will benefit small entities by reducing the costs caused by delays in marketing new equipment. We have decided to make the system mandatory, since the equipment required to electronically file applications is readily available. However, we will continue to accept paper applications for a period of one year to minimize the impact on small entities.

45. *Report to Congress.* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this First Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Reporting and recordkeeping requirements.

47 CFR Parts 1 and 2

Radio, Reporting and recordkeeping requirements.

47 CFR Part 5

Radio.

47 CFR Part 15

Communications equipment.

47 CFR Part 18

Business and industry, Scientific equipment.

47 CFR Parts 21, 22, and 24

Communications equipment, Radio.

47 CFR Part 26

Radio.

47 CFR Parts 73, 74, 78, 80, 87, 90, 95, 97, and 101

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rules Changes

For the reasons discussed in the preamble Parts 0, 1, 2, 5, 15, 18, 21, 22, 24, 26, 73, 74, 78, 80, 87, 90, 95, 97 and 101 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

§ 0.31 [Amended]

2. Section 0.31, paragraph (j) is amended by removing the term ''type approval and acceptance, and certification'' and adding in its place ''approval''.

§ 0.401 [Amended]

3. Section 0.401, paragraph (a)(2) is amended by revising the second sentence to read ''The mailing address is: Federal Communications Commission, Equipment Authorization Division, 7435 Oakland Mills Road, Columbia, MD 21046''.

§ 0.406 [Amended]

4. Section 0.406, paragraph (b)(3) is amended by removing the term ''type acceptance and type approval'' and adding in its place ''authorization''.

§ 0.433 [Removed]

5. Section 0.433 is removed.

§ 0.453 [Amended]

6. Section 0.453, paragraph (k) is amended by removing the term ''(Type accepted, type approved, certified and notified)''.

§ 0.455 [Amended]

7. Section 0.455, paragraph (e)(3) is amended by removing the term ''(type accepted, type approval, certification, or advance approval of subscription television systems)''.

§ 0.457 [Amended]

8. Section 0.457, paragraph (d)(1)(ii) is amended by removing the term ''(type acceptance, type approval, certification, or advance approval of subscription television systems)''.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

§ 1.77 [Amended]

10. Section 1.77, paragraph (g) is amended by removing the term ''type approval and type acceptance'' and adding in its place ''certification'', and removing the reference to ''subpart F'' and adding in its place ''subpart J''.

11. Section 1.1103 is revised to read as follows:

§ 1.1103 Schedule of charges for equipment authorization, experimental radio services, ship inspections and international telecommunications settlements.

Action	FCC form No.	Fee amount	Payment type code	Address
1. Certification:				
a. Receivers (except TV and FM).	731	350	EEC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
b. Devices under Parts 11, 15 and 18 (except receivers).	731	895	EGC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
c. All other devices	731	450	EFT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.

Action	FCC form No.	Fee amount	Payment type code	Address
d. Modifications and Class II Permissive Changes.	731	45	EAC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
e. Request for Confidentiality	731 or 159 & Corres.	130	EBC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
2. Advance Approval for Subscription TV System.	159 & Corres	2,740	EIS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
a. Request for Confidentiality	159 & Corres	130	EBS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
3. Assignment of Applicant Code:				
a. New applicants for all application types except Subscription TV.	159 & Corres	45	EAG	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
4. Experimental Radio Service:				
a. New Station Authorization	442	45	EAE	Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
b. Modification of Authorization.	442	45	EAE	Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
c. Renewal of Station Authorization.	405	45	EAE	Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
d. Assignment or Transfer of Control.	702 or 703	45	EAE	Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
e. Special Temporary Authority.	159 & Corres	45	EAE	Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
f. Additional fee required for any of the above applications that request confidentiality.	159 & Corres	45	EAE	Federal Communications Commission, Equipment Approval Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
5. Ship Inspections:				
a. Passenger Vessel Under Title III, Part III.	801	390	FCS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
b. Oceangoing Vessel Under Title III, Part II.	801	755	FFS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
c. Vessels Under the Great Lakes Agreement.	801	110	FDS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
d. Vessels Under the Safety of Life at Sea (SOLAS) Convention.	801	660	FES	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
e. Temporary Waiver of Inspection.	159 & Corres	75	FBS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
6. International Telecommunications Settlements Administrative Fee for Collections (per line item).	99	2	IAT	Licensees will be billed.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

12. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307, and 336, unless otherwise noted.

13. Section 2.803, paragraph (a)(1) is revised to read as follows:

§ 2.803 Marketing of radio frequency devices prior to equipment authorization.

(a) * * *

(1) In the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labelled as required by § 2.925 and other relevant sections in this chapter; or

* * * * *

§ 2.901 [Amended]

14. Section 2.901, paragraph (a) is amended by removing the term ''type acceptance, certification, registration or notification'' and adding in its place ''certification or registration''. Paragraph (b) is amended by removing the term ''type acceptance, certification or notification'' and adding in its place ''certification''.

§ 2.904 [Removed]

15. Section 2.904 is removed.

§ 2.905 [Removed]

16. Section 2.905 is removed.

17. Section 2.907, paragraph (a) is revised to read as follows:

§ 2.907 Certification.

(a) Certification is an equipment authorization issued by the Commission, based on representations

and test data submitted by the applicant.

* * * * *

18. Section 2.911 is amended by adding a new paragraph (g) to read as follows:

§ 2.911 Written application required.

* * * * *

(g) ''Signed,'' as used in this section, means an original handwritten signature; however, the Office of Engineering and Technology may allow signature by any symbol executed or adopted by the applicant with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

19. Section 2.913 is amended by revising paragraph (b) and adding a new paragraph (c) as follows:

§ 2.913 Submittal of equipment authorization application or information to the Commission.

* * * * *

(b) Any information or equipment samples requested by the Commission pursuant to the provisions of subpart J of this part shall, unless otherwise directed, be submitted to the Federal Communications Commission, Equipment Authorization Division, 7435 Oakland Mills Road, Columbia, Maryland 21046.

(c) Effective October 5, 1999, all applications for equipment authorization must be filed electronically. The Commission will be amenable to consideration of waiver requests from small businesses that find it a hardship to file applications electronically. Information on the procedures for electronically filing equipment authorization applications can be obtained from the address in paragraph (b) of this section.

20. Section 2.915, paragraphs (a) introductory text and (c) are revised to read as follows:

§ 2.915 Grant of application.

(a) The Commission will grant an application for certification if it finds from an examination of the application and supporting data, or other matter which it may officially notice, that:

* * * * *

(c) Certification shall not attach to any equipment, nor shall any equipment authorization be deemed effective, until the application has been granted.

§ 2.924 [Amended]

21. Section 2.924 is amended by revising the second sentence to read as follows:

* * * * *

A device will be considered to be electrically identical if no changes are made to the device authorized by the Commission, or if the changes made to the device would be treated as class I permissive changes within the scope of § 2.1043(b)(1).

* * * * *

22. Section 2.929 is revised to read as follows:

§ 2.929 Changes in name, address, ownership or control of grantee.

(a) An equipment authorization issued by the Commission may not be assigned, exchanged or in any other way transferred to a second party, except as provided in this section.

(b) The grantee of an equipment authorization may license or otherwise authorize a second party to manufacture the equipment covered by the grant of the equipment authorization provided:

(1) The equipment manufactured by such second party bears the FCC Identifier as is set out in the grant of the equipment authorization.

Note to paragraph (b)(1): Any change in the FCC Identifier desired as a result of such production or marketing agreement will require the filing of a new application for an equipment authorization as specified in § 2.933.

(2) The grantee of the equipment authorization shall continue to be responsible to the Commission for the equipment produced pursuant to such an agreement.

(c) Whenever there is a change in the name and/or address of the grantee of an equipment authorization, written notice of such change(s) shall be submitted to the Commission within 30 days after the grantee starts using the new name and/or address.

(d) In the case of transactions affecting the grantee, such as a transfer of control or sale to another company, mergers, or transfer of manufacturing rights, notice must be given to the Commission in writing within 60 days after the consummation of the transaction. Depending on the circumstances in each case, the Commission may require new applications for equipment authorization. In reaching a decision the Commission will consider whether the acquiring party can adequately ensure and accept responsibility for continued compliance with the regulations. In general, new applications for each device will not be required. A single application for equipment authorization may be filed covering all the affected equipment.

23. Section 2.931 is revised to read as follows:

§ 2.931 Responsibility of the grantee.

In accepting a grant of an equipment authorization, the grantee warrants that each unit of equipment marketed under such grant and bearing the identification specified in the grant will conform to the unit that was measured and that the data (design and rated operational characteristics) filed with the application for certification continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis.

24. Section 2.932 is revised to read as follows:

§ 2.932 Modification of equipment.

(a) A new application for an equipment authorization shall be filed whenever there is a change in the design, circuitry or construction of an equipment or device for which an equipment authorization has been issued, except as provided in paragraphs (b) through (d) of this section.

(b) Permissive changes may be made in certificated equipment, and equipment that was authorized under the former type acceptance procedure, pursuant to § 2.1043.

(c) Permissive changes may be made in equipment that was authorized under the former notification procedure without submittal of information to the Commission, unless the equipment is currently subject to authorization under the certification procedure. However, the grantee shall submit information documenting continued compliance with the pertinent requirements upon request.

(d) All requests for permissive changes submitted to the Commission must be accompanied by the anti-drug abuse certification required under § 1.2002 of this chapter.

25. Section 2.933 is revised to read as follows:

§ 2.933 Change in identification of equipment.

(a) A new application for equipment authorization shall be filed whenever there is a change in the FCC Identifier for the equipment with or without a change in design, circuitry or construction. However, a change in the model/type number or trade name performed in accordance with the provisions in § 2.924 of this chapter is not considered to be a change in identification and does not require additional authorization from the Commission.

(b) An application filed pursuant to paragraph (a) of this section where no change in design, circuitry or construction is involved, need not be accompanied by a resubmission of

equipment or measurement or test data customarily required with a new application, unless specifically requested by the Commission. In lieu thereof, the applicant shall attach a statement setting out:

(1) The original identification used on the equipment prior to the change in identification.

(2) The date of the original grant of the equipment authorization.

(3) How the equipment bearing the modified identification differs from the original equipment.

(4) Whether the original test results continue to be representative of and applicable to the equipment bearing the changed identification.

(5) The photographs required by § 2.1033(b)(7) or § 2.1033(c)(12) showing the exterior appearance of the equipment, including the operating controls available to the user and the identification label. Photographs of the construction, the component placement on the chassis, and the chassis assembly are not required to be submitted unless specifically requested by the Commission.

(c) If the change in the FCC Identifier also involves a change in design or circuitry which falls outside the purview of a permissive change described in § 2.1043, a complete application shall be filed pursuant to § 2.911.

§ 2.934 [Removed]

26. Section 2.934 is removed.

§ 2.935 [Removed]

27. Section 2.935 is removed.

28. Section 2.938 is amended by revising paragraph (c) to read as follows:

§ 2.938 Retention of records.

* * * * *

(c) The records listed in paragraph (a) of this section shall be retained for one year for equipment subject to authorization under the certification procedure or former type acceptance procedure, or for two years for equipment subject to authorization under any other procedure, after the manufacture of said equipment has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the responsible party (or, under paragraph (b) of this section, the manufacturer) is officially notified that an investigation or any other administrative proceeding involving its equipment has been instituted.

* * * * *

§ 2.943 [Amended]

29. Section 2.943, paragraph (a) is amended by removing the words ''for type acceptance, certification or notification''.

30. Section 2.946 is revised to read as follows:

§ 2.946 Penalty for failure to provide test samples and data.

(a) Any responsible party, as defined in § 2.909, or any party who markets equipment subject to the provisions of this chapter, shall provide test sample(s) or data upon request by the Commission. Failure to comply with such a request within 14 days may be cause for forfeiture, pursuant to § 1.80 of this chapter, or other administrative sanctions such as suspending action on any applications for equipment authorization submitted by such party while the matter is being resolved.

(b) The Commission may consider extensions of time upon submission of a showing of good cause.

§ 2.948 [Amended]

31. Section 2.948, paragraph (a)(2) first sentence is amended by removing the words ''or the notification''.

§ 2.971 [Removed]

32. The undesignated center heading ''Notification'' and § 2.971 are removed.

§ 2.973 [Removed]

33. Section 2.973 is removed.

§ 2.975 [Removed]

34. Section 2.975 is removed.

§ 2.977 [Removed]

35. Section 2.977 is removed.

§ 2.981 [Removed]

36. The undesignated center heading ''Type Acceptance'' and § 2.981 is removed.

§ 2.983 [Removed]

37. Section 2.983 is removed.

§ 2.985 [Redesignated as § 2.1046]

38. Section 2.985 is redesignated as new § 2.1046, and the reference to ''§ 2.983(d)(5)'' in paragraph (a) is removed and add in its place ''§ 2.1033(c)(8)''.

§ 2.987 [Redesignated as § 2.1047]

39. Section 2.987 is redesignated as new § 2.1047, and the reference to ''§ 2.989'' in paragraph (c) is removed and add in its place ''§ 2.1049''.

§ 2.989 [Redesignated as § 2.1049]

40. Section 2.989 is redesignated as new § 2.1049.

§ 2.991 [Redesignated as § 2.1051]

41. Section 2.991 is redesignated as new § 2.1051, and the reference to ''§ 2.989'' is removed and add in its place ''§ 2.1049''.

§ 2.993 [Redesignated as § 2.1053]

42. Section 2.993 is redesignated as new § 2.1053, and the reference to ''§ 2.989'' is removed and add in its place ''§ 2.1049''.

§ 2.995 [Redesignated as § 2.1055]

43. Section 2.995 is redesignated as § 2.1055.

§ 2.997 [Redesignated as § 2.1057]

44. Section 2.997 is redesignated as § 2.1057, and the references to ''§§ 2.991 and 2.993'' in paragraph (a) are removed and add in its place ''§§ 2.1051 and 2.1053'', respectively.

§ 2.999 [Removed]

45. Section 2.999 is removed.

§ 2.1001 [Removed]

46. Section 2.1001 is removed.

§ 2.1005 [Removed]

47. Section 2.1005 is removed.

48. Section 2.1033 is revised to read as follows:

§ 2.1033 Application for certification.

(a) An application for certification shall be filed on FCC Form 731 with all questions answered. Items that do not apply shall be so noted.

(b) Applications for equipment operating under Parts 11, 15 and 18 of the rules shall be accompanied by a technical report containing the following information:

(1) The full name and mailing address of the manufacturer of the device and the applicant for certification.

(2) FCC identifier.

(3) A copy of the installation and operating instructions to be furnished the user. A draft copy of the instructions may be submitted if the actual document is not available. The actual document shall be furnished to the FCC when it becomes available.

(4) A brief description of the circuit functions of the device along with a statement describing how the device operates. This statement should contain a description of the ground system and antenna, if any, used with the device.

(5) A block diagram showing the frequency of all oscillators in the device. The signal path and frequency shall be indicated at each block. The tuning range(s) and intermediate frequency(ies) shall be indicated at each block. A schematic diagram is also required for intentional radiators.

(6) A report of measurements showing compliance with the pertinent FCC technical requirements. This report shall identify the test procedure used (e.g., specify the FCC test procedure, or industry test procedure that was used), the date the measurements were made,

the location where the measurements were made, and the device that was tested (model and serial number, if available). The report shall include sample calculations showing how the measurement results were converted for comparison with the technical requirements.

(7) A sufficient number of photographs to clearly show the exterior appearance, the construction, the component placement on the chassis, and the chassis assembly. The exterior views shall show the overall appearance, the antenna used with the device (if any), the controls available to the user, and the required identification label in sufficient detail so that the name and FCC identifier can be read. In lieu of a photograph of the label, a sample label (or facsimile thereof) may be submitted together with a sketch showing where this label will be placed on the equipment. Photographs shall be of size A4 (21 cm × 29.7 cm) or 8 × 10 inches (20.3 cm × 25.4 cm). Smaller photographs may be submitted provided they are sharp and clear, show the necessary detail, and are mounted on A4 (21 cm × 29.7 cm) or 8.5 × 11 inch (21.6 cm × 27.9 cm) paper. A sample label or facsimile together with the sketch showing the placement of this label shall be on the same size paper.

(8) If the equipment for which certification is being sought must be tested with peripheral or accessory devices connected or installed, a brief description of those peripherals or accessories. The peripheral or accessory devices shall be unmodified, commercially available equipment.

(9) For equipment subject to the provisions of part 15 of this chapter, the application shall indicate if the equipment is being authorized pursuant to the transition provisions in § 15.37 of this chapter.

(10) Applications for the certification of direct sequence spread spectrum transmitters under part 15 shall be accompanied by an exhibit demonstrating compliance with the processing gain provisions of § 15.247(e) of this chapter. Applications for the certification of frequency hopping transmitters under part 15 shall be accompanied by an exhibit describing compliance of the associated receiver or receivers with § 15.247(a)(1) of this chapter.

(11) Applications for the certification of scanning receivers shall include a statement describing the methods used to comply with the design requirements of § 15.121(a) of this chapter or the marketing requirements of § 15.121(b) of this chapter.

(c) Applications for equipment other than that operating under parts 15 and 18 of the rules shall be accompanied by a technical report containing the following information:

(1) The full name and mailing address of the manufacturer of the device and the applicant for certification.

(2) FCC identifier.

(3) A copy of the installation and operating instructions to be furnished the user. A draft copy of the instructions may be submitted if the actual document is not available. The actual document shall be furnished to the FCC when it becomes available.

(4) Type or types of emission.

(5) Frequency range.

(6) Range of operating power values or specific operating power levels, and description of any means provided for variation of operating power.

(7) Maximum power rating as defined in the applicable part(s) of the rules.

(8) The dc voltages applied to and dc currents into the several elements of the final radio frequency amplifying device for normal operation over the power range.

(9) Tune-up procedure over the power range, or at specific operating power levels.

(10) A schematic diagram and a description of all circuitry and devices provided for determining and stabilizing frequency, for suppression of spurious radiation, for limiting modulation, and for limiting power.

(11) A photograph or drawing of the equipment identification plate or label showing the information to be placed thereon.

(12) Photographs (8″ x 10″) of the equipment of sufficient clarity to reveal equipment construction and layout, including meters, if any, and labels for controls and meters and sufficient views of the internal construction to define component placement and chassis assembly. Insofar as these requirements are met by photographs or drawings contained in instruction manuals supplied with the certification request, additional photographs are necessary only to complete the required showing.

(13) For equipment employing digital modulation techniques, a detailed description of the modulation system to be used, including the response characteristics (frequency, phase and amplitude) of any filters provided, and a description of the modulating wavetrain, shall be submitted for the maximum rated conditions under which the equipment will be operated.

(14) The data required by §§ 2.1046 through 2.1057, inclusive, measured in accordance with the procedures set out in § 2.1041.

(15) The application for certification of an external radio frequency power amplifier under part 97 of this chapter need not be accompanied by the data required by paragraph (b)(14) of this section. In lieu thereof, measurements shall be submitted to show compliance with the technical specifications in subpart C of part 97 of this chapter and such information as required by § 2.1060 of this part.

(16) An application for certification of an AM broadcast stereophonic exciter-generator intended for interfacing with existing certified, or formerly type accepted or notified transmitters must include measurements made on a complete stereophonic transmitter. The instruction book must include complete specifications and circuit requirements for interconnecting with existing transmitters. The instruction book must also provide a full description of the equipment and measurement procedures to monitor modulation and to verify that the combination of stereo exciter-generator and transmitter meet the emission limitations of § 73.44.

(17) A single application may be filed for a composite system that incorporates devices subject to certification under multiple rule parts, however, the appropriate fee must be included for each device. Separate applications must be filed if different FCC Identifiers will be used for each device.

49. Section 2.1041 is revised to read as follows:

§ 2.1041 Measurement procedure.

For equipment operating under parts 15 and 18, the measurement procedures are specified in the rules governing the particular device for which certification is requested. For equipment operating in the authorized radio services, measurements are required as specified in §§ 2.1046, 2.1047, 2.1049, 2.1051, 2.1053, 2.1055 and 2.1057. See also § 2.947.

50. Section 2.1043 is revised to read as follows:

§ 2.1043 Changes in certificated equipment.

(a) Changes to the basic frequency determining and stabilizing circuitry (including clock or data rates), frequency multiplication stages, basic modulator circuit or maximum power or field strength ratings shall not be performed without application for and authorization of a new grant of certification. Variations in electrical or mechanical construction, other than these indicated items, are permitted provided the variations either do not affect the characteristics required to be reported to the Commission or the

variations are made in compliance with the other provisions of this section.

(b) Two classes of permissive changes may be made in certificated equipment without requiring a new application for and grant of certification. Neither class of change shall result in a change in identification.

(1) A Class I permissive change includes those modifications in the equipment which do not degrade the characteristics reported by the manufacturer and accepted by the Commission when certification is granted. No filing with the Commission is required for a Class I permissive change.

(2) A Class II permissive change includes those modifications which degrade the performance characteristics as reported to the Commission at the time of the initial certification. Such degraded performance must still meet the minimum requirements of the applicable rules. When a Class II permissive change is made by the grantee, the grantee shall supply the Commission with complete information and the results of tests of the characteristics affected by such change. The modified equipment shall not be marketed under the existing grant of certification prior to acknowledgement by the Commission that the change is acceptable.

(3) Except as specified below, permissive changes, as detailed above, shall be made only by the holder of the grant of certification. Changes by any party other than the grantee require a new application for and grant of certification.

(c) A grantee desiring to make a change other than a permissive change shall file an application on FCC Form 731 accompanied by the required fees. The grantee shall attach a description of the change(s) to be made and a statement indicating whether the change(s) will be made in all units (including previous production) or will be made only in those units produced after the change is authorized.

(d) A modification which results in a change in the identification of a device with or without change in circuitry requires a new application for, and grant of certification. If the changes affect the characteristics required to be reported, a complete application shall be filed. If the characteristics required to be reported are not changed the abbreviated procedure of § 2.933 may be used.

(e) Equipment that has been certificated or formerly type accepted for use in the Amateur Radio Service pursuant to the requirements of part 97 of this chapter may be modified without regard to the conditions specified in paragraph (b) of this section, provided the following conditions are met:

(1) Any person performing such modifications on equipment used under part 97 of this chapter must possess a valid amateur radio operator license of the class required for the use of the equipment being modified.

(2) Modifications made pursuant to this paragraph are limited to equipment used at licensed amateur radio stations.

(3) Modifications specified or performed by equipment manufacturers or suppliers must be in accordance with the requirements set forth in paragraph (b) of this section.

(4) Modifications specified or performed by licensees in the Amateur Radio Service on equipment other than that at specific licensed amateur radio stations must be in accordance with the requirements set forth in paragraph (b) of this section.

(5) The station licensee shall be responsible for ensuring that modified equipment used at his station will comply with the applicable technical standards in part 97 of this chapter.

(f) For equipment other than that operating under parts 15 or 18, when a Class II permissive change is made by other than the grantee of certification, the information and data specified in paragraph (b)(2) of this section shall be supplied by the person making the change. The modified equipment shall not be operated under an authorization of the Commission prior to acknowledgement by the Commission that the change is acceptable.

(g) The interconnection of a certificated or formerly type accepted AM broadcast stereophonic exciter-generator with a certificated or formerly type accepted AM broadcast transmitter in accordance with the manufacturer's instructions and upon completion of measurements showing that the modified transmitter meets the emission limitation requirements of § 73.44 is defined as a Class I permissive change for compliance with this section.

(h) The interconnection of a multiplexing exciter with a certificated or formerly type accepted AM broadcast transmitter in accordance with the manufacturer's instructions without electrical or mechanical modification of the transmitter circuits and completion of equipment performance measurements showing the transmitter meets the minimum performance requirements applicable thereto is defined as a Class I permissive change for compliance with this section.

(i) The addition of TV broadcast subcarrier generators to a certificated or formerly type accepted TV broadcast transmitter or the addition of FM broadcast subcarrier generators to a type accepted FM broadcast transmitter, provided the transmitter exciter is designed for subcarrier operation without mechanical or electrical alterations to the exciter or other transmitter circuits.

(j) The addition of TV broadcast stereophonic generators to a certificated or formerly type accepted TV broadcast transmitter or the addition of FM broadcast stereophonic generators to a certificated or formerly type accepted FM broadcast transmitter, provided the transmitter exciter is designed for stereophonic sound operation without mechanical or electrical alterations to the exciter or other transmitter circuits.

(k) The addition of subscription TV encoding equipment for which the FCC has granted advance approval under the provisions of § 2.1400 in subpart M and § 73.644(c) of part 73 to a certificated or formerly type accepted transmitter is considered a Class I permissive change.

(l) Notwithstanding the provisions of this section, broadcast licensees or permittees are permitted to modify certificated or formerly type accepted equipment pursuant to § 73.1690 of the FCC's rules.

51. A new § 2.1060 is added to read as follows:

§ 2.1060 Equipment for use in the amateur radio service.

(a) The general provisions of §§ 2.925, 2.1031, 2.1033, 2.1041, 2.1043, 2.1051, 2.1053 and 2.1057 shall apply to applications for, and grants of, certification for equipment operated under the requirements of part 97 of this chapter, the Amateur Radio Service.

(b) When performing the tests specified in §§ 2.1051 and 2.1053 of this part, the center of the transmitted bandwidth shall be within the operating frequency band by an amount equal to 50 percent of the bandwidth utilized for the tests. In addition, said tests shall be made on at least one frequency in each of the bands within which the equipment is capable of tuning.

(c) Any supplier of an external radio frequency power amplifier kit as defined by § 97.3(a)(17) of this chapter shall comply with the following requirements:

(1) Assembly of one unit of a specific type shall be made in exact accordance with the instructions being supplied with the product being marketed. If all of the necessary components are not normally furnished with the kit, assembly shall be made using the recommended components.

(2) The measurement data required for certification shall be obtained for this

unit and submitted with the certification application. Unless otherwise requested, it is not necessary to submit this unit with the application.

(3) A copy of the exact instructions which will be provided for assembly of the equipment shall be provided in addition to other material required by § 2.1033 of this part.

(4) The identification label required by § 2.925 of this part shall be permanently affixed to the assembled unit and shall be of sufficient size so as to be easily read. The following information shall be shown on the label:

(Name of Grantee of Certification)

FCC ID: (The number assigned to the equipment by the grantor)

This amplifier can be expected to comply with part 97 of the FCC Regulations when assembled and aligned in strict accordance with the instruction manual using components with the kit or an exact equivalent thereof.

(Title and signature of responsible representative of Grantee)

Statement of Compliance

I state that I have constructed this equipment in accordance with the instruction manual and using the parts furnished by the supplier of this kit.

(Signature)
(Date)

(Amateur call sign) (Class of license)

(Expiration date of license)

To be signed by the person responsible for proper assembly of kit.)

(5) If requested, an unassembled unit shall be provided for assembly and test by the Commission. Shipping charges to and from the Commission's Laboratory shall be borne by the applicant.

(d) Certification of external radio frequency power amplifiers and amplifier kits may be denied when denial serves the public interest, convenience and necessity by preventing the use of these amplifiers in services other than the Amateur Radio Service. Other uses of these amplifiers, such as in the Citizens Band Radio Service, are prohibited (§ 95.411 of this chapter). Examples of features which may result in the denial of certification are contained in § 97.317 of this chapter.

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

52. The authority citation for part 5 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

§ 5.108 [Amended]

53. Section 5.108, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''verified''.

54. Section 5.109 is revised to read as follows:

§ 5.109 Acceptability of transmitters for licensing.

All transmitters used at stations licensed for wildlife and ocean buoy tracking and telemetering operations pursuant to § 5.108 shall be verified pursuant to subpart J of part 2 of this chapter.

PART 15—RADIO FREQUENCY DEVICES

55. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

§ 15.19 [Amended]

56. Section 15.19, paragraph (a) introductory text is amended by removing the word ''notification,''.

§ 15.25 [Amended]

57. Section 15.25, paragraph (b) introductory text is amended by removing the term ''notified'' and adding in its place ''authorized under the Declaration of Conformity procedure,'' paragraph (b)(2) is amended by removing the term ''notification'' and adding in its place ''Declaration of Conformity'' and paragraph (c) is amended by removing the term ''or notification''.

§ 15.31 [Amended]

58. Section 15.31, paragraph (b) is amended by removing the term ''notification or''. Paragraph (f)(3) is amended by removing the term ''notification'' and adding in its place ''Declaration of Conformity''.

§ 15.35 [Amended]

59. Section 15.35, paragraph (c) is amended by removing the term ''notification'' and adding in its place ''Declaration of Conformity''.

60. Section 15.101, paragraphs (a) and (b) are revised to read as follows:

§ 15.101 Equipment authorization of unintentional radiators.

(a) Except as otherwise exempted in §§ 15.23, 15.103, and 15.113, unintentional radiators shall be authorized prior to the initiation of marketing, as follows:

Type of device	Equipment authorization required
TV broadcast receiver	Verification.
FM broadcast receiver	Verification.
CB receiver	Declaration of Conformity or Certification.
Superregenerative receiver	Declaration of Conformity or Certification.
Scanning receiver	Certification.
All other receivers subject to part 15	Declaration of Conformity or Certification.
TV interface device	Declaration of Conformity or Certification.
Cable system terminal device	Declaration of Conformity.
Stand-alone cable input selector switch	Verification.
Class B personal computers and peripherals	Declaration of Conformity or Certification.
CPU boards and internal power supplies used with Class B personal computers.	Declaration of Conformity or Certification.
Class B personal computers assembled using authorized CPU boards or power supplies..	Declaration of Conformity.
Class B external switching power supplies	Verification.
Other Class B digital devices & peripherals	Verification.
Class A digital devices, peripherals & external switching power supplies..	Verification.
All other devices	Verification.

Note to table: Where the above table indicates more than one category of authorization for a device, the party responsible for compliance has the option to select the type of authorization.

(b) Only those receivers that operate (tune) within the frequency range of 30–960 MHz and CB receivers are subject to the authorizations shown in paragraph (a) of this section. However, receivers indicated as being subject to Declaration of Conformity that are contained within a transceiver, the transmitter portion of which is subject to certification, shall be authorized under the verification procedure. Receivers operating above 960 MHz or below 30 MHz, except for CB receivers, are exempt from complying with the technical provisions of this part but are subject to § 15.5.

* * * * *

§ 15.214 [Amended]

61. Section 15.214, paragraph (a) is amended by revising the last sentence to read as follows:

(a) * * * The application shall include a fee for certification of each type of transmitter and for certification, if appropriate, for each type of receiver included in the system.

* * * * *

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

62. The authority citation for part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304, 307.

63. Section 18.203, paragraph (a) is revised to read as follows:

§ 18.203 Equipment authorization.

(a) Consumer ISM equipment, unless otherwise specified, must be authorized under either the Declaration of Conformity or certification procedure prior to use or marketing. An application for certification shall be filed with the Commission on an FCC Form 731, pursuant to the relevant sections in part 2, subpart J of this chapter and shall also be accompanied by:

(1) A description of measurement facilities pursuant to § 2.948, or reference to such information already on file with the Commission.

(2) A technical report pursuant to §§ 18.207 and 18.311.

* * * * *

§ 18.205 [Removed]

64. Section 18.205 is removed.

§ 18.207 [Amended]

65. Section 18.207, paragraph (a) is amended by correcting ''§ 18.205'' to read ''§ 2.948''.

66. Section 18.209 is revised to read as follows:

§ 18.209 Identification of authorized equipment.

(a) Each device for which a grant of equipment authorization is issued under this part shall be identified pursuant to the applicable provisions of subpart J of part 2 of this chapter. Changes in the identification of authorized equipment may be made pursuant to § 2.933 of part 2 of this chapter. FCC Identifiers as described in §§ 2.925 and 2.926 of this chapter shall not be used on equipment subject to verification or Declaration of Conformity.

(b) Devices authorized under the Declaration of Conformity procedure shall be labelled with the logo shown below. The label shall not be a stick-on, paper label. It shall be permanently affixed to the product and shall be readily visible to the purchaser at the time of purchase, as described in § 2.925(d) of this chapter. ''Permanently affixed'' means that the label is etched, engraved, stamped, silkscreened, indelibly printed, or otherwise permanently marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other material fastened to the equipment by welding, riveting, or a permanent adhesive. The label must be designed to last the expected lifetime of the equipment in the environment in which the equipment may be operated and must not be readily detachable. The logo follows:

67. A new § 18.212 is added to read as follows:

§ 18.212 Compliance information.

(a) Equipment authorized under the Declaration of Conformity procedure shall include the following compliance information in lieu of the information required by § 2.1077.

(1) Identification of the product, e.g., name and model number.

(2) A statement similar to the following:

This device complies with Part 18 of the FCC Rules.

(3) The name and address of the responsible party as defined in § 2.909 of the rules. This party must be located within the United States.

(b) The compliance information may be placed in the instruction manual, on a separate sheet, or on the packaging. There is no specific format for this information.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

68. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

§ 21.42 [Amended]

69. Section 21.42, paragraph (c)(1)(i) is amended by removing the term ''type-accepted'' each place it appears and adding in its place ''certificated'', and by removing the term ''type notified'' each place it appears.

§ 21.120 [Amended]

70. Section 21.120, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''certificated''. Paragraphs (b) and (c) are amended by removing the term ''type acceptance or notification'' and adding in its place ''certification'' and by removing the last sentence in each of paragraphs (b) and (c).

§ 21.907 [Amended]

71. Section 21.907, paragraphs (c) and (d) are amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

PART 22—PUBLIC MOBILE SERVICES

72. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

§ 22.99 [Amended]

73. Section 22.99, the definition of *emission mask* is amended by removing the term ''type acceptance'' and adding in its place ''certification''.

§ 22.377 [Amended]

74. Section 22.377, existing paragraph (c) is removed, paragraph (d) is redesignated as paragraph (c), the section heading, introductory text, paragraphs (a), (b) and newly redesignated (c) are amended by removing the term ''type-acceptance'' and adding in its place ''certification'' each place it appears and removing the term ''type-accepted'' and adding in its place ''certificated''.

§ 22.379 [Amended]

75. Section 22.379(a) is amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

PART 24—PERSONAL COMMUNICATIONS SERVICES

76. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

§ 24.51 [Amended]

77. Section 24.51, existing paragraph (b) is removed, paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), paragraph (a) and newly redesignated paragraph (c) are amended by removing the term ''type acceptance'' each place it appears and adding in its place ''certification''. Newly redesignated paragraph (b) is amended by removing the last sentence.

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

78. The authority citation for part 26 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

79. Section 26.51 is revised to read as follows:

§ 26.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type certification procedure.

(b) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in Subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

81. Section 73.53 is amended by revising paragraphs (a), (b) introductory text, and (b)(10) to read as follows:

§ 73.53 Requirements for authorization of antenna monitors.

(a) Antenna monitors shall be verified for compliance with the technical requirements in this section. The procedure for verification is specified in subpart J of part 2 of the FCC's rules.

(b) An antenna monitor shall meet the following specifications:

* * * * *

(10) Complete and correct schematic diagrams and operating instructions shall be retained by the party responsible for verification of the equipment and submitted to the FCC upon request. For the purpose of equipment authorization, these diagrams and instructions shall be considered as part of the monitor.

* * * * *

82. Section 73.1660 is revised to read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

(a) An AM, FM or TV transmitter shall be verified for compliance with the requirements of this part following the procedures described in part 2 of the FCC rules.

(b) A permittee or licensee planning to modify a transmitter which has been approved by the FCC or verified for compliance must follow the requirements contained in § 73.1690.

(c) A transmitter which was in use prior to January 30, 1955, may continue to be used by the licensee, and successors or assignees, if it continues to comply with the technical requirements for the type of station at which it is used.

(d) AM stereophonic exciter-generators for interfacing with approved or verified AM transmitters may be certified upon request from any manufacturer in accordance with the procedures described in part 2 of the FCC rules. Broadcast licensees may modify their certified AM stereophonic exciter-generators in accordance with § 73.1690.

(e) Additional rules covering certification and verification, modification of authorized transmitters, and withdrawal of a grant of authorization are contained in part 2 of the FCC rules.

83. Section 73.1665, paragraph (c) and the note that follows are revised to read as follows:

§ 73.1665 Main transmitters.

* * * * *

(c) A licensee may, without further authority or notification to the FCC, replace an existing main transmitter or install additional main transmitter(s) for use with the authorized antenna if the replacement or additional transmitter(s) has been verified for compliance. Within 10 days after commencement of regular use of the replacement or additional transmitter(s), equipment performance measurements, as prescribed for the type of station are to be completed.

Note to paragraph (c): Pending the availability of AM broadcast transmitters that are approved or verified for use in the 1605–1705 kHz band, transmitters that are approved or verified for use in the 535–1605 kHz band may be utilized in the 1605–1705 kHz band if it is shown that the requirements of § 73.44 have been met. Verification or FCC approval of the transmitter will supersede the applicability of this note.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

84. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

85. Section 74.451, the section heading is revised to read as follows:

§ 74.451 Certification of equipment.

§ 74.451 [Amended]

Paragraphs (a), (b), (c), (d) and (f) are amended by removing the term ''type accepted'' each place it appears and adding in its place ''certificated'' and by removing the term ''type acceptance'' each place it appears and adding in its place ''certification''. The last sentence of paragraph (c) is removed.

§ 74.452 [Amended]

86. Section 74.452, paragraphs (b) and (d) are amended by removing the term ''type accepted'' each place it appears and adding in its place ''certificated''.

§ 74.462 [Amended]

87. Section 74.462, paragraph (a) is amended by removing the term ''type accepted'' each place it appears and adding in its place ''certificated'', footnote 4 of the table in paragraph (b) is amended by removing the term ''type accepted'' and adding in its place ''certificated'' and removing the term ''Radio Equipment List'' and adding in its place ''database''.

88. Section 74.550 is revised to read as follows:

§ 74.550 Equipment authorization.

Each authorization for aural broadcast STL, ICR, and booster stations shall require the use of equipment which has been certificated or verified. Equipment which has not been approved under the equipment authorization program and which was in service prior to July 1, 1993, may be retained solely for temporary uses necessary to restore or maintain regular service provided by approved equipment, because the main or primary unit has failed or requires servicing. Such temporary uses may not interfere with or impede the establishment of other aural broadcast auxiliary links and may not occur during more than 720 cumulative hours per year. Should interference occur, the

licensee must take all steps necessary to eliminate it, up to and including cessation of operation of the auxiliary transmitter. All unapproved equipment retained for temporary use must have been in the possession of the licensee prior to July 1, 1993, and may not be obtained from other sources. Equipment designed exclusively for fixed operation shall be authorized under the verification procedure. The equipment authorization procedures are contained in subpart J of part 2 of the rules.

Note to § 74.550: Consistent with the note to § 74.502(a), grandfathered equipment in the 942–944 MHz band and STL/ICR users of these frequencies in Puerto Rico are also required to come into compliance by July 1, 1993. The backup provisions described above apply to these stations also.

§ 74.632 [Amended]

89. Section 74.632, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''authorized as required''.

§ 74.651 [Amended]

90. Section 74.651, paragraph (a)(1) is amended by removing the term ''type accepted or notified'' and adding in its place ''authorized''.

91. Section 74.655 is revised to read as follows:

§ 74.655 Authorization of equipment.

(a) Except as provided in paragraph (b) of this section, all transmitting equipment first marketed for use under this subpart or placed into service after October 1, 1981, must be authorized under the certification or verification procedure, as detailed in paragraph (f) of this section. Equipment which is used at a station licensed prior to October 1, 1985, which has not been authorized as detailed in paragraph (f) of this section, may continue to be used by the licensee or its successors or assignees, provided that if operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this subpart, the FCC may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference. However, such equipment may not be further marketed or reused under part 74 after October 1, 1985. Transmitters designed for use in the 31.0 to 31.3 GHz band shall be authorized under the verification procedure.

(b) Certification or verification is not required for transmitters used in conjunction with TV pickup stations operating with a peak output power not greater than 250 mW. Pickup stations operating in excess of 250 mW licensed pursuant to applications accepted for filing prior to October 1, 1980 may continue operation subject to periodic renewal. If operation of such equipment causes harmful interference the FCC may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(c) The license of a TV auxiliary station may replace transmitting equipment with authorized equipment, as detailed under paragraph (f) of this section, without prior FCC approval, provided the proposed changes will not depart from any of the terms of the station or system authorization or the Commission's technical rules governing this service, and also provided that any changes made to authorized transmitting equipment is in compliance with the provisions of part 2 of the FCC rules concerning modifications to authorized equipment.

(d) Any manufacturer of a transmitter to be used in this service may authorize the equipment under the certification or verification procedure, as appropriate, following the procedures set forth in subpart J of part 2 of the FCC rules.

(e) An applicant for a TV broadcast auxiliary station may also authorize an individual transmitter, as specified in paragraph (f) of this section, by following the procedures set forth in subpart J of part 2 of the FCC rules and regulations.

(f) Transmitters designed to be used exclusively for a TV STL station, a TV intercity relay station, a TV translator relay station, or a TV microwave booster station, shall be authorized under verification. All other transmitters will be authorized under the certification procedure.

§ 74.750 [Amended]

92. Section 74.750, paragraph (a), (b), (c) introductory text and (g) are amended by removing the term ''type accepted'' each place it appears and adding in it place ''certificated''. Paragraph (e) introductory text and (e)(1), (e)(2), (e)(3), (e)(4) are amended by removing the term ''type accepted'' each place its appears and adding in its place ''certificated'' and by removing the term ''type acceptance'' each place it appears and adding in its place ''certification''. The last two sentences of paragraph (e)(1) are removed.

§ 74.751 [Amended]

93. Section 74.751, paragraphs (a) and (b)(1) are amended by removing the term ''type accepted'' and adding in its place ''certificated''.

94. Section 74.851, the section heading is revised to read as follows:

§ 74.851 Certification of equipment.

§ 74.851 [Amended]

Paragraphs (a), (b), (c), (e) and (f) are amended by removing the term ''type accepted'' each place its appears and adding in its place ''certificated'' and by removing the term ''type acceptance'' each place it appears and adding in its place ''certification''. The last sentence of paragraph (c) is removed.

§ 74.852 [Amended]

95. Section 74.852, paragraph (a) is amended by removing the term ''type accepted'' each place it appears and adding in its place ''certificated''.

§ 74.861 [Amended]

96. Section 74.861, paragraph (b) is amended by removing the term ''type accepted'' and adding in its place ''certificated'', and removing the term ''type acceptance'' and adding in its place ''certification''.

§ 74.938 [Amended]

97. Section 74.938 is amended by removing the term ''type accepted'' and adding in its place ''certificated'', and removing the term ''type acceptance'' each place it appears and adding in its place ''certification''.

§ 74.939 [Amended]

98. Section 74.939, paragraph (j) is amended by removing the term ''type acceptance'' and adding in its place ''certification''.

§ 74.950 [Amended]

99. Section 74.950, paragraph (f) introductory text is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 74.951 [Amended]

100. Section 74.951, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 74.952 [Amended]

101. Section 74.952, paragraph (a) is redesignated as paragraph (b), the introductory text is redesignated as paragraph (a), and newly redesignated paragraphs (a) and (b) are amended by removing the term ''type accepted'' and adding in its place ''certificated'', and newly redesignated paragraph (b) is amended removing the term ''type acceptance'' each place it appears and adding in its place ''certification''.

§ 74.1235 [Amended]

102. Section 74.1235(e) is amended by removing the term ''type-accepted'' each place it appears and adding in its place ''certificated''.

103. Section 74.1250 is amended by revising paragraphs (a), (b) and (c) introductory text to read as follows:

§ 74.1250 Transmitters and associated equipment.

(a) FM translator and booster transmitting apparatus, and exciters employed to provide a locally generated and modulated input signal to translator and booster equipment, used by stations authorized under the provisions of this subpart must be certificated upon the request of any manufacturer of transmitters in accordance with this section and subpart J of part 2 of this chapter. In addition, FM translator and booster stations may use FM broadcast transmitting apparatus verified or approved under the provisions of part 73 of this chapter.

(b) Transmitting antennas, antennas used to receive signals to be rebroadcast, and transmission lines are not subject to the requirement for certification.

(c) The following requirements must be met before translator, booster or exciter equipment will be certificated in accordance with this section:

* * * * *

§ 74.1251 [Amended]

104. Section 74.1251, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''certificated'', and revising the reference ''§ 2.1001'' to read ''Part 2''. Paragraph (b)(1) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

PART 78—CABLE TELEVISION RELAY SERVICE

105. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

106. Section 78.107 is amended by removing paragraph (a) and by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (a), (b), (c), and (d). The newly redesignated paragraph (a) is amended by revising paragraph (a) introductory text, and paragraph (a)(2) to read as follows:

§ 78.107 Equipment and installation.

(a) Applications for new cable television relay stations, other than fixed stations, will not be accepted unless the equipment specified therein has been certificated. In the case of fixed stations, the equipment must be authorized under the verification procedure for use pursuant to the provisions of this subpart. Transmitters designed for use in the 31.0 to 31.3 GHz band shall be authorized under the verification procedure.

(1) * * *

(2) Neither certification nor verification is required for the following transmitters:

* * * * *

Part 78 Index [Amended]

107. The alphabetical index to part 78 is amended by removing the entry for ''Equipment list, Type accepted'', and removing the entry for ''Type accepted equipment'' and adding in its place ''Certificated equipment''.

PART 80—STATIONS IN THE MARITIME SERVICES

108. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

§ 80.29 [Amended]

109. Section 80.29, the table in paragraph (a) is amended by removing the term ''type-accepted'' and adding in its place ''authorized'' in the second column.

§ 80.43 [Amended]

110. Section 80.43 is amended by removing the term ''type accepted'' and adding in its place ''authorized''.

§ 80.203 [Amended]

111. Section 80.203, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''certificated'' in the first sentence, removing the term ''type acceptance'' and adding in its place ''certification'' in the second sentence, and removing the term ''type accepted or type approved'' and adding in its place ''authorized'' in the last sentence. Paragraphs (d), (f), (h), (g), (i), (j), (k), (l) and (m)(2) are amended by removing the term ''type accepted'' each place it appears and adding in its place ''certificated'' and removing the term ''type acceptance'' each place its appears and adding in its place ''certification''. Paragraph (k) is amended by removing the last sentence.

§ 80.205 [Amended]

112. Section 80.205, paragraph (a), footnote 11 is amended by removing the term ''type accepted'' and adding in its place ''approved''.

§ 80.207 [Amended]

113. Section 80.207, paragraph (d), footnotes 2 and 5 are amended by removing the term ''type accepted'' and adding in its place ''approved''.

114. In the first column of the table in the entries in paragraph (a) of § 80.209, paragraphs (1)(ii), (1)(iii) and (1)(iv) are amended by removing the terms ''type accepted or type approved'' and ''type approved'' and adding in its place ''approved''. Footnote 1 following the table, is amended by removing the term ''type acceptance'' and adding in its place ''approval''. Footnote 2 is amended by removing the term ''type accepted'' and adding in its place ''approved''.

§ 80.215 [Amended]

115. Section 80.215, in paragraph (e)(3), footnote 8 is amended by removing the term ''type acceptance'' and adding in its place ''Certification''.

§ 80.221 [Amended]

116. Section 80.221, paragraph (d) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.251 [Amended]

117. Section 80.251, paragraph (a) is amended by removing the term ''type acceptance'' and adding in its place ''certification'', and in paragraph (b) by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.253 [Amended]

118. Section 80.253, in paragraph (a), footnote 1 is amended by removing the term ''type accepted or type approved'' and adding in its place ''approved''. Footnote 2 is amended by removing the term ''type accepted or type approval'' and adding in its place ''approved''.

§ 80.255 [Amended]

119. Section 80.255, paragraph (a), footnotes 1 and 2 are amended by removing the terms ''type accepted or type approved'' and adding in its place ''approved''.

§ 80.250 [Amended]

120. Section 80.259, paragraph (a) introductory text is amended by removing the term ''type acceptance'' and adding in its place ''certification'', paragraphs (a)(1) and (a)(2) are amended by removing the term ''type approved'' and adding in its place ''approved''.

§ 80.265 [Amended]

121. Section 80.265, following the table in paragraph (b)(1), footnotes 1 and 2 are amended by removing the terms ''type accepted or type approved'' and adding in its place ''approved''. Footnote 3 is amended by removing the word ''type''. Paragraph (c)(1), the footnote to the table is amended by

removing the term ''type approved'' and adding in its place ''approved''. Paragraph (e)(2) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.267 [Amended]

122. Section 80.267, paragraph (a)(1), following the table, footnotes 1 and 2 are amended by removing the term ''type accepted or type approved'' and adding in its place ''approved''.

§ 80.271 [Amended]

123. Section 80.271, paragraphs (b), (c) and (d) are amended by removing the term ''type accepted'' and adding in its place ''certificated''. Paragraph (e) is amended by removing the term ''Radio Equipment List'' and adding in its place ''database''.

§ 80.605 [Amended]

124. Section 80.605, paragraph (b) is amended by removing the term ''type acceptance'' each place it appears and adding in its place ''certification'' .

§ 80.812 [Amended]

125. Section 80.812 is amended by removing the term ''of a type accepted'' and adding in its place ''certificated''.

§ 80.814 [Amended]

126. Section 80.814 is amended by removing the term ''of a type accepted'' and adding in its place ''certificated''.

§ 80.829 [Amended]

127. Section 80.829, paragraph (b) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.831 [Amended]

128. Section 80.831, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.833 [Amended]

129. Section 80.833, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.836 [Amended]

130. Section 80.836, paragraph (c)(3)(i) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.856 [Amended]

131. Section 80.856 is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.873 [Amended]

132. Section 80.873, paragraph (d)(3) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.874 [Amended]

133. Section 80.874, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.911 [Amended]

134. Section 80.911, paragraph (c) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 80.1053 [Amended]

135. Section 80.1053, paragraph (c) is amended by removing the term ''type accepted'' each place it appears and adding in its place ''certificated'', and by removing the term ''type acceptance'' each place it appears and adding in its place ''certification''.

§ 80.1059 [Amended]

136. Section 80.1059, paragraph (e) is amended by removing the term ''type acceptance'' and adding in its place ''certification''.

§ 80.1061 [Amended]

137. Section 80.1061, paragraphs (c) and (d) are amended by removing the term ''type acceptance'' and adding in its place ''certification''.

§ 80.1103 [Amended]

138. Section 80.1103, paragraph (a) is amended by removing the term ''type accepted'' and adding in its place ''certificated'' and by removing the term ''notified'' and adding in its ''verified''. Paragraph (b) is amended by removing the term ''type acceptance'' and adding in its place ''certification'', and paragraph (c) is amended by removing the term ''notification'' and adding in its place ''verification'' and by removing the term ''certificate'' and adding in its place ''certification''.

PART 87—AVIATION SERVICES

139. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

§ 87.39 [Amended]

140. Section 87.39 is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 87. 131 [Amended]

141. Section 87.131, footnote 5 of the table, is amended by removing the term ''type accepted'' and adding in its place ''certificated'', and footnote 7 is amended by removing the term ''type acceptance'' and adding in its place ''certification''.

§ 87.133 [Amended]

142. Section 87.133, paragraph (a), footnote 3 of the table is amended by removing the term ''type accepted or type approved'' and adding in its place ''approved''. Footnotes 4 and 5 are amended by removing the term ''type accepted'' and adding in its place ''approved''. Footnote 11 is amended by removing the term ''type acceptance'' and adding in its place ''certification''.

§ 87.137 [Amended]

143. Section 87.137, paragraph (a), footnotes 3 and 15 of the table are amended by removing the term ''type accepted'' and adding in its place ''approved''. Footnote 4 is amended by removing the term ''type acceptance'' and adding in its place ''approval''.

§ 87.139 [Amended]

144. Section 87.139, paragraph (g) is amended by removing the term ''type accepted'' and adding in its place ''approved''.

145. Section 87.145 is revised to read as follows:

§ 87.145 Acceptability of transmitters for licensing.

(a) Each transmitter must be certificated for use in these services, except as listed in paragraph (c) of this section. However, aircraft stations which transmit on maritime mobile frequencies must use transmitters certificated for use in ship stations in accordance with part 80 of this chapter. Certification under part 80 is not required for aircraft earth stations transmitting on maritime mobile-satellite frequencies. Such stations must be certificated under part 87.

(b) Some radio equipment installed on air carrier aircraft must meet the requirements of the Commission and the requirements of the FAA. The FAA requirements may be obtained from the FAA, Aircraft Maintenance Division, 800 Independence Ave., SW., Washington, DC 20591.

(c) The equipment listed below is exempted from certification. The operation of transmitters which have not been certificated must not result in harmful interference due to the failure of those transmitters to comply with technical standards of this subpart.

(1) Development or Civil Air Patrol transmitters.

(2) Flight test station transmitters for limited periods where justified.

(3) U.S. Government transmitters furnished in the performance of a U.S. Government contract if the use of

certificated equipment would increase the cost of the contract or if the transmitter will be incorporated in the finished product. However, such equipment must meet the technical standards contained in this subpart.

(4) ELTs verified in accordance with § 87.147(e).

(5) Signal generators when used as radionavigation land test stations (MTF).

(d) Aircraft earth stations must correct their transmit frequencies for Doppler effect relative to the satellite. The transmitted signal may not deviate more than 335 Hz from the desired transmit frequency. (This is a root sum square error which assumes zero error for the received ground earth station signal and includes the AES transmit/receive frequency reference error and the AES automatic frequency control residual errors.) The applicant must attest that the equipment provides adequate Doppler effect compensation and where applicable, that measurements have been made that demonstrate compliance. Submission of data demonstrating compliance is not required unless requested by the Commission.

146. Section 87.147 is amended by revising paragraphs (a), (b), (c), (d) introductory text, (d)(2), and (e) to read as follows:

§ 87.147 Authorization of equipment.

(a) Certification may be requested by following the procedures in part 2 of this chapter. Aircraft transmitters must meet the requirements over an ambient temperature range of −20 degrees to +50 degrees Celsius.

(b) ELTs manufactured after October 1, 1988, must meet the output power characteristics contained in § 87.141(i) when tested in accordance with the Signal Enhancement Test contained in subpart N, part 2 of this chapter. A report of the measurements must be submitted with each application for certification. ELTs that meet the output power characteristics of the section must have a permanent label prominently displayed on the outer casing state, ''Meets FCC Rule for improved satellite detection.'' This label, however, must not be placed on the equipment without authorization to do so by the Commission. Application for such authorization may be made either by submission of a new application for certification accompanied by the required fee and all information and test data required by parts 2 and 87 of this chapter or, for ELTs approved prior to October 1, 1988, a letter requesting such authorization, including appropriate test data and a showing that all units produced under the original equipment authorization comply with the requirements of this paragraph without change to the original circuitry.

(c) An applicant for a station license may request certification for an individual transmitter by following the procedure in part 2 of this chapter. Such a transmitter will be individually certified and so noted on the station license.

(d) An applicant for certification of equipment intended for transmission in any of the frequency bands listed in paragraph (d)(3) of this section must notify the FAA of the filing of a certification application. The letter of notification must be mailed to: FAA, Spectrum Engineering Division, 800 Independence Ave. SW., Washington, DC 20591 no later than the date of filing of the application with the Commission.

(1) * * *

(2) The certification application must include a copy of the notification letter to the FAA. The Commission will not act for 21 days after receipt of the application to afford the FAA an opportunity to comment. If the FAA objects to the application for equipment authorization, it should mail its objection with a showing that the equipment is incompatible with the National Airspace System to: Office of Engineering and Technology Laboratory, Authorization and Evaluation Division, 7435 Oakland Mills Rd., Columbia, MD 21046. If the Commission receives such an objection, the Commission will consider the FAA showing before taking final action on the application.

(3) * * *

(e) Verification reports for ELTs capable of operating on the frequency 406.025 MHz must include sufficient documentation to show that the ELT meets the requirements of § 87.199(a). A letter notifying the FAA of the ELT verification must be mailed to: FAA, Spectrum Engineering Division, 800 Independence Avenue SW., Washington, DC 20591.

§ 87.189 [Amended]

147. Section 87.189, paragraph (b) is amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

148. Section 87.199 is amended by revising paragraphs (c) and (d) to read as follows:

§ 87.199 Special requirements for 406.025 MHz ELTs.

* * * * *

(c) Prior to verification of a 406.025 MHz ELT, the ELT must be certified by a test facility recognized by one of the COSPAS/SARSAT Partners that the equipment satisfies the design characteristics associated with the COSPAS/SARSAT document COSPAS/SARSAT 406 MHz Distress Beacon Type Approval Standard (C/S T.007). Additionally, an independent test facility must certify that the ELT complies with the electrical and environmental standards associated with the RTCA Recommended Standards.

(d) The procedures for verification are contained in subpart J of part 2 of this chapter.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

149. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

§ 90.5 [Amended]

150. Section 90.5, paragraph (c) is amended by removing the term ''type acceptance and type approval'' and adding in its place ''certification''.

§ 90.20 [Amended]

151. Section 90.20, paragraph (e)(5)(i), (f)(4) and (f)(5) are amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 90.35 [Amended]

152. Section 90.35, paragraph (c)(22) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 90.65 [Amended]

153. Section 90.65, paragraph (c)(11) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 90.103 [Amended]

154. Section 90.103, paragraphs (c)(23) and (c)(24) are amended by removing the term ''type accepted'' and adding in its place ''certificated''.

155. Section 90.129 is amended by revising paragraph (b) to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

* * * * *

(b) Description of any equipment proposed to be used if it is not approved for use under this part.

* * * * *

156. Section 90.203 is amended by revising paragraph (a) and paragraph (b) introductory text and paragraphs (c), (e), (f), (h)(2), (j)(2) introductory text, (j)(4)

introductory text, (j)(5), (j)(6) introductory text, (j)(6)(i)(A), (j)(7), (j)(8), and (k) to read as follows:

§ 90.203 Certification required.

(a) Except as specified in paragraph (b) of this section, each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be of a type which has been certificated for use under this part.

(1) [Reserved]

(2) Any manufacturer of radio transmitting equipment (including signal boosters) to be used in these services may request certification for such equipment following the procedures set forth in subpart J of part 2 of this chapter. Certification for an individual transmitter or signal booster also may be requested by an applicant for a station authorization by following the procedure set forth in part 2 of this chapter. Such equipment if approved will be individually enumerated on the station authorization.

(b) Certification is not required for the following:

* * * * *

(c) Radiolocation transmitters for use in public safety and land transportation applications marketed prior to January 1, 1974, must meet the applicable technical standards in this part, pursuant to § 2.803 of this chapter.

* * * * *

(e) Except as provided in paragraph (g) of this section, transmitters designed to operate above 25 MHz shall not be certificated for use under this part if the operator can program and transmit on frequencies, other than those programmed by the manufacturer, service or maintenance personnel, using the equipment's external operation controls.

(f) Except as provided in paragraph (g) of this section, transmitters designed to operate above 25 MHz that have been approved prior to January 15, 1988, and that permit the operator, by using external controls, to program the transmitter's operating frequencies, shall not be manufactured in, or imported into the United States after March 15, 1988. Marketing of these transmitters shall not be permitted after March 15, 1989.

* * * * *

(h) * * *

(2) The part 90 certification limits the use of the equipment to operations only under § 90.423.

(i) Equipment certificated after February 16, 1988 and marketed for public safety operation in the 821–824/866–869 MHz bands must have the capability to be programmed for operation on the mutual aid channels as designated in § 90.617(a) of the rules.

(j) * * *

(2) Applications for certification received on or after February 14, 1997 will only be granted for equipment with the following channel bandwidths:

* * * * *

(3) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150–174 MHz and/or 421–512 MHz bands, received on or after February 14, 1997, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

(4) Applications for certification received on or after January 1, 2005, except for hand-held transmitters with an output power of two watts or less, will only be granted for equipment with the following channel bandwidths:

* * * * *

(5) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150–174 MHz and/or 421–512 MHz bands, received on or after January 1, 2005, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

(6) Modification and permissive changes to certification grants.

(i) * * *

(A) Transmitters that have the inherent capability for multi-mode or narrowband operation allowed in paragraphs (j)(2) and (j)(4) of this section, may have their grant of certification modified (reissued) upon demonstrating that the original unit complies with the technical requirements for operation; and

(B) * * *

(ii) * * *

(7) Transmitters designed for one-way paging operations will be certificated with a 25 kHz channel bandwidth and are exempt from the spectrum efficiency requirements of paragraphs (j)(3) and (j)(5) of this section.

(8) The Commission's Equipment Authorization Division may, on a case by case basis, grant certification to equipment with slower data rates than specified in paragraphs (j)(3) and (j)(5) of this section, provided that a technical analysis is submitted with the application which describes why the slower data rate will provide more spectral efficiency than the standard data rate.

* * * * *

(k)(1) For transmitters operating on frequencies in the 220–222 MHz band, certification will only be granted for equipment with channel bandwidths up to 5 kHz, except that certification will be granted for equipment operating on 220–222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz if the equipment meets the following spectrum efficiency standard: Applications for part 90 certification of transmitters designed to operate on frequencies in the 220–222 MHz band must include a statement that the equipment meets a spectrum efficiency standard of at least one voice channel per 5 kHz of channel bandwidth (for voice communications), and a data rate of at least 4,800 bits per second per 5 kHz of channel bandwidth (for data communications). Certification for transmitters operating on 220–222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz will be granted without the requirement that a statement be included that the equipment meets the spectrum efficiency standard if the requests for certification of such transmitters are filed after December 31, 2001.

(2) Certification may be granted on a case-by-case basis by the Commission's Equipment Authorization Division for equipment operating on 220–222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275

through 221.9975) with channel bandwidths greater than 5 kHz and not satisfying the spectrum efficiency standard identified in paragraph (k)(1) of this section, if requests for part 90 certification of such transmitters are accompanied by a technical analysis that satisfactorily demonstrates that the transmitters will provide more spectral efficiency than that which would be provided by use of the spectrum efficiency standard.

§ 90.211 [Amended]

157. Section 90.211, paragraph (b) is amended by removing the term ''type acceptance'' each place it appears and adding in its place ''certification''.

§ 90.219 [Amended]

158. Section 90.219, paragraph (e) is amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

§ 90.237 [Amended]

159. Section 90.237, paragraphs (c) and (g) are amended by removing the term ''type-accepted'' each place it appears and adding in its place ''certificated''.

§ 90.241 [Amended]

160. Section 90.241, paragraph (c)(12) is amended by removing the term ''Type accepted'' and adding in its place ''certificated''.

§ 90.269 [Amended]

161. Section 90.269, paragraph (a)(2) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

PART 95—PERSONAL RADIO SERVICES

162. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

§ 95.117 [Amended]

163. Section 95.117, paragraph (a)(4) is amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

§ 95.129 [Amended]

164. Section 95.129, paragraphs (a), (b)(1) and (b)(2) are amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

§ 95.133 [Amended]

165. Section 95.133, paragraphs (a) and (b) are amended by removing the term ''type-accepted'' each place it appear and adding in its place ''certificated''.

166. Section 95.209 is revised to read as follows:

§ 95.209 (R/C Rule 9) What equipment may I use at my R/C station?

(a) Your R/C station may transmit only with:

(1) An FCC certificated R/C transmitter (certificated means the FCC has determined that certain radio equipment is capable of meeting recommended standards for operation); or

(2) A non-certificated R/C transmitter on Channels 26.995–27.255 MHz if it complies with the technical standards (see part 95, subpart E).

(3) Use of a transmitter outside of the band 26.955–27.255 MHz which is not certificated voids your authority to operate the station. Use of a transmitter in the band 26.995–27.255 MHz which does not comply with the technical standards voids your authority to operate the station.

(b) You may examine a list of certificated transmitters at any FCC field office.

(c) Your R/C station may transmit with a transmitter assembled from a kit.

(d) You must not make, or have made, any internal modification to a certificated transmitter. (See R/C Rule 22.) Any internal modification to a certificated transmitter cancels the certification, and use of such a transmitter voids your authority to operate the station.

§ 95.221 [Amended]

167. Section 95.221, paragraph (b) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 95.222 [Amended]

168. Section 95.222, paragraph (b)(2) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 95.225 [Amended]

169. Section 95.225, paragraph (a)(2) is amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

§ 95.409 [Amended]

170. Section 95.409, paragraphs (a) and (b) are amended by removing the term ''type-accepted'' each place it appears and adding in its place ''certificated'', and by removing the term ''type acceptance'' each place it appears and adding in its place ''certification''.

§ 95.411 [Amended]

171. Section 95.411, paragraph (a) introductory text is amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

§ 95.425 [Amended]

172. Section 95.425, paragraph (b)(2) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 95.428 [Amended]

173. Section 95.428, paragraph (a)(2) is amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

§ 95.601 [Amended]

174. Section 95.601 is amended by removing the term ''type acceptance or type certification'' and adding in its place ''certification''.

§ 95.603 [Amended]

175. Section 95.603 the section heading is revised, paragraphs (a), (b), (c) and (e) are amended by removing the term ''type accepted'' each place it appears and adding in its place ''certificated''.

§ 95.603 Certification required.

176. Section 95.605 is revised to read as follows:

§ 95.605 Certification procedures.

Any entity may request certification for its transmitter when the transmitter is used in the GMRS, R/C, CB, IVDS, LPRS, or FRS following the procedures in part 2 of this chapter.

§ 95.607 [Amended]

177. Section 95.607, introductory text and paragraph (a) are revised by removing the term ''type accepted'' and adding in its place ''certificated'', and removing the term ''type acceptance'' each place it appears and adding in its place ''certification''.

§ 95.635 [Amended]

178. Section 95.635, the table in paragraph (b) is amended by removing the term ''type accepted'' each place it appears and adding in its place ''authorized''.

§ 95.645 [Amended]

179. The undesignated center heading preceding § 95.645 is revised to read as follows: ''CERTIFICATION REQUIREMENTS''.

180. Section 95.645, paragraph (b) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 95.653 [Amended]

181. Section 95.653, paragraph (a) is amended by removing the term ''type acceptance'' and adding in its place ''certification''.

§ 95.655 [Amended]

182. Section 95.655, paragraph (a) is amended by removing the term ''type accepted'' each place it appears and adding in its place ''certificated'', and removing the term ''type acceptance'' and adding in its place ''certification''.

§ 95.665 [Amended]

183. The undesignated center heading preceding § 95.665 is revised to read as follows: ''ADDITIONAL CERTIFICATION REQUIREMENTS FOR CB TRANSMITTERS.''

§ 95.669 [Amended]

184. Section 95.669, paragraph (a)(1) is amended by removing the term ''type acceptance'' and adding in its place ''certification''.

185. Section 95.851 is revised to read as follows:

§ 95.851 Certification.

Each CTS and RTU transmitter must be certificated for use in the IVDS in accordance with subpart J of part 2 of this chapter.

§ 95.857 [Amended]

186. Section 95.857, paragraph (c) is amended by removing the term ''type acceptance'' and adding in its place ''certification''.

PART 97—AMATEUR RADIO SERVICE

187. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

188. Section 97.315, the section heading is revised to read as follows:

§ 97.315 Certification of external RF power amplifiers.

Paragraphs (a), (b) and (c) are amended by removing the term ''type acceptance'' each place it appears and adding in its place ''certification'', and by removing the term ''type accepted'' each place it appears and adding in its place ''certificated''. Paragraph (c) is amended by removing the first sentence, and by removing the term ''on this list'' and adding in its place ''in the Commission's database''.

189. Section 97.317, the section heading is revised to read as follows:

§ 97.317 Standards for certification of external RF power amplifiers.

Paragraphs (a), (b) and (c) are amended by removing the term ''type acceptance'' each place it appears and adding in its place ''certification''.

PART 101—FIXED MICROWAVE SERVICES

190. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 101.61 [Amended]

191. Section 101.61, paragraph (c)(1)(i) is amended by removing the term ''type-accepted (or type-notified)'' each place it appears and adding in its place ''certificated or verified.''

§ 101.107 [Amended]

192. Section 101.107, footnote 4 following the table is amended by removing the term ''type accepted'' and adding in its place ''authorized''.

§ 101.133 [Amended]

193. Section 101.133, paragraph (a) is amended by removing the term ''type-accepted'' and adding in its place ''certificated''.

194. Section 101.139 is revised to read as follows:

§ 101.139 Authorization of transmitters.

(a) Except for transmitters used at developmental stations or for fixed point-to-point operation pursuant to subparts H and I of this part, each transmitter must be a type which has been certificated by the Commission for use under the applicable rules of this part. Transmitters used in the private operational fixed and common carrier fixed point-to-point microwave services under subparts H and I of this part must be of a type that has been verified for compliance. Transmitters designed for use in the 31.0 to 31.3 GHz band will be authorized under the verification procedure.

(b) Any manufacturer of a transmitter to be produced for use under the rules of this part may request certification or obtain verification by following the applicable procedures set forth in part 2 of this chapter.

(c) Certification for an individual transmitter may also be requested by an applicant for a station authorization, pursuant to the procedures set forth in part 2 of this chapter.

(d) A transmitter presently shown on an instrument of authorization, which operates on an assigned frequency in the 890–940 MHz band and has not been certificated, may continue to be used by the licensee without certification provided such transmitter continues otherwise to comply with the applicable rules and regulations of the Commission.

(e) Certification or verification is not required for portable transmitters operating with peak output power not greater than 250 mW. If operation of such equipment causes harmful interference the FCC may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(f) After July 15, 1996, the manufacturer (except for export) or importation of equipment employing digital modulation techniques in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680 and 10,700–11,700 MHz bands must meet the minimum payload capacity requirements of § 101.141.

§ 101.141 [Amended]

195. Section 101.141, paragraph (a)(2) is amended by removing the term ''type accepted'' and adding in its place ''certificated''.

§ 101.151 [Amended]

196. Section 101.151, paragraph (e) is amended by removing the term ''Type-accepted'' and adding in its place ''Certificated''.

[FR Doc. 98–17670 Filed 7–6–98; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 980629161–8161–01; I.D. 061798A]

RIN 0648–AL39

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rescission of prohibition.

SUMMARY: NMFS issues this notification announcing the rescission of the prohibition of the use of aircraft to assist fishing vessel operators in the location and capture of Atlantic bluefin tuna (BFT). This rescission is in compliance with a June 10, 1998, Order of the United States District Court for Massachusetts (Court), which overturned the regulations banning the use of spotter planes in other than the Purse Seine and Harpoon categories.

DATES: Effective June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: NMFS, in accordance with the authority of the Atlantic Tunas Convention Act (16

U.S.C. 971 *et seq.*), amended the regulations found at 50 CFR Part 285 governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction to prohibit the use of spotter aircraft in assisting BFT vessels in other than the Harpoon and Purse Seine categories (62 FR 38485, July 18, 1997).

In response to a lawsuit filed by the Atlantic Fish Spotters Association, the Court, on June 10, 1998, overturned the prohibition on the use of spotter aircraft in assisting BFT vessels in other than the Harpoon and Purse Seine categories, as codified in 50 CFR Part 285. Therefore, consistent with the judicial order, spotter aircraft may now assist vessels in all categories, and the prohibition at 50 CFR Part 285 is rescinded.

Classification

This action is not significant for purposes of review under E.O. 12866.

The Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and an opportunity for public comment as such procedures are unnecessary. This rule, which rescinds an existing rule, is being issued pursuant to a court order invalidating the existing rule. NMFS has no discretion to consider alternatives to the issuance of this rule implementing the order. As such, prior notice and an opportunity for public comment are unnecessary because NMFS has no authority to alter the provisions of this rule. Because this action relieves a restriction, under 5 U.S.C. 553(d)(1), it is not subject to a delay in effective date.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 30, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended to read as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

§ 285.31 [Amended]

2. In § 285.31, paragraph (a)(40) is removed.

§ 285.33 [Amended]

3. In § 285.33, paragraph (b) is removed and reserved.

[FR Doc. 98–17938 Filed 7–1–98; 3:39 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 971229312–7312–01; I.D. 062698A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Changes

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the trip limits to the Pacific Coast groundfish limited entry fishery for the *Sebastes* complex south of Cape Mendocino, to the coastwide open access fisheries for widow rockfish, canary rockfish, the *Sebastes* complex, and lingcod, and to the open access nontrawl sablefish fishery north of 36°00' N. lat. In addition, closure of the open access fishery for lingcod is announced for August 1, 1998. Trip limits for the Washington Coastal Treaty tribes for canary rockfish and lingcod also are announced. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to keep landings within the 1998 harvest guidelines (HGs) and allocations for these species.

DATES: Effective 0001 hours local time (l.t.) July 1, 1998, except the change to the trip limit for the *Sebastes* complex for limited entry trawl vessels in the ''B'' platoon becomes effective at 0001 hours l.t. July 16, 1998, and closure of the open access lingcod fishery occurs at 0001 hours on August 1, 1998. These changes remain in effect, unless modified, superceded or rescinded, until the effective date of the 1999 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through July 22, 1998.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle WA 98115–0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Bill Robinson, Northwest Region, NMFS, 206–526–6140; or Svein Fougner, Southwest Region, NMFS, 526–980–4040.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council) at its June 23–26, 1998, meeting in Seattle, WA, in consultation with the States of Washington, Oregon, and California.

Limited Entry Fishery

The *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch, widow rockfish, shortbelly rockfish, and shortspine and longspine thornyheads.

Currently the *Sebastes* complex is managed with 2-month cumulative trip limits: 40,000 lb (18,144 kg) north of Cape Mendocino and 150,000 lb (68,039 kg) south of Cape Mendocino. Within the cumulative limits for the *Sebastes* complex, no more than 13,000 lb (5897 kg) may be yellowtail rockfish north of Cape Mendocino, no more than 2,000 lb (907 kg) may be bocaccio south of Cape Mendocino, and no more than 15,000 lb (6,804 kg) may be canary rockfish coastwide.

The best available information at the June Council meeting indicated that the 4,677 mt limited entry allocation for the *Sebastes* complex in the Eureka-Monterey-Conception area would be reached between August 27 and September 18, 1998, if the rate of landings is not curtailed. The Council recommended that the current 2-month cumulative trip limit of 150,000 lb (68,039 kg) south of Cape Mendocino be reduced to 40,000 lb (18,144 kg), the same as north of Cape Mendocino, which makes one, consistent coastwide limit for the complex. The limited entry limits for yellowtail rockfish, bocaccio, and canary rockfish are not changed.

Open Access Fishery

Widow rockfish. Currently, the open access fishery for widow rockfish is managed by a 1-month cumulative trip limit of 15,000 lb (6,804 kg), which is half the limited entry 2-month cumulative limit. The best available information at the June Council meeting indicated that the 158–mt open access allocation would be reached between August 2, 1998, and November 9, 1998,

if the rate of landings is not slowed. The Council, therefore, recommended an immediate reduction of the cumulative 1-month trip limit to 3,000 lb (1,361 kg) to extend the fishery as long as possible during the year. Washington Coastal Treaty tribes will implement the same limit for their fisheries.

Canary rockfish. Canary rockfish is a component of the *Sebastes* complex. Currently, the open access fishery for canary rockfish is managed by a 1-month cumulative trip limit of 7,500 lb (3,402 kg), which is half the limited entry 2-month cumulative limit. The best available information at the June Council meeting indicated that the 90 mt open access allocation would be reached by July 6, 1998, if the rate of landings is not slowed. Because canary rockfish are unavoidable in other fisheries, the Council recommended a 1-month cumulative trip limit of 200 lb (91 kg) to accommodate minor amounts of unavoidable incidental catch. The harvest guideline may be exceeded by a slight amount, but a complete closure is not recommended because most incidentally-caught canary rockfish are not expected to survive if returned to sea.

The trip limit for Washington Coastal Treaty tribes will be 300 lb (136 kg) ''per trip'' for canary rockfish taken in their tribal longline fisheries, which is expected to result in a harvest of about 5–7 mt, consistent with tribal landings in recent years.

Sebastes complex/rockfish limits. The Council recommended that the overall, 40,000 lb (18,144 kg) monthly cumulative trip limit for all rockfish in the open access fishery be removed, and replaced with a 33,000 lb (14,969 kg) monthly cumulative trip limit for the *Sebastes* complex. In doing so, the open access fishery is constrained adequately by limits on the major rockfish components (3,000 lb (1,361 kg) for widow rockfish, 4,000 lb (1,814 kg) for Pacific ocean perch (POP), and 33,000 lb (14,969 kg) for the *Sebastes* complex) that add up to 40,000 lb (18,144 kg) per month. This is intended to simplify complicated regulations, and to discourage additional effort on species that are fully utilized.

Lingcod. Currently the open access fishery for lingcod is managed with a 2-month cumulative trip limit of 1,000 lb (454 kg); all lingcod must be larger than 24 inches (61 cm) total length. (The preamble to the annual management measures at 63 FR 419 (January 6, 1998) stated that the 24–inch (61 cm) total length size limit applied to all commercial and recreational lingcod, but this was inadvertently deleted in the open access trip limit. This document confirms that the 24–inch (61 cm) size limit was intended to apply to the open access fishery as well.) The 60:40 percent limits that apply in the limited entry fishery do not apply to lingcod caught in the open access fishery. The best available information at the June Council meeting indicated that the 76 mt open access allocation for lingcod would be reached by July 18 through August 1, 1998, if the rate of landings is not slowed. The Council recommended that the open access fishery for lingcod be slowed significantly by implementing a 250 lb (113 kg) cumulative monthly trip limit, for the month of July only, followed by complete closure for all open access gears starting on August 1, 1998. This enables the lingcod open access allocation to be achieved but not exceeded, while providing the industry with adequate notice of the pending closure. The 250 lb (113 kg) monthly trip limit is implemented immediately because even the current limit of 1,000 lb (454 kg) per 2 months could easily be taken if the closure were not implemented at the beginning of the next 2-month cumulative period on July 1. Survivability of released lingcod appears to be high.

The trip limit for Washington Coastal Treaty tribes will be 300 lb (136 kg) ''per trip'' for lingcod taken in their tribal fisheries, which is expected to result in harvest of about 1 mt, consistent with tribal landings in recent years.

Nontrawl sablefish. Currently the open access, nontrawl fishery for sablefish is managed with a 300 lb (136 kg) daily trip limit, which counts toward a 700 lb (318 kg) cumulative limit per 2-month period. The non-trawl fishery includes hook-and-line, pot, setnet, and trammel nets. (The 60:40 percent limits that apply in the limited entry trawl fishery do not apply to nontrawl sablefish in the open access fishery.) The best available information at the June Council meeting indicated that the 278 mt open access allocation for sablefish north of 36°00' N. lat. would not be reached. The Council recommended that the 2-month cumulative open access limit be increased to 1,800 lb (816 kg), the same as currently in effect for the limited entry nontrawl sablefish fishery north of 36°00' N. lat., with the intent that the open access allocation will be achieved in 1998.

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and announces the following changes to the 1998 annual management measures (63 FR 419, January 6, 1998, as amended).

1. In Section IV., under *B. Limited Entry Fishery*, paragraphs (2)(b) and (2)(c) are revised to read as follows:

B. *Limited Entry Fishery*

* * * * *

(2) * * *

(b) *Cumulative trip limits*. The coastwide cumulative trip limit for the *Sebastes* complex is 40,000 lb (18,144 kg) per vessel per 2-month period. Within the cumulative trip limit for the *Sebastes* complex, no more than 13,000 lb (5,897 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino; no more than 2,000 lb (907 kg) may be bocaccio taken and retained south of Cape Mendocino; and no more than 15,000 lb (6,804 kg) may be canary rockfish.

(c) The 60 percent monthly limits, which are the maximum amounts that may be taken and retained, possessed, or landed in either month in a 2-month period are: For the *Sebastes* complex coastwide, 24,000 lb (10,866 kg); for yellowtail rockfish, 7,800 lb (3,538 kg) north of Cape Mendocino; for bocaccio, 1,200 lb (5,443 kg) south of Cape Mendocino; and for canary rockfish coastwide, 9,000 lb (4,082 kg).

* * * * *

2. In Section IV., under *C. Trip Limits in the Open Access Fishery*, paragraph 1 introductory text, (1)(a), and (1)(b) are revised; paragraphs (1)(c) through (e) are added; and (2)(a)(i) and (3) are revised.

C. *Trip Limits in the Open Access Fishery*

* * * * *

(1) *Rockfish*. Rockfish means all rockfish as defined at 50 CFR 660.302, which includes the *Sebastes* complex, shortbelly rockfish, widow rockfish, POP, and thornyheads (longspine and shortspine). The *Sebastes* complex contains all other species of rockfish, including yellowtail rockfish, bocaccio, canary rockfish, and black rockfish. The following limits for rockfish in this paragraph C. (1) apply to all open access gear, including exempted trawl gear, unless otherwise specified.

(a) *All rockfish*. The trip limit for rockfish taken with hook-and-line or pot gear is 10,000 lb (4,536 kg) per vessel per fishing trip. Rockfish taken under this trip limit count toward cumulative trip limits.

(b) *Thornyheads*.

(i) *North of Pt. Conception*. Thornyheads (shortspine and longspine) may not be taken and retained, possessed, or landed north of Pt. Conception, except for a daily trip limit of 100 lb (45 kg) that applies to vessels engaged in fishing for pink shrimp.

(ii) *South of Pt. Conception*. The daily trip limit for thornyheads is 50 lb (23 kg).

(c) *Widow rockfish*. The cumulative monthly trip limit for widow rockfish is 3,000 lb (1,361 kg).

(d) *POP*. The 50 percent monthly limit for POP is 4,000 lb (1,814 kg).

(e) *Sebastes complex*. The monthly cumulative limit for the *Sebastes* complex is 33,000 lb (14,969 kg) coastwide. The individual trip limits for species in the *Sebastes* complex in paragraph C. (d) are counted toward monthly limits for the *Sebastes* complex or rockfish, as applicable, and also apply to exempted trawl gear.

(i) *Yellowtail rockfish*. The 50 percent monthly limit for yellowtail rockfish is 6,500 lb (2,948 kg) north of Cape Mendocino.

(ii) *Bocaccio*.

(A) *All open access gear except setnets or trammel nets*. For all open access gear except setnets or trammel nets, the 50 percent monthly limit for bocaccio is 1,000 lb (454 kg) south of Cape Mendocino, of which no more than 500 lb (227 kg) per trip may be taken and retained with hook-and-line or pot gear.

(B) *Setnets or trammel nets* (legal only south of 38° N. lat.): For set nets or trammel nets, the cumulative monthly trip limit is 2,000 lb (907 kg).

(iii) *Canary rockfish*. The cumulative monthly trip limit for canary rockfish is 200 lb (91 kg).

(iv) *Black rockfish*. The trip limit at 50 CFR 660.323(a)(i) for black rockfish caught with hook-and-line gear also applies and is counted toward the cumulative *Sebastes* and rockfish limits. (The black rockfish limit is also stated in paragraph IV.B.7.)

(2) * * *

(a) * * *

(i) *North of 36°00' N. lat*. North of 36°00' N. lat, the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 1,800 lb (816 kg) per 2-month period. The 2-month cumulative trip limit may be taken at any time during the 2-month period; there is no 60 percent monthly limit for the open access fishery.

* * * * *

(3) *Lingcod*.

(a) The monthly cumulative trip limit for lingcod is 250 lb (113 kg) during July 1998. All lingcod must be longer than 24 inches (61 cm) total length.

(b) Effective August 1, 1998, lingcod may not be taken and retained, possessed, or landed by any open access gear, including exempted trawl gear, coastwide.

* * * * *

V. Washington Coastal Tribal Fisheries [Amended]

3. In the second column, the fifth paragraph from the top is designated as *A. Sablefish*; the sixth paragraph from the top is designated as *B. Rockfish* and revised. In the third column, the first complete paragraph is designated as *C. Whiting*; and paragraph *D. Lingcod* is added to read as follows:

V. Washington Coastal Tribal Fisheries

* * * * *

B. Rockfish: For the commercial harvest of black rockfish off Washington State, an HG of: 20,000 lb (9,072 kg) north of Cape Alava (48° 09' 30'' N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47° 40' 00'' N. lat.) and Leadbetter Point (46° 38' 10'' N. lat.). This 30,000 lb (13.6 mt) is subtracted from the HG for the northern *Sebastes* complex.

(1) Thornyheads taken and retained with longline gear are subject to a 300 lb (136 kg) trip limit, which is expected to result in landings of 8,000–10,000 lb (3–5 mt).

(2) Canary rockfish taken and retained with longline gear are subject to a 300 lb (136 kg) trip limit, which is expected to result in landings of 10,000–15,000 lbs (5–7 mt).

(3) Widow rockfish taken and retained with any gear are subject to a 3,000 lb (1,361 kg) monthly cumulative limit.

* * * * *

D. Lingcod: Lingcod taken and retained with any gear are subject to a 300 lb trip limit.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours. Because of the need for immediate action to implement these changes at the beginning of the next 2-month cumulative trip limit period and because the public had an opportunity to comment on the action at the June 1998 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review un der Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 30, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–17863 Filed 7–1–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980501115–8160–02; I.D. 032498A]

RIN 0648–AK86

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Compensation for Collecting Resource Information

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule.

SUMMARY: This action, authorized by the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act), implements provisions by which a vessel owner or operator who has collected resource information according to a NMFS-approved protocol may be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions. This action is intended to improve the types and amounts of scientific information available for use in stock assessments and management of the Pacific coast groundfish fishery. This action must be implemented under the Magnuson-Stevens Act emergency rulemaking authority so that NMFS may contract with commercial fishing vessels to conduct resource surveys during the summer of 1998. The Pacific Fishery Management Council (Council) is considering an amendment to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) that would continue this compensation initiative beyond 1998.

DATES: Effective July 1, 1998 through January 4, 1999.

ADDRESSES: Send comments to William Stelle, Jr., Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or William T. Hogarth, Administrator, Southwest Region, (Regional Administrator) NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Copies of the

environmental assessment/regulatory impact review are also available from that address. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirements in this emergency rule, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office on Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Katherine A. King at 206–526–6140.

SUPPLEMENTARY INFORMATION: NMFS is implementing an emergency rule to allow owners or operators of vessels that collect resource information to be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions [hereinafter ''compensated with fish'']. The Council recommended this action at its November 1997 meeting in Portland, OR, with the intent that NMFS proceed with this rule immediately so that NMFS may so contract with commercial fishing vessels to conduct resource surveys during the summer of 1998.

A proposed rule was published on May 15, 1998 (at 63 FR 27035), requesting public comments through June 5, 1998. One comment was received, which resulted in no change to the final rule, and NMFS made one clarification regarding accounting for fish used as compensation. The final rule is substantively the same as proposed. See the preamble to the proposed rule for additional background information.

Background

On October 11, 1996, the Magnuson-Stevens Act was amended to authorize the Secretary of Commerce (Secretary) to use the private sector to provide vessels, equipment, and services necessary to survey fishery resources and to pay for these surveys through the sale of fish taken during the survey or, if the quality or amount of fish is not adequate, on a subsequent commercial fishing trip (sec. 402(e)). Section 303(b)(11) of the Magnuson-Stevens Act enables the Secretary to ''reserve a portion of the allowable biological catch of the fishery for use in scientific research.'' A vessel that is chartered by NMFS to conduct resource surveys becomes a ''scientific research vessel'' as defined at 50 CFR 600.10, and it must not conduct commercial fishing on the same trip during which a resource survey is conducted.

These provisions must be in place by early July 1998 in order to include compensation with fish as a component of contracts NMFS will award to commercial fishing vessels to conduct resource surveys during the summer of 1998. Stock assessments for the Dover sole/thornyhead/trawl-caught sablefish complex are controversial and have resulted in serious concern over the amount and accuracy of survey data. NMFS is committed to addressing these concerns. However, Federal fiscal constraints have precluded gathering the information needed. This is further compounded by the unavailability of the NOAA ship *Miller Freeman*, the principle vessel used for conducting resource surveys in this fishery, during much of 1998. Implementation of these provisions would enable NMFS to expand sampling in the annual slope survey that provides data for the stock assessments for these and other groundfish species. There is inadequate time to amend the PCGFMP to provide for using fish as compensation (and subtracting the compensation fish from acceptable biological catch (ABC)) before the slope survey is scheduled to begin in August 1998. Therefore, NMFS is implementing this rule under the Secretary's emergency rulemaking authority of the Magnuson-Stevens Act so that these provisions may be implemented in time to support the 1998 slope survey. The Council is preparing an amendment to the PCGFMP for later implementation.

Compensation for a Vessel Conducting a Resource Survey

The Magnuson-Stevens Act authorizes the Secretary, in consultation with the Council and the fishing industry, to structure competitive solicitations by which a vessel's owner or operator may compete for a contract with NMFS to conduct a resource survey. Resource surveys generally are conducted from chartered fishing vessels, chartered university vessels, and dedicated NOAA vessels. In a resource survey, all samples (fish) are collected according to a specified research plan or protocol. NMFS distinguishes survey activities by a scientific research vessel from commercial fishing activities according to a process of acknowledging scientific research described at 50 CFR 600.745(a). NMFS frequently uses this mechanism to conduct surveys from chartered fishing vessels, and, in some cases, some of the sample has been retained by the vessel owner/operator for sale to reduce waste and to defray some of the costs of the charter. However, any additional harvest taken on a subsequent commercial trip as payment for the resource survey would not be considered scientific research. This additional harvest was not authorized under the old provisions of the Magnuson-Stevens Act.

The new provisions of the Magnuson-Stevens Act provide the authority to go beyond allowing the retention and sale of fish caught during the course of a resource survey by providing compensation through the opportunity to harvest fish in excess of current vessel limits and/or outside of other restrictions. This rule authorizes such ''compensation fishing'' through the issuance of an exempted fishing permit (EFP) in the Pacific Coast groundfish fishery, which would enable the vessel to exceed trip limits (and/or to be exempt from other specified management restrictions) so that the compensation amount could be achieved. The compensation EFP would include terms and conditions that would limit the authorized activities. Conditions for disposition of bycatch or any excess catch and for reporting the value of the amount landed and other appropriate terms and conditions would be specified in the EFP. If the PCGFMP is amended, it is anticipated that compensation fishing would occur no later than the end of September of the year after the survey occurred. Compensation fishing must take place during the period specified in the EFP and must be conducted according to the terms and conditions of the EFP. The compensation EFP may also require the vessel owner or operator to keep separate records of compensation fishing conducted after the survey is completed and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

Process

The process incorporates selection of commercial vessels to be used to conduct the resource surveys, issuance of compensation EFPs to provide for compensation with fish, and adjustment of the ABC to account for the compensation fish used.

Competitive Offers

NMFS may initiate a competitive solicitation, i.e., request for proposals (RFP), to select vessels to conduct resource surveys that use fish as full or partial compensation. The RFP would be publicized in the *Commerce Business Daily* and would specify the factors that NMFS would use in evaluating the proposals. Vessel owners would be expected to submit offers to conduct the resource survey for a combination of dollars and compensation fish.

Council Consultation and Approval

At a Council meeting, NMFS would consult with the Council and receive public comment on upcoming resource surveys to be conducted with groundfish used as whole or partial compensation. For each proposal, NMFS would present (1) the maximum number of vessels expected or needed to conduct the survey, (2) an estimate of the species and amount of fish likely to be needed to compensate the vessel, (3) the time frame in which the survey and the compensation fish would be taken, and (4) the year in which the compensation fish would be deducted from the ABC before determining the harvest guideline (HG) or quota. This is, in effect, equivalent to NMFS presenting a compensation EFP application to the Council for the compensation amounts. In general, compensation fish should be similar to surveyed species, but there may be reasons to provide compensation with healthier, more abundant, less restricted, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also want to take into account other factors such as expected discards and incidental catches of other species. If the Council does not approve the proposal to use fish as compensation to pay for a resource survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey.

Awarding the Contract

NMFS would negotiate and award the resource survey contracts in accordance with normal Federal procurement procedures. The contract would include any conditions and limits on compensation fishing, including a requirement for the vessel to have on board (1) a letter of acknowledgment of research signed by the Regional Administrator or designee, while conducting any resource survey, and (2) the compensation EFP while conducting compensation fishing and for a period of at least 15 days after the end of any applicable cumulative trip limit period in which compensation fishing occurred.

Retention of Samples

All fishing on a resource survey trip would be required to be conducted according to scientific protocol and would be considered scientific research. However, the owner or operator of the vessel could retain and sell some fish caught while conducting the survey as compensation for the vessel's participation. Retention of samples for sale would be at the discretion of the chief scientist on board, who would consult with the vessel captain. Collection of scientific information and samples would be the highest priority and might interfere with the vessel's ability to retain market-quality fish.

Issuance of the Compensation EFP

Upon successful completion of the resource survey and of the determination concerning the amount and/or value of the survey sample that was retained for sale as payment for conducting the survey, NMFS would issue a compensation EFP to the owner or operator of the vessel if full compensation has not been achieved by cash payment and retention of the survey sample. The compensation EFP would allow the vessel an opportunity to exceed the current commercial fishing limits by the total amount of compensation fish needed. The amount of compensation fish needed is the amount of fish specified in the contract less the amount and/or value of the survey sample retained for sale. The compensation EFP also could exempt the vessel from other specified management measures.

Accounting for Compensation Fish

Because the species and amounts of fish used as compensation would not be determined until the contract is awarded, it may not be possible to deduct the amount of compensation fish from the ABC or HG in the year that the fish are caught. Even if this could be done, it would cause great confusion with the many allocations and limits that were set before the compensation amounts were known. Therefore, the compensation fish will be deducted from the ABC the year after they are caught. During the annual specification process (50 CFR 660.321(b)), NMFS would advise the Council of the total amount of fish caught during the year as compensation for conducting a resource survey, which then would be deducted from the following year's ABCs before setting the HGs or quotas. (If compensation fish are taken too late in the year so that landings data are not available to be deducted from the next year's ABC, it will be deducted in the next management cycle practicable.)

Compensation for a Commercial Vessel Collecting Resource Information—an EFP With a Compensation Clause

NMFS also intends to conduct smaller scale cooperative projects on vessels that are operating in the commercial fishery. This type of activity would not be considered scientific research under 50 CFR 600.745(a) because it would not be conducted by a scientific research vessel, even though the vessels would be collecting resource information according to strict scientific standards approved by NMFS. For small-scale cooperative projects, NMFS could issue EFPs to fishing vessels collecting the resource information. The EFP would require the vessel to conduct specific activities and allow it to retain and sell a limited amount of fish above the amount it could take under its regular trip limit. After the resource information has been obtained, the EFP could authorize the vessel to sell the fish that were in the sample. This would be a standard EFP, issued under the procedures at 50 CFR 600.745(b). Fish caught under this EFP would be counted against the ABCs and HGs or quotas in the year they are caught.

In some circumstances, NMFS might want to allow the vessel to harvest slightly more fish than necessary for the particular project. For the sablefish depth-specific sampling EFP expected in 1998, a vessel would be able to retain the sample plus a modest compensation amount, no larger than the size of the sample, above its normal trip limits. Samples in these cases generally would be expected to involve less than 500–1,500 lb (227–680 kg) of fish per vessel per month. The extra fish would compensate the vessel for the extra work involved in collecting the samples, encourage vessels to participate in surveys, and utilize more of the fish taken during the surveys that are surplus to sampling needs. NMFS could propose the amount of fish that would be used as compensation, or the EFP applicant could propose an amount in the EFP application. In these cases, when NMFS announces receipt of the EFP application and requests comments as required under 50 CFR 600.745(b), NMFS also announces a window period during which vessels would have an opportunity to submit EFP applications. NMFS contemplates two ways of issuing such EFPs: First, the EFPs could be issued to individuals implementing a protocol approved by NMFS. NMFS would consider the qualified applicants, issue EFPs to all of them, select participation by lottery, issue EFPs to the first applicants, or use other impartial selection methods. Second, NMFS could issue the EFP to a NMFS element or to a state or other Federal research agency, and the research agency's proposal would include an impartial way of selecting fishing vessel

participants that would receive individual EFPs under the umbrella EFP held by the research agency.

Biological and Socio-economic Impacts

The biological impacts of using fish as compensation are expected to be neutral in the short term and positive in the long term. In the short term, the amount of fish used as compensation will be within the ABC, and ,therefore, within current acceptable biological levels. In the long term, the additional information that is gathered because NMFS is able to compensate vessels with fish will provide more and better data for use in stock assessments, resulting in better management of the stock and less likelihood of overfishing. This should lead to better stock assessments and to a better long-term prognosis for a sustainable fishery, contributing to stability in the fishing industry and in the resources upon which the industry depends. A more detailed discussion is found in the preamble to the proposed rule and the environmental assessment for this action.

Comment and Response

One comment was received during the public comment period. It was supportive of the rule but requested a broader distribution of the RFP soliciting charter vessels to conduct resource surveys. NMFS agrees that a wide distribution is a good idea and will attempt to do so. In fact, notification of the RFP for the 1998 slope survey was submitted to each holder of a limited entry trawl permit for the groundfish fishery off Washington, Oregon, and California. However, distribution of the RFP is part of the Federal procurement process and is not governed by this rule; a description was included in the preamble of the proposed rule as background information. Therefore, no change is made to this rule.

Clarification

NMFS has changed the rule slightly to clarify that compensation fish caught too late in 1998 to be counted against the 1999 ABC may be deducted in the next management cycle practicable, e.g., 2000. Other minor editorial changes have been made for clarity and to meet publication format requirements.

Classification

The Assistant Administrator (AA) finds that the need to implement these measures in a timely manner so that vessels collecting resource information may be compensated with fish constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. If the rule was not made effective for 30 days, NMFS would be unable to issue fish compensation contracts in a timely manner to vessels needed to conduct the August 1998 slope survey. This would be contrary to the public interest because sufficient funds are not available to compensate all of the vessels needed to conduct an adequate survey. The result would be a reduced survey with less data to determine the status of the resource. Also, it is unnecessary to delay the rule because the survey does not directly affect the activities of the 1998 fishery and there are no compliance requirements for participants in the survey.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This emergency rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. The collection of this information has been approved by the Office of Management and Budget, under OMB control number 0648–0203 for Federal fishing permits. The public reporting burden for applications for exempted fishery permits is estimated at 1 hour per response; burden for reporting by exempted fishing permittees is estimated at 30 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 30, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

l. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.306, paragraph (y) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(y) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 660.350.

3. In part 660, subpart G, a new § 660.350 is added to read as follows:

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart G for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. The EFP would allow a vessel to retain fish as compensation in excess of trip limits, or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP.* A compensation EFP may be issued to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or amount of fish and including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish that may be retained by the vessel after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select

vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation and approval.* At a Council meeting, NMFS will consult with the Council and receive public comment on upcoming resource surveys to be conducted if groundfish could be used as whole or partial compensation. Generally, compensation fish would be similar to surveyed species, but there may be reasons to provide payment with healthier, more abundant, less restricted stocks, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, or that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS also may also consider levels of discards, bycatch, and other factors. If the Council does not approve providing whole or partial compensation for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the harvest guideline or quota.

(3) *Issuance of the compensation EFP.* Upon successful completion of the survey, NMFS will issue a ''compensation EFP'' to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR part 660, subpart G).

(4) *Terms and conditions of the compensation EFP.* Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions will be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch.* The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation fish.* As part of the annual specification process (§ 660.321), NMFS will advise the Council of the amount of fish retained under a compensation EFP, which then will be deducted from the next year's ABCs before setting the HGs or quotas. Fish taken too late in the year to be deducted from the following year's ABC will be accounted for in the next management cycle practicable.

(b) *EFP with a compensation clause.* An EFP may be issued to a commercial fishing vessel for the purpose of collecting resource information in excess of current management limits (§ 600.745(b) of this chapter). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at § 600.745(b) of this chapter.

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can reasonably be obtained at less cost to the resource.

(3) *Window period for other applications.* If the RA or designee agrees that compensation should be considered, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 660.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS and NMFS approves the selection method, the permit applicant may chose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that are waived while fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, are counted toward the current year's catch or landings.

[FR Doc. 98–17937 Filed 7–1–98; 3:32 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 129
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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all de Havilland Model DHC–8–100, –200, and –300 series airplanes. This proposal would require installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. This proposal also would require eventual installation of a system that would prevent such positioning of the power levers during flight. Such installation would terminate the requirement for installation of a placard. This proposal is prompted by reports of operation of the airplane with the power levers positioned below the flight idle stop during flight. The actions specified by the proposed AD are intended to prevent such positioning of the power levers below the flight idle stop during flight, which could cause engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane.

DATES: Comments must be received by October 5, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information concerning this proposed rule 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.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, 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) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–179–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of operation of the airplane with the power levers positioned below the flight idle stop during flight on de Havilland Model DHC–8–100, –200, and –300 series airplanes. One report indicated that such operation resulted in significant engine damage.

When the power levers are positioned below the flight idle stop during flight, the propellers operate in the beta range. Under these conditions, it is possible for air loads to back-drive the propeller, which could result in overspeed of the propeller and power turbine of the engine. (''Beta,'' as defined in this proposed rule, is the range of propeller operation intended for use during taxi, ground idle, or reverse operations, as controlled by the power lever settings aft of the flight idle stop.)

Operation of the propellers in the beta range during flight due to positioning of the power levers below the flight idle stop, could result in engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has 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.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. Additionally, the proposed AD would require eventual installation of an FAA-approved system that would prevent

such positioning of the power levers during flight. Installation of that system would eliminate the requirement for installation of the placard. Installation of such an FAA-approved system would be required to be accomplished in accordance with a method approved by the FAA.

Additionally, the FAA has included a provision [paragraph (c) of the proposal] for Master Minimum Equipment List (MMEL) relief in the event the system proposed in paragraph (b) of the proposal malfunctions or the use of an override (if installed) has been necessary. If provision is not made for MMEL relief, the system required by paragraph (b) would be required all of the time. Absence of such MMEL relief could create a burden for operators if required maintenance or repair was not readily available at certain airports or locations. The proposed MMEL relief is based on the condition that the existing manual power lever flight idle gate and lifting finger trigger latch design is retained and remains fully functional. This is consistent with the current MMEL that makes no mention of the flight idle gate and lifting finger trigger latch design, which means these devices must be operational at all times.

Cost Impact

The FAA estimates that 185 de Havilland Model DHC–8–100, and –200, and –300 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the installation of the placard, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed placard installation on U.S. operators is estimated to be $11,100, or $60 per airplane.

Since the manufacturer has not yet developed a specific system commensurate with the requirements of this proposal, the FAA is unable to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the proposed installation. However, based on similar installations of such systems accomplished previously on other airplane models, the FAA can reasonably estimate that approximately 130 work hours per airplane may be necessary to accomplish the system installation. The FAA also estimates that required parts would cost approximately $10,000 per airplane. Based on these figures, the cost impact of the proposed system installation on U.S. operators is estimated to be $3,293,000, or $17,800 per airplane.

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

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

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland: Docket 98–NM–179–AD.

Applicability: All Model DHC–8–100, –200, and –300 airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent positioning of the power levers below the flight idle stop during flight, which could cause engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, install a placard in a prominent location on the instrument panel of the cockpit that states:

Positioning of the power levers below the flight idle stop during flight is prohibited.

Such positioning may lead to loss of airplane control, or may result in an engine overspeed condition and consequent loss of engine power.

(b) Within 1 year after the effective date of this AD, install a system that would prevent positioning the power levers below the flight idle stop during flight, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Following accomplishment of that installation, the placard required by paragraph (a) of this AD may be removed.

(c) In the event that the system required by paragraph (b) of this AD malfunctions, or if the use of an override (if installed) has been necessary, the airplane may be operated for two days to a location where required maintenance/repair can be performed, provided the system required by paragraph (b) of this AD has been properly deactivated and placarded for flightcrew awareness, in accordance with the FAA-approved Master Minimum Equipment List (MMEL).

(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, 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.

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

Issued in Renton, Washington, on June 29, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17915 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes. This proposal would require repetitive lubrication of the engine control push-pull cables. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent ice from building up on the engine control push-pull cables, which could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane.

DATES: Comments must be received by August 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–157–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that it has received several reports of ice building up on the engine control push-pull cables during flight, which prompted operators to descend to a lower altitude (higher temperature) to melt off any build-up. Investigation revealed that the ice builds up on and around the conduit seal housing for the engine control push-pull cables. Such build-up of ice on the engine control push-pull cables, if not corrected, could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletins ASB–328–76–022, dated December 22, 1997, and ASB–328–76–015, Revision 3, dated January 9, 1998, which describe procedures for repetitive lubrication of the engine control push-pull cables at two locations along the cables. The LBA classified these alert service bulletins as mandatory and issued German airworthiness directives 1998–105, dated January 30, 1998, and 1997–148/3, dated February 26, 1998, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement,

the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletins described previously.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed lubrication, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $12,000, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GmbH: Docket 98–NM–157–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 ice from building up on the engine control push-pull cables, which could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 2 months after the effective date of this AD, lubricate the engine control push-pull cables in accordance with Dornier Alert Service Bulletins ASB–328–76–022, dated December 22, 1997, and ASB–328–76–015, Revision 3, dated January 9, 1998. Repeat the lubrication thereafter at intervals not to exceed 300 flight hours.

(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 requests 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 §§ 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.

Note 3: The subject of this AD is addressed in German airworthiness directives 1998–105, dated January 30, 1998, and 1997–148/3, dated February 26, 1998.

Issued in Renton, Washington, on June 30, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17959 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–307–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require repetitive visual inspections to detect cracked or broken door stop fittings on the fuselage frame of the forward passenger doors, and replacement of any cracked or broken fitting with a new fitting. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct

cracked or broken door stop fittings of the forward passenger doors, which could result in failure of the door stop fittings, consequent reduced structural integrity of the door support structure, and sudden loss of cabin pressure in the passenger compartment.

DATES: Comments must be received by August 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–307–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–307–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–307–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that, during full scale fatigue testing of Airbus Model A330 and A340 series airplanes, cracked and broken door stop fittings were discovered on the fuselage frame of the left and right forward passenger doors. The broken door stops were found between 27,000 and 60,000 simulated flight cycles. As a result of these findings, another analysis of fatigue loading on Model A300, A310, and A300–600 series airplanes was performed. The results of this analysis demonstrated that similar fractures also may occur on these airplanes because of the design similarities. Such cracked or broken door stop fittings, if not detected and corrected, could result in failure of the door stop fittings, consequent reduced structural integrity of the door support structure, and sudden loss of cabin pressure in the passenger compartment.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–53–0309 (for Model A300 series airplanes); A310–53–2087 (for Model A310 series airplanes); and A300–53–6060 (for Model A300–600 series airplanes); all dated March 19, 1997; which describe procedures for repetitive visual inspections to detect cracked or broken door stop fittings on the fuselage frame of the forward passenger doors, and replacement of any cracked or broken fitting with a new fitting. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–124–223(B), dated June 4, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the Airbus service bulletins reference the Master Minimum Equipment List (MMEL) for appropriate compliance times for repair of cracked or broken door stop fittings, this proposed AD would not permit further flight if cracks are detected in the door stop fittings. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject door stop fitting that is found to be cracked, must be replaced prior to further flight.

Cost Impact

The FAA estimates that 103 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $12,360, or $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 proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 97–NM–307–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracked or broken door stop fittings of the forward passenger doors, which could result in failure of the door stop fittings, consequent reduced structural integrity of the door support structure, and sudden loss of cabin pressure in the passenger compartment, accomplish the following:

(a) Prior to the accumulation of the total flight cycles specified in the ''Threshold'' column of paragraph 1.B.(5) of the Planning Information of Airbus Service Bulletin A300–53–0309 (for Model A300 series airplanes); A310–53–2087 (for Model A310 series airplanes); or A300–53–6060 (for Model A300–600 series airplanes); all dated March 19, 1997; as applicable; or within 200 flight cycles after the effective date of this AD, whichever occurs later; accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a visual inspection of the left and right forward passenger door stop fittings to detect cracked or broken door stop fittings, in accordance with the applicable service bulletin. And

(2) Thereafter, repeat the visual inspection at the intervals specified in the ''Intervals'' column of paragraph 1.B.(5) of the Planning Information of the applicable service bulletin.

(b) If any cracked or broken door stop fitting is detected during any inspection required by paragraph (a)(1) or (a)(2) of this AD, prior to further flight, replace the door stop fitting with a new fitting in accordance with Airbus Service Bulletin A300–53–0309 (for Model A300 series airplanes); A310–53–2087 (for Model A310 series airplanes); or A300–53–6060 (for Model A300–600 series airplanes); all dated March 19, 1997; as applicable. Thereafter, repeat the visual inspections at the intervals specified in the ''Intervals'' column of paragraph 1.B.(5) of the Planning Information of the applicable service bulletin.

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, 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.

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–124–223(B), dated June 4, 1997.

Issued in Renton, Washington, on June 30, 1998.

Stewart R. Miller,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17958 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–96–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require a one-time inspection of direct current (DC) power unit 1VE to determine whether electrical connections are correctly installed and stud nuts are correctly torqued, and corrective actions, if necessary. For certain airplanes, this proposal also would require replacement of the existing DC power unit 1VE with a modified DC power unit. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent overheating of electrical connections, which could result in electrical arcing and consequent fire.

DATES: Comments must be received by August 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the

FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–M–96–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received reports of overheating of the electrical connection studs on direct current (DC) power unit 1VE, which has been attributed to incorrectly installed terminals and spring washers, and incorrect torquing of the stud nuts. The LBA also has received reports of overheating and burning of the mounting plate of the bus bar of the auxiliary power unit in the DC power unit 1VE, which have been attributed to an incorrectly torqued bus bar screw. Such overheating of electrical connections, if not corrected, could result in electrical arcing and consequent fire.

Explanation of Relevant Service Information

The manufacturer has issued Dornier Alert Service Bulletin ASB–328–24–018, dated August 5, 1997. The alert service bulletin describes procedures for a one-time visual inspection of the electrical connections of DC power unit 1VE to determine whether terminals and spring washers are installed correctly, and a one-time torque inspection of the stud nuts to determine whether they are torqued correctly. Figure 1 and Table 1 of this alert service bulletin specify criteria for ensuring correct installation of the terminals and spring washers and correct torquing of the stud nuts.

The manufacturer also has issued Dornier Alert Service Bulletin ASB–328–24–021, dated November 25, 1997, which describes procedures for removing DC power unit 1VE and installing a modified DC power unit. Dornier Alert Service Bulletin ASB–328–24–021 refers to l'Equipement et la Construction Electrique (ECE) Alert Service Bulletin ASB 230GC02Y–24–001, dated November 24, 1997, as an additional source of service information for accomplishing the modification of the DC power unit. That ECE alert service bulletin describes procedures for inspecting the glass mounting plate of the auxiliary power unit (APU) bus bar in the DC power unit 1VE for heat damage, installing a shim, and performing a one-time inspection of the APU bus bar screw to ensure that it is correctly torqued.

Accomplishment of the actions specified in the Dornier alert service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these Dornier alert service bulletins as mandatory and issued German airworthiness directive 97–322, dated November 20, 1997, and German airworthiness directive 97–354, dated December 18, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany 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 LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Dornier alert service bulletins described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $3,000, or $60 per airplane.

It would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this proposed replacement on U.S. operators is estimated to be $12,000, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GmbH: Docket 98–NM–96–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Alert Service Bulletin ASB–328–24–021, dated November 25, 1997; or Dornier Alert Service Bulletin ASB–328–24–018, dated August 5, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of electrical connections, which could result in electrical arcing and consequent fire, accomplish the following:

(a) For airplanes listed in Dornier Alert Service Bulletin ASB–328–24–018, dated August 5, 1997: Within 10 days after the effective date of this AD, perform the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with Dornier Alert Service Bulletin ASB–328–24–018, dated August 5, 1997.

(1) Perform a one-time visual inspection of direct current (DC) power unit 1VE to determine whether electrical connections are installed correctly, in accordance with the Accomplishment Instructions of the alert service bulletin. If any discrepancy is detected, prior to further flight, install the connections in accordance with Figure 1 of the alert service bulletin.

(2) Perform a one-time torque inspection of the stud nuts of DC power unit 1VE to determine whether they are torqued correctly, in accordance with the Accomplishment Instructions of the alert service bulletin. If any discrepancy is found, prior to further flight, torque in accordance with Table 1 of the alert service bulletin.

(b) For airplanes listed in Dornier Alert Service Bulletin ASB–328–24–021, dated November 25, 1997: Within 10 days after the effective date of this AD, replace the existing DC power unit 1VE with a modified DC power unit, in accordance with Dornier Alert Service Bulletin ASB–328–24–021, dated November 25, 1997.

Note 2: Dornier Alert Service Bulletin 328–24–021, dated November 25, 1997, refers to l'Equipement et la Construction Electrique Alert Service Bulletin ASB 230GC02Y–24–001, dated November 24, 1997, as an additional source of service information for accomplishing the modification of the DC power unit.

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

Note 4: The subject of this AD is addressed in German airworthiness directive 97–322, dated November 20, 1997; and German airworthiness directive 97–354, dated December 18, 1997.

Issued in Renton, Washington, on June 30, 1998.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17957 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–158–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model SN–601 (Corvette) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model SN–601 (Corvette) series airplanes. This proposal would require repetitive inspections to detect corrosion, cracking, or rupture of the support arms of the aileron balance weights; and repair, if necessary. Accomplishment of the repair would terminate the repetitive inspection requirement of this AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent corrosion, cracking, or rupture of the support arms of the aileron balance weights, which may cause reduced flutter damping or jamming of the aileron, and consequent reduced controllability of the airplane.

DATES: Comments must be received by August 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–158–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Aerospatiale Model SN–601 (Corvette) series airplanes. The DGAC advises that two cases of failure of the support arms of the aileron balance weights have occurred on one in-service airplane. Subsequent inspection of seven additional airplanes revealed one case of cracking of a support arm of the aileron balance weight. Investigation revealed that the cracking developed from the end bending radius, through or close to the rear rivet hole of the anchor nut plate. Corrosion evidence also was found in the same area. Such corrosion, cracking, or rupture of the support arms of the aileron balance weights, if not corrected, could result in reduced flutter damping or jamming of the aileron, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Aerospatiale has issued All Operators Telex (AOT) A/BTE/AM 499.368/95, dated March 7, 1995, which describes procedures for repetitive detailed visual inspections to detect corrosion, cracking, or rupture of the support arms of the aileron balance weights, and repair, if necessary. Accomplishment of the repair would eliminate the need for the repetitive inspections. Accomplishment of the action specified in the AOT is intended to adequately address the identified unsafe condition. The DGAC classified this AOT as mandatory and issued French airworthiness directive 95–054–019 (B), dated March 29, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOT described previously, except as discussed below.

Differences Between Proposed Rule and the Parallel French AD

Operators should note that, although the French airworthiness directive specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $240, or $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 proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket 98–NM–158–AD.

Applicability: All Model SN–601 (Corvette) series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion, cracking, or rupture of the support arms of the aileron balance weights, which may cause reduced flutter damping or jamming of the aileron, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 10 landings or 10 days after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect corrosion, cracking, or rupture of the support arms of the aileron balance weights, in accordance with Aerospatiale All Operators Telex (AOT) A/BTE/AM 499.368/95, dated March 7, 1995.

(1) If no corrosion, cracking, or rupture is detected on the support arms, repeat the inspection thereafter at intervals not to exceed 200 flight hours or 6 months, whichever occurs earlier.

(2) If any corrosion, cracking, or rupture is detected on the support arms: Except as provided by paragraph (b) of this AD, prior to further flight, repair in accordance with the AOT. Accomplishment of this repair constitutes terminating action for the repetitive inspection requirements of this AD.

(b) If any corrosion, cracking, or rupture is detected on the support arms, and Aerospatiale All Operators Telex (AOT) A/BTE/AM 499.368/95, dated March 7, 1995, specifies to contact Aerospatiale for an appropriate repair: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

(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, International Branch, ANM–116. Operators shall submit their requests 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.

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 95–054–019 (B), dated March 29, 1995.

Issued in Renton, Washington, on June 30, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17956 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–185–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Pratt & Whitney Model JT9D–70 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections to detect fatigue cracking of the spring beams on the outboard struts; replacement of cracked spring beams with new or serviceable spring beams; and follow-on actions. That action also provides an optional terminating action for the repetitive inspections. This action would remove that optional terminating action, and would require a new terminating action. This proposal is prompted by the development of an improved process for manufacturing titanium spring beams that will eliminate the embedded porosity flaws in the existing spring beams from which fatigue cracking can originate. The actions specified by this proposal are intended to prevent fatigue cracking of the spring beam, which could result in loss of an outboard strut.

DATES: Comments must be received by August 21, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–185–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 30, 1994, the FAA issued AD 94–25–01, amendment 39–9085 (59 FR 63003, December 7, 1994), applicable to certain Boeing Model 747 series airplanes, to require repetitive detailed visual inspections to detect fatigue cracking of the spring beams on the outboard struts; replacement of cracked spring beams with new or serviceable spring beams; and follow-on actions. That action also provides an optional terminating action for the repetitive inspections.

AD 94–25–01 was prompted by a report of failure of a spring beam due to cracking that was propagated by fatigue. The requirements of that AD are intended to prevent failure of the spring beam, which could result in loss of an outboard strut.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has determined that the specified optional terminating action, if accomplished, would not adequately address the unsafe condition. Neither the fluorescent dye penetrant inspection nor the zero-time overhaul, which are part of the optional terminating action, would detect the porosity flaws that are embedded within the titanium material of the existing spring beams. In addition, an improved process for manufacturing titanium spring beams has been developed that will eliminate the embedded porosity flaws in the existing spring beams from which fatigue cracking can originate. Such fatigue cracking, if not corrected, could result in loss of an outboard strut.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–54–2177, dated June 27, 1996, which describes procedures for replacement of the spring beams on the outboard struts with new, improved spring beams, which would eliminate the need for the repetitive inspections of the spring beams.

In addition, the FAA has reviewed and approved Boeing Service Bulletin 747–54A2171, Revision 1, dated June 27, 1996, which changes the original issue of the alert service bulletin (which was referenced in AD 94–25–01 as the appropriate source of service information). This revision changes the repetitive inspection intervals and the terminating action. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–25–01 to continue to require the repetitive inspections to detect fatigue cracking of the spring beams on the outboard struts, and to remove the follow-on actions. For certain airplanes, this proposed AD would reinstate the repetitive inspections of AD 94–25–01 to detect fatigue cracking of the spring beams on the outboard struts. In addition, the proposed AD would remove the current optional terminating action, and would require a new terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with Boeing Service Bulletin 747–54–2177 and Boeing Alert Service Bulletin 747–54A2171.

Cost Impact

There are approximately 7 airplanes of the affected design in the worldwide fleet. The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 94–25–01, and retained in this proposed AD, take approximately 40 work hours per airplane, per inspection cycle, to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be$12,000, or $2,400 per airplane, per inspection cycle.

The new replacement proposed by this AD would take approximately 376 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $105,000 per airplane. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be$637,800, or $127,560 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9085 (59 FR 63003, December 7, 1994), and by

adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 97–NM–185–AD. Supersedes AD 94–25–01, Amendment 39–9085.

Applicability: Model 747 series airplanes, line numbers 202 through 396 inclusive, equipped with Pratt & Whitney Model JT9D–70 engines; 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the spring beam, which could result in loss of an outboard strut, accomplish the following:

(a) Prior to the accumulation of 10,000 total flight cycles, or within 30 days after December 22, 1994 (the effective date of AD 94–25–01), whichever occurs later, perform a detailed visual inspection to detect fatigue cracking of the spring beams on the outboard struts, in accordance with Boeing Alert Service Bulletin 747–54A2171, dated October 31, 1994, or Revision 1, dated June 27, 1996. (Remove the gap covers and fairing access panels to perform this inspection.)

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 300 flight cycles until the requirements of paragraph (d) of this AD have been accomplished.

(2) If any cracking is detected, prior to further flight, accomplish the replacement actions specified in paragraph (d) of this AD.

Note: 2: Accomplishment of the optional terminating action specified in paragraph (b) of AD 94–25–01 does not constitute terminating action for the requirements of this AD.

(b) For airplanes that have accomplished terminating action in accordance with paragraph (b) of AD 94–25–01: Within 1,000 flight cycles after accomplishment of the terminating action specified by AD 94–25–01, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect fatigue cracking of the spring beams on the outboard struts, in accordance with Boeing Alert Service Bulletin 747–54A2171, dated October 31, 1994, or Revision 1, dated June 27, 1996.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 300 flight cycles until the requirements of paragraph (d) of thisAD have been accomplished.

(2) If any cracking is detected, prior to further flight, accomplish the replacement actions specified in paragraph (d) of this AD.

(c) For airplanes that have accomplished installation of the Boeing-inspected spare titanium spring beams in accordance with Boeing Service Bulletin 747–54A2171,Revision 1, dated June 27, 1996: Within 3,000 flight cycles after accomplishment of the installation of the spare spring beams, or within 90 days after the effective date of thisAD, whichever occurs later, perform a detailed visual inspection to detect fatigue cracking of the spring beams on the outboard struts, in accordance with Boeing AlertService Bulletin 747–54A2171, dated October 31, 1994, or Revision 1, dated June 27, 1996.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 300 flight cycles until the requirements of paragraph (d) of thisAD have been accomplished.

(2) If any cracking is detected, prior to further flight, accomplish the replacement actions specified in paragraph (d) of this AD.

(d) For all airplanes: Prior to the accumulation of 10,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later, replace the spring beams on the outboard struts with new, improved spring beams, in accordance with Boeing Service Bulletin 747–54–2177, dated June 27, 1996. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of this AD.

(e) As of the effective date of this AD, no person shall install a spring beam assembly, part numbers 65B89175–5, –6, –9, –10, –13, –14, –19, and –20, on any airplane.

(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,Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

Issued in Renton, Washington, on June 30, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate,Aircraft Certification Service.

[FR Doc. 98–17947 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require modification of the attach points of the uplock system of the nose landing gear (NLG). This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent wear of the attach points of the uplock system of the NLG; such wear could result in damage to the adjacent emergency hydraulic system, or jamming of the uplock system and consequent inability to extend and retract the NLG.

DATES: Comments must be received by August 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–167-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support , Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98-NM–167-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–167-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace (Jetstream) Model 4101 airplanes. The CAA advises that it has received reports of wear of the attach points of the uplock system of the nose landing gear (NLG). Investigation revealed that the wear is due to excessive loads from the uplock system, which caused excessive movement of the uplock mechanisms. Such wear of the attach points of the NLG uplock system, if not corrected, could result in damage to the adjacent emergency hydraulic system, or jamming of the uplock system and consequent inability to extend and retract the NLG.

Explanation of Relevant Service Information

The manufacturer has issued Jetstream Alert Service Bulletin J41–53–041, dated July 25, 1997, which describes procedures for modification of the attach points of the uplock system of the NLG. The modification involves installation of nested angle stiffeners on the ''Z'' members near the NLG and removal and replacement of the distance tubes and pieces with new distance tubes and pieces. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this alert service bulletin as mandatory and issued British airworthiness directive 009–07–97 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

The FAA estimates that 58 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $170 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $44,660, or $770 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft
[Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 98–NM–167–AD.

Applicability: Jetstream Model 4101 airplanes, constructor's numbers 41004 through 41100 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

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

Compliance: Required as indicated, unless accomplished previously.

To prevent wear of the attach points of the uplock system of the nose landing gear (NLG), which could result in damage to the adjacent emergency hydraulic system, or jamming of the uplock system, and consequent inability to extend and retract the NLG, accomplish the following:

(a) Prior to the accumulation of 9,000 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs later, modify the attach points of the uplock system of the NLG, in accordance with Jetstream Alert Service Bulletin J41–53–041, dated July 25, 1997.

(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 requests 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.

Note 3: The subject of this AD is addressed in British airworthiness directive 009–07–97.

Issued in Renton, Washington, on June 30, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–17950 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1728; IC–23293; File No. S7–20–98]

RIN 3235–AH45

Investment Adviser Year 2000 Reports

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing for comment a proposed new rule and form under the Investment Advisers Act of 1940 that would require most registered investment advisers to file with the Commission a report regarding preparations for the Year 2000 computer problem. The reports would inform the Commission about the steps that investment advisers have taken, and will take, to prepare for the challenges posed by the Year 2000 problem.

DATES: Comments must be received on or before August 10, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–20–98; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Arthur B. Laby, Special Counsel, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 204–5 [17 CFR 275.204–5] and Form ADV-Y2K [17 CFR 279.9] under the Investment Advisers Act of 1940 (''Advisers Act'') [15 U.S.C. 80b].

I. Background

The Commission is undertaking a review of U.S. public companies and the U.S. securities industry to examine whether they will be prepared for the computer challenges associated with the Year 2000.[1] As part of this initiative, in March 1998, the Commission requested comment on proposed rule changes that would require certain broker-dealers [2] and transfer agents [3] to file with the Commission a report on Year 2000 readiness. The Commission today is requesting comment on a new rule and form that would require most investment advisers registered with the Commission under the Advisers Act to file a report on Year 2000 readiness.

Investment advisers (''advisers'') manage approximately $13 trillion of savings of American families. These assets are managed on behalf of investors directly, as well as indirectly through financial institutions such as employee benefit plans, trusts, hedge funds and mutual funds. Mutual funds alone control over $5 trillion of assets,[4] 35 percent of which are estimated to be retirement plan assets.[5] Thus, investment advisers play a key role in the economic life of America today.

Advisers manage these assets using computer systems that connect them with the markets, service providers and clients. In addition, advisers depend upon internal computer systems for various management, compliance and recordkeeping functions.[6] The development and growth of the Internet has made advisory clients more dependent upon their advisers' computer systems to provide them with information about their adviser and their portfolios. The failure of the advisers' or third parties' computer

[1] On January 1, 2000, certain computer systems may function erroneously if necessary modifications have not been made because, among other things, the systems may read incorrectly the date 01/01/00 as being the year 1900 or another incorrect date. Problems may arise earlier than January 1, 2000, because dates after December 31, 1999, already are being entered into computer programs and may be misread.

[2] Reports to be Made by Certain Brokers and Dealers, Exchange Act Release No. 39724 (Mar. 5, 1998) [63 FR 12056 (Mar. 12, 1998)].

[3] Reports to be Made by Transfer Agents, Exchange Act Release No. 39726 (Mar. 5, 1998) [63 FR 12062 (Mar. 12, 1998)].

[4] The Investment Company Institute, Current Statistical Releases, Trends in Mutual Fund Investing, April 1998, available at <http://www.ici.org/facts_figures/trends_0498html>.

[5] The Investment Company Institute, Retirement Statistics, Retirement Plans Hold 35 Percent of Mutual Fund Assets (Oct. 14, 1997), available at <http://www.ici.org/retirement/retirement_statistics96.html>.

[6] Under the federal securities laws, advisers and investment companies are obligated to make, and keep current, certain books and records relating to their business. *See* rule 204–2 under the Advisers Act [17 CFR 275.204–2]; rule 31a-1 under the Investment Company Act of 1940 [17 CFR 270.31a-1].

systems to function properly as a result of the Year 2000 problem could threaten the ability of advisers to manage properly client assets, communicate information to their clients and comply with the federal securities laws.

Investment companies (''funds'') also are highly dependent on sophisticated computer systems to communicate with their advisers and other third parties such as underwriters, brokers, transfer agents, custodians and sub-advisers. To manage their portfolios, calculate net asset values, keep accurate records, process shareholder purchases and redemptions, and timely deliver disclosure documents and account statements, funds and their advisers continuously must exchange information with each other and with their service providers. A breakdown in this exchange of information could interfere with the day-to-day management of fund portfolios, delay shareholder transactions and compromise recordkeeping and other compliance systems.

The Commission has identified six steps of preparation that advisers and funds can take to prepare for the Year 2000 computer problem. These steps are: (i) Awareness of potential Year 2000 problems; (ii) assessment of steps advisers and funds must take to avoid Year 2000 problems; (iii) implementation of the steps to avoid Year 2000 problems; (iv) internal testing of software designed to avoid Year 2000 problems; (v) point-to-point testing of software designed to avoid Year 2000 problems (*i.e.*, testing with service providers such as broker-dealers, custodians, transfer agents and distributors); and (vi) implementation of tested software that will avoid Year 2000 problems. By taking these steps now, advisers and funds more likely can solve potential Year 2000 problems well in advance of December 31, 1999.

The Commission has for some time recognized the challenges that the Year 2000 poses for advisers and funds. Since 1996, Commission examiners have raised Year 2000 concerns during adviser and fund examinations to increase awareness of, and encourage aggressive and timely action to address, Year 2000 problems. In 1997, Chairman Levitt sent a letter to all registered investment advisers warning of the consequences of not being Year 2000 compliant and urging them to make preparations for the Year 2000 their highest priority. In 1997, the staff provided guidance on the disclosure obligations of advisers and funds.[7] Commissioners and members of the staff have met with industry and professional groups to express these concerns.

Today, the Commission is proposing to require most advisers registered with the Commission to complete and submit a report to the Commission on their preparedness for the Year 2000 problem. The reports will help the Commission evaluate the readiness of advisers for the Year 2000 problem, identify those advisers and funds that pose a significant risk to their clients and shareholders, and evaluate the adequacy of disclosure made by these firms regarding the Year 2000 problem. Finally, the proposed rule will permit the Commission to make the reports about Year 2000 preparations of advisers and funds available to the public and to fulfill Congressional requests for information regarding the securities industry's readiness for the Year 2000 problem.

II. Discussion

The Commission is proposing new rule 204–5, which would require most investment advisers registered with the Commission to file with the Commission new Form ADV-Y2K.[8] Form ADV-Y2K would be filed by each investment adviser that (i) is registered with the Commission, and (ii) has at least $25 million of assets under management[9] or is an adviser to an investment company registered under the Investment Company Act of 1940.[10] The form would have to be filed no later than 30 days after the rule becomes effective, and an updated form would have to be filed no later than eight months from the date of the first filing. The second filing would reflect progress made in preparing for the Year 2000 problem up to that time.

Proposed Form ADV–Y2K has two parts. Part I would be completed by all respondents and would contain 11 questions about the adviser's preparation for the Year 2000 problem with respect to all of the adviser's clients. The questions all would be in multiple choice or fill-in-the-blank format, and advisers would be required to respond to each question. Part II would consist of questions similar to those in Part I and would be completed by advisers to a registered fund or a group of registered funds.

Investment companies are frequently organized into groups, called ''complexes'' or ''families,'' that realize efficiencies by sharing administrative functions. The instructions to Part II of the proposed form specify that each adviser (or sub-adviser) to a fund must complete Part II with respect to an entire complex if the adviser advises a single fund (or a series) in the complex. An adviser, however, need not complete Part II for the complex or a fund (or a series) with respect to which another adviser is completing Part II.[11] The effect of the proposed approach would permit multiple advisers to funds in a single fund complex to decide among themselves which adviser will be responsible for completing Part II with respect to the complex, but would assure that the Commission receives Year 2000 information with respect to most funds. Comment is requested on this proposed approach.

The instructions are designed so that the reporting adviser for a fund complex would likely be the adviser that has administrative responsibilities for the complex and thus is in the best position to report on the Year 2000 readiness of the complex—even if that adviser does not provide advice for all funds in the complex.[12] An adviser responding to

[7] Staff Legal Bulletin No. 5 (CF/IM) (revised), Jan. 12, 1998, available at <http://www.sec.gov/rules/othern/slbcf5.htm>.

[8] Under section 204 of the Advisers Act, the Commission has the authority to require every registered investment adviser to make and keep such reports that the Commission, by rule, may prescribe. 15 U.S.C. 80b-4. Form ADV-Y2K, like all forms filed with the Commission by investment advisers, would be publicly available. *See* section 210(a) of the Advisers Act [15 U.S.C. 80b-10(a)].

[9] The amount of assets under management for purposes of Form ADV-Y2K would be the amount reported on Schedule I of the adviser's most recently filed Form ADV, or the most recent amendment to Form ADV.

[10] 15 U.S.C. 80a. As a result of the National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code), which amended the Advisers Act, generally only advisers that have at least $25 million of assets under management or that advise a registered investment company can register with the Commission. Advisers in the four states that do not regulate investment advisers, advisers with principal places of business in foreign countries, and other advisers exempt from the $25 million assets under management limitation may still register with the Commission. *See* rule 203A–2 under the Advisers Act [17 CFR 275.203A–2]. The $25 million assets under management reporting threshold, however, would exclude most of those advisers from the proposed Form ADV–Y2K filing requirement.

[11] The Commission intentionally has not proposed to define the term complex or family to give advisers flexibility to report for groups they administer.

[12] In some cases, a third party administrator that is not a registered investment adviser may be in the best position to report on the Year 2000 readiness of the complex. In such cases, the third party administrator could complete the form on behalf of one of the advisers to a fund in the complex, although the adviser would have the obligation to file the report. The Commission is requiring advisers, as opposed to other firms, such as administrators, to file the form because, under section 204 of the Advisers Act, the Commission

Continued

Part II on behalf of multiple complexes would complete multiple versions of Part II, one for each complex.[13]

The form would require each responding investment adviser to provide the Commission with information relating to the following areas: (1) The scope and status of the adviser's Year 2000 compliance plan; (2) the commitment by the adviser of resources and personnel (including consultants) to address Year 2000 issues; (3) the systems that may be affected by the Year 2000 problem; (4) progress on each of the six steps of preparation identified above;[14] (5) contingency plans in the event that the adviser experiences Year 2000 difficulties after December 31, 1999; [15] and (6) the readiness of third parties upon whom the adviser relies for critical systems. The report would be required to be signed by an authorized person that participates in managing or directing the adviser's affairs, but would not be required to be attested to by an independent public accountant. Comment is requested on whether an attestation by an independent public accountant should be required.

The Commission understands that an adviser or fund may rely on multiple systems that are at different stages of preparation for the Year 2000 problem. An adviser or fund, for example, may use separate systems for portfolio management, financial planning and client services. In those cases, the Commission is asking the reporting adviser to take a qualitative average and present the most accurate picture practicable of the preparedness of the systems of the adviser or the fund. In requiring a qualitative average, the Commission intends to be flexible and take a common sense approach. If an adviser, for example, uses two computer systems that are at different stages of preparedness, but one of those systems is more critical than the other, the adviser should base its responses primarily on the more critical system. Comment is requested on this approach, and on whether alternative ways to request information for multiple systems is desirable. Would it be preferable, for instance, to require advisers and funds to respond to questions about their preparedness for the Year 2000 problem on a system-by-system basis? Comment also is requested on what information advisers to funds underlying variable insurance contracts should be required to provide regarding systems supporting the contracts and the separate accounts and insurance companies issuing the contracts?

Advisers would be required to file Form ADV–Y2K by fax; a paper filing would not be accepted. Instructions in the form would direct advisers to use specified fax numbers. The Commission believes that all advisers have access to a fax machine and that, as a result, this filing method will reduce filing burdens. Comment is requested on the Commission's assumption that all advisers will be able easily to file the form by fax.

III. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and form that are the subject of this release, suggest additional changes, or submit comments on other matters that might have an effect on the proposal contained in this release, are requested to do so.

IV. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules, and understands that completing Form ADV–Y2K may impose costs on advisers and funds.[16] As discussed below, the Commission believes that the costs imposed by requiring advisers to complete Form ADV–Y2K are necessary and justified in light of the need to make information on the Year 2000 problem available to investors, Congress and the Commission.

The Commission believes that requiring advisers to report on their readiness for the Year 2000 problem would yield several important benefits, both direct and indirect. As discussed above, the Year 2000 reports required by the rule would yield direct benefits because they would help the Commission evaluate the preparedness of advisers and funds for the Year 2000 computer problem. The reports also would identify advisers and funds that may not be preparing for the Year 2000 problem and may pose a risk to their clients and shareholders. The reports also would identify disclosure by advisers and funds regarding risks associated with the Year 2000 problem that may be inadequate. Finally, the reports would permit the Commission to make information available to the public and to fulfill requests by members of Congress for information regarding the securities industry's readiness for the Year 2000 problem.

The Year 2000 reports also would yield important indirect benefits. By requiring the Year 2000 reports now, some advisers and funds, whose Year 2000 preparedness efforts to date have been inadequate, may be persuaded to accelerate their efforts, which would save them significant costs in the future if they failed to meet the Year 2000 challenge.[17] This indirect benefit is difficult to quantify because it is hard to estimate the costs that could be incurred if computer systems of advisers and funds fail to function properly after December 31, 1999.[18] Moreover, if the systems of advisers and funds were to fail after December 31, 1999, it could have negative effects not only for the advisers and funds themselves, but also for investors and third parties, such as underwriters, brokers, transfer agents, custodians, sub-advisers and other service providers.

Avoiding the harm to third parties may be one of most important benefits to proper preparation for the Year 2000 problem. Most firms' computer systems today depend on the systems of many other firms and individuals. If even one of these systems were to fail, this could have negative repercussions on the systems of other firms with which its computers interface. The failure to address this interdependence may be one of the greatest harms stemming from the Year 2000 problem.[19] The benefit of avoiding this harm from occurring,

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has the statutory authority to require only advisers to file such reports.

[13] See proposed Instructions for Part II of Form ADV–Y2K.

[14] One of the six steps is testing. The form contains questions about the progress of both point-to-point testing, also known as bilateral testing, and about industry-wide testing, also known as street-wide testing, to date. Much of the industry-wide testing to take place has been arranged by the Securities Industry Association (SIA). The SIA has arranged to test all aspects of its members' businesses for Year 2000 compliance and has included transactions with funds as one of the tests for its members.

[15] Contingency planning should provide for adequate protections for critical systems if computer interfaces fail or unexpected problems are experienced with operating systems and infrastructure software. In addition, contingency plans should provide for the failure of external systems. The plans should anticipate the failure of a vendor, for example, that services critical applications and should provide for the possibility that an investor may experience Year 2000 problems.

[16] *See infra* section VI of this release for the Commission's estimate of the costs that the proposed rule will impose on affected advisers and funds.

[17] It has been estimated that without corrective measures, ninety percent of all computer applications worldwide may fail, or fail to function properly, because of the inability properly to recognize the date change. Maggie Parent, Morgan Stanley Year 2000 Issue Paper (May 1997), available at <http://www.ms.com/odyssey.html>.

[18] The Securities Industry Association has stated that the transition to the Year 2000 is the largest business and technology effort that the world has ever experienced. See SIA, Year 2000, available at <http://www.sia.com/year__2000/index.html>.

[19] C. Lawrence Meador and Leland G. Freeman, Year 2000: The Domino Effect, Datamation (Jan. 1997), available at <http://www.datamation.com/PlugIn/issues/1997/jan/01depend.html>.

although difficult to quantify, may be extremely significant to investors, firms and the economy in general.

The proposed rule would impose some additional costs on advisers and funds. Advisers may need to spend resources obtaining answers to questions in the form, completing the form and submitting it to the Commission. These costs may vary from adviser to adviser. Small advisers, for example, may spend comparatively little time completing the form because small advisers likely have fewer systems and one person may be responsible for all of the systems. This person is likely to have all of the information necessary to complete the form and can do so in a few minutes. Larger advisers may require more time. Larger advisers are more likely to have more computer systems and it is possible that the adviser would have to draw on the knowledge of several individuals to complete the form.

The Commission estimates that there are approximately 7,500 investment advisers registered with the Commission, approximately 6,500 of which would be required to file Form ADV–Y2K. Although the time needed to comply with the rule could vary from adviser to adviser, the Commission estimates that a respondent will devote approximately two employee hours of time to completing Part I of the form. In addition, approximately 891 registered investment advisers have registered investment companies as clients. Therefore, those 891 advisers may be required to spend an additional two hours completing Part II of the form on behalf of a fund or fund complex. These estimates are based on field-testing of the form by the Commission's Office of Compliance, Inspections and Examinations. The total annual burden will be 14,782 hours ((6,500 advisers × 2 hours) + (891 advisers × 2 hours)). The form will likely be completed by information technology professionals. The Commission estimates the hourly wage rate for these professionals to be $100 per hour. Therefore, the Commission estimates that the total annual cost of completing the forms is $1,478,200. The Commission believes that the proposed rule would not impose significant additional costs on investment advisers.

The Commission believes that the costs imposed by the rule are insignificant compared to the benefits. If advisers and funds are not prepared for the Year 2000 problem, the effect on advisers and funds, and their clients and third party service providers, could be very substantial. The chance of ameliorating the Year 2000 problem with respect to advisers and funds justifies the minimal costs involved.

The Commission requests comment on the effect of the proposed rule on individual investment advisers and on the profession as a whole. Commenters should provide data and analyses relating to the costs and benefits associated with the proposed rule. Comment is requested on the costs of filing Form ADV–Y2K by fax with the Commission. This information would assist the Commission in its evaluation of the costs and benefits that may result if the proposed rule is adopted.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential effect of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

Comment is requested on this cost/benefit analysis. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed rule.

V. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), in accordance with the provisions of the Regulatory Flexibility Act,[20] regarding the proposed rule. As discussed more fully in the IRFA, few or none of the advisers that the proposed rule would affect are small entities, as defined by new Commission rules.[21] The IRFA states that the purpose of the proposed rule is for the Commission to ascertain what steps advisers and funds are taking to avoid Year 2000 problems.

The IRFA sets forth the statutory authority for the proposed rule. The IRFA also discusses the effect of the proposed rule on advisers that are small entities. An adviser generally is a small entity (i) if it manages assets of $25 million or less reported on Form ADV–T [17 CFR 279.3] or its most recent Schedule I to Form ADV [17 CFR 279.1], (ii) if it does not have total assets of $5 million or more on the last day of the most recent fiscal year, and (iii) if it is not in a control relationship with another investment adviser that is not a small entity. The Commission estimates that there are approximately 7,500 registered advisers, approximately 1000 of which are small entities. The Commission estimates that few or none of the small entities would be required to complete Form ADV–Y2K.

Under the terms of the rule, only an adviser that is (i) registered with the Commission, *and* (ii) has assets under management of not less than $25 million or is an investment adviser to an investment company registered under the Investment Company Act must file Form ADV–Y2K. Since the new definition of small entity establishes a threshold of $25 million under management, most or all small entities would be exempted from the rule by its terms. In addition, the Commission believes that few or no investment advisers that have less than $25 million under management have more than $5 million in assets or are in a control relationship with an entity that is not considered a small entity. Finally, the only small entities that still would be subject to the rule are those small entities that advise a registered investment company. The Commission is not aware of any small entity that advises a registered investment company. Comment is requested on the number of small entities that would not be subject to the rule.[22]

The IRFA states that the proposed rule would impose new reporting requirements because most investment advisers would have to file with the Commission a new form regarding their readiness for the Year 2000 problem. The Commission estimates that, on average, a respondent would devote approximately two employee hours of preparation time to completing Part I of the form in 1998 and again in 1999. If the adviser is required to complete Part II, it would devote approximately an additional two hours to completing the form in 1998 and in 1999. The IRFA states that the Commission estimates that few or no small entities would be required to complete Form ADV–Y2K. The IRFA states that the proposed rule would not impose any other reporting, recordkeeping, or compliance requirements, and that the Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed rule.

[20] 5 U.S.C. 603.

[21] The Commission recently adopted revised definitions of ''small entity.'' *See* Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Investment Adviser Act Release No. 1727 (June 24, 1998). The revised definition of small investment adviser for Regulatory Flexibility Act purposes reflects the National Securities Markets Improvement Act. If the Commission adopts the proposed rule, the new definitions of small entities would be effective before the final rule would be adopted.

[22] If the Commission were to adopt a final rule, it may prepare a Regulatory Flexibility Act Certification stating that the rule will not have a substantial impact on small entities.

The analysis discusses the various alternatives considered by the Commission in connection with the proposed rule that might minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule or any part of it, for small entities. The Commission has determined that it is not feasible to further clarify, consolidate, or simplify the proposed rule for small entities.

As discussed in the analysis, most or all small entities are exempted from the rule. The Commission believes that it would be inconsistent with the purpose of the rule proposal to further exempt small entities from the proposed rule or to use performance standards to specify different requirements for small entities. As discussed in the IRFA, investment advisers registered with the Commission would be required to file Form ADV–Y2K because they likely have substantial financial exposure to the market and investors.

In the IRFA, the Commission encourages the submission of written comments with respect to all aspects of the IRFA. In particular, the Commission is interested in comments that specify costs of compliance with the proposed rule, and suggest alternatives that would accomplish the objective of the proposed rule. A copy of the IRFA may be obtained by contacting Arthur B. Laby, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–6, Washington, D.C. 20549.

VI. Paperwork Reduction Act

The proposed rule contains collection of information requirements within the meaning of the Paperwork Reduction Act of 1995,[23] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Proposed Rule 204–5'' and ''Form ADV–Y2K.''

Collection of information by the Commission is contemplated by the proposed rule because registered advisers would have to file new Form ADV–Y2K with the Commission. Advisers would be required to file Form ADV–Y2K twice, first no later than 30 days after the rule is effective and again eight months from the date that the first filing must be made. The form is necessary for the Commission to assess the steps advisers are taking to manage and avoid Year 2000 problems.

The Commission estimates that there are approximately 7,500 investment advisers registered with the Commission, approximately 6,500 of which would be required to file Form ADV–Y2K. Although the amount of time needed to comply with the rule could vary from adviser to adviser, the Commission estimates that, on average, a respondent would devote approximately two employee hours of preparation time to completing Part I of the form, and an additional two employee hours to completing Part II of the form, if the adviser is required to complete Part II. This estimate is based on field-testing of Form ADV–Y2K by the Commission's Office of Compliance, Inspections and Examinations. The total annual burden will be 14,782 hours ((6,500 advisers × 2 hours) + (891 advisers × 2 hours)). It is important to note that this burden would be incurred only twice, once in 1998 and once in 1999. The rule would not impose an ongoing reporting requirement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Filing of this form is mandatory. The principal purpose of this collection of information is to enable the Commission to address the Year 2000 problem faced by advisers and funds. The Commission would use the information, among other things, to assess the readiness of advisers and funds for the Year 2000 problem and make the information available to the public, to assist the Commission in its inspection and examination program and to report to Congress on the readiness of advisers and funds for the Year 2000 problem. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate of this form, and any suggestions for reducing this burden.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits commenters to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) enhance the quality, utility and clarity of the information to be collected; and

(iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7–20–98. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

VII. Statutory Authority

The Commission is proposing new Rule 204–5 and new Form ADV–Y2K pursuant to the authority set forth in sections 204 and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11(a)].

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Form

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.204–4 is added and reserved and § 275.204–5 is added to read as follows:

§ 275.204–4 Reserved.

§ 275.204–5 Year 2000 reports.

Every investment adviser registered with the Commission that has assets under management of not less than $25 million or is an investment adviser to an

[23] 44 U.S.C. 3501.

investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) must file with the Commission by fax in accordance with the instructions in the form:

(a) A completed Form ADV–Y2K (17 CFR 279.9) no later than [30 days after the rule becomes effective]; and

(b) An additional Form ADV–Y2K, no later than [eight months from the date that the first filing must be made], reflecting information as of the date of the filing.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*

4. Section 279.9 and Form ADV–Y2K are added to read as follows:

§ 279.9 Form ADV-Y2K.

This form must be filed pursuant to § 275.204–5 of this chapter by certain investment advisers.

By the Commission.

Dated: June 30, 1998.

Margaret H. McFarland,

Deputy Secretary.

Note: The text of the following Form ADV-Y2K will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–P

Form ADV-Y2K

OMB APPROVAL	
OMB Number:	3235-0nnn
Expires:	
Estimated average burden hours per response:	

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form for Reporting on Preparations for the Year 2000

[PLEASE TYPE ALL RESPONSES]

Name of Adviser:

SEC File Number:
801-

Address of Principal Place of Business (Do Not Use Post Office Box):

(city) (state) (zip code)

Contact Person Responsible for Completing This Form:
Name:

Title:

Phone: _____

Business Address:

(city) (state) (zip code)

E-mail: _____

EXECUTION

The undersigned represents that he or she is executing this Form on behalf of, and with the authority of, the registrant. (The person executing the form does not necessarily have to be the contact person above.)

The undersigned and registrant represent that the information contained in this form is current, true and complete to the best of his or her knowledge.

Date:	Name of Registrant:	By (Signature):
Typed Name:		Title:

Attention: **Registrants are reminded that it is a violation of section 207 of the Advisers Act to make any untrue statements of a material fact in any report filed with the Commission, or willfully to omit to state in any such report any material fact that is required to be stated in the form.**

Form ADV-Y2K

GENERAL INSTRUCTIONS

Throughout these instructions and the form, we will refer to the investment advisory firm on behalf of which the form is being completed as "you."

Who Must File

You must complete this report and file it with the SEC if you were registered with the SEC on [the effective date of the form] and either:

- you have assets under management of $25 million or more as reported on your current Form ADV, or
- you advise an investment company registered under the Investment Company Act of 1940.

When Must You File

You must file this form twice. Initially, on [30 days after the effective date of the form], and then on [a date approximately eight months later]. The second report will serve to update the first report. The information in both reports must be current as of the date the reports are signed.

How the Form is Filed

The SEC is using a new filing method that we hope you will find more convenient. You must fax your reports to the Commission at one of the following fax numbers:

[Fax numbers]

The faxes must arrive at the SEC by the deadlines given above.

If necessary to explain your responses, you may attach additional information, however, do not write explanatory notes next to the questions.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

The information contained in the reports submitted on this Form will assist the Commission in evaluating whether investment advisers will be prepared for the computer challenges associated with the Year 2000, identify advisers and funds that may not be prepared for the Year 2000 problem, and permit the Commission to fulfill Congressional requests for information regarding the securities industry's readiness for the Year 2000. Responses to the questions in this Form are mandatory. The completed Forms will be publicly available.

Form ADV-Y2K

PART I Information on Preparations by Investment Advisers for the Year 2000 Problem

Instructions for Part I

1. If you are required to file Form ADV-Y2K, you must complete Part I. Complete Part I even if you also will be completing Part II because you are an adviser to an investment company.
2. Include in your answers to Part I your investment adviser affiliates that are *not* required to file this report.
3. Answer Part I with respect to all of your computer systems, including systems that service only investment company clients.
4. If you have computer systems for which you have made different amounts of progress in preparing for the Year 2000 problem, base your responses on a qualitative average of your systems. Give greater weight to mission-critical systems, and systems used for a large number of clients, than to other systems.
5. If more than one answer to a question is applicable, mark all answers that apply.

PART I.

1. Year 2000 compliance plan

(a) Do you have a plan for Year 2000 compliance to address whether your computer systems will operate correctly after December 31, 1999?

Yes ☐ No ☐

Consider as a plan, or as part of a plan, efforts to contact vendors of software systems you use.

(b) If *no*, are you:

MM/DD/YYYY

☐ Developing a written plan — it is scheduled to be completed by:

☐ Not developing a plan because you do not plan to be conducting business after January 1, 2000 — plan to be out of business by:

MM/DD/YYYY

☐ Other (please specify on a separate attachment)

If you have no plan, go on to question 2

(c) If the answer to question 1(a) is *yes*, does the plan address external interfaces with third party computer systems that communicate with your systems? Yes ☐ No ☐

(d) Is your Year 2000 compliance plan in writing? Yes ☐ No ☐

(e) Who has approved the plan? (check all that apply)

☐ No approval ☐ Board of directors ☐ Corporate officers ☐ Executive management

☐ Head of Information Technology or equivalent ☐ Employees

(f) Has the plan been discussed with your outside auditors? Yes ☐ No ☐

(g) What is the scope of coverage of the plan? (check all that apply)

☐ All systems ☐ Mission-critical systems ☐ Physical facilities ☐ Communications systems

---

(h) Which of your facilities does the plan cover? (check all that apply)

☐ Our primary facility ☐ Certain U.S. facilities ☐ All U.S. facilities ☐ Certain facilities worldwide

☐ All facilities worldwide ☐ We have no international facilities

Form ADV-Y2K

(i) Are your activities for non-U.S. clients covered by the plan? Yes ☐ No ☐ not applicable ☐

2. Funding for Year 2000 compliance

(a) Please indicate the month your fiscal year begins: _____

(b) Has specific funding been allocated for fiscal year 1998, fiscal year 1999, or fiscal year 2000, for your Year 2000 compliance plan?

(i) 1998 ☐ Yes ☐ No

(ii) 1999 ☐ Yes ☐ No

(iii) 2000 ☐ Yes ☐ No

If funding has not yet been allocated for fiscal year 1999 or fiscal year 2000, mark "no"
If you marked "no" for 1998, 1999, and 2000, go on to question 3

(c) What is your specific 1998 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?

☐ Less than $1,000 ☐ $1,001 - $10,000 ☐ $10,001 - $50,000 ☐ $50,001 - $100,000

☐ $100,001 - $500,000 ☐ $500,001 - $1 million ☐ $1-2 million ☐ $2-5 million ☐ $5-10 million

☐ $10-20 million ☐ $20-50 million ☐ $50-100 million ☐ over $100 million

(d) What items are contained in your1998 fiscal year budget for Year 2000 compliance? (check all that apply)

☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems ☐ Internal testing

☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents and other service providers)

☐ Training ☐ SIA industry-wide testing ☐ Implementation of contingency plans

If you marked "no" for 1999 and 2000 in question 2(b), go on to question 3

(e) What is your specific 1999 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?

☐ Less than $1,000 ☐ $1,001 - $10,000 ☐ $10,001 - $50,000 ☐ $50,001 - $100,000

☐ $100,001 - $500,000 ☐ $500,001 - $1 million ☐ $1-2 million ☐ $2-5 million ☐ $5-10 million

☐ $10-20 million ☐ $20-50 million ☐ $50-100 million ☐ over $100 million

(f) What items are contained in your 1999 fiscal year budget for Year 2000 compliance? (check all that apply)

☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems ☐ Internal testing

☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents and other service providers)

☐ Training ☐ SIA industry-wide testing ☐ Implementation of contingency plans

If you marked "no" for 2000 in question 2(b), go on to question 3

(g) What is your specific 2000 fiscal year budget allocation for Year 2000 compliance (including operating and capital expenditures)?

☐ Less than $1,000 ☐ $1,001 - $10,000 ☐ $10,001 - $50,000 ☐ $50,001 - $100,000

☐ $100,001 - $500,000 ☐ $500,001 - $1 million ☐ $1-2 million ☐ $2-5 million ☐ $5-10 million

☐ $10-20 million ☐ $20-50 million ☐ $50-100 million ☐ over $100 million

(h) What items are contained in your 2000 fiscal year budget for Year 2000 compliance? (check all that apply)

☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems ☐ Internal testing

☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents and other service providers)

☐ Training ☐ SIA industry-wide testing ☐ Implementation of contingency plans

3. Persons responsible for Year 2000 compliance

(a) Has one or more individuals been designated as responsible for your Year 2000 compliance? Yes ☐ No ☐

Include both employees and consultants

Form ADV-Y2K

(b) If *yes*, provide the following information on the person primarily responsible:

Name:

_____

Title:

_____

Business Address:

_____

(city) (state) (zip code)

Provide information for one person only

4. Staffing for Year 2000

(a) Is this a full-time project for at least one individual? Yes ☐ No ☐

Include both employees and consultants

(b) If *yes*, how many individuals are working full time on Year 2000 compliance?

☐ 1 ☐ 2-5 ☐ 6-10 ☐ 11-20 ☐ 21-50

☐ 51-100 ☐ 101-200 ☐ over 200

(c) Have you hired third parties to assist you on Year 2000 issues? Yes ☐ No ☐

(d) If *yes*, what function(s) are the third parties performing? (check all that apply)

☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems ☐ Internal testing

☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents and other service providers)

☐ Training ☐ SIA industry-wide testing ☐ Implementation of contingency plans

☐ Vendor assessment ☐ Other (please specify on a separate attachment)

(e) If you have not completed staffing your Year 2000 project, are you:

MM/DD/YYYY

☐ Defining resources — this will be completed by:

☐ Unable to find sufficient staffing resources

☐ Handling the staffing as part of your ongoing business operations

5. Inventory of systems

(a) Have you inventoried all of your systems? Yes ☐ No ☐

(b) What is the nature of the computer systems you utilize? (check all that apply)

☐ Off-the-shelf ☐ Vendor provided ☐ Developed in-house (custom made)

☐ Other (please specify on a separate attachment)

(c) Have you identified your mission-critical systems? Yes ☐ No ☐

(d) If *no*, this will be completed by:

MM/DD/YYYY

(e) Have you determined which of your mission-critical systems are not currently Year 2000 compliant? Yes ☐ No ☐

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6. Awareness of the problem

What steps have you taken to enhance awareness of potential Year 2000 problems? (check all that apply)

☐ None to date ☐ Designated individuals for Year 2000 compliance ☐ Presentations to the Adviser's Board

☐ Presentations to management ☐ Presentations to employees ☐ Contacted third parties

☐ Other (please specify on a separate attachment)

7. Progress on preparing mission-critical systems for the Year 2000

What is your progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps you will take to address Year 2000 problems with your mission-critical systems (including preparing an inventory of computer systems affected by the Year 2000):

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, assessment expected to be completed by:

(b) **Implementation of steps** you will take to address Year 2000 problems with your mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, implementation of steps expected to be completed by:

(c) **Testing** of your internal mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, testing expected to be completed by:

(d) Did your testing of internal mission-critical systems result in material exceptions that remain unresolved as of this filing?

Yes ☐ No ☐ not applicable ☐

(e) **Point-to-point testing** of your mission-critical systems (including testing with broker-dealers, custodians, transfer agents and other service providers):

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, point-to-point testing expected to be completed by:

(f) Did your point-to-point testing of mission-critical systems result in material exceptions that remain unresolved as of this filing?

Yes ☐ No ☐ not applicable ☐

(g) **Implementation of tested software** to address Year 2000 problems with your mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, implementation of tested software expected to be completed by:

8. Progress on preparing all other systems for the Year 2000

What is your progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps you will take to address Year 2000 problems with your non-mission-critical systems (including preparing an inventory of computer systems affected by the Year 2000):

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, assessment expected to be completed by:

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(b) **Implementation of steps** you will take to address Year 2000 problems with your non-mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, implementation of steps expected to be completed by:

(c) **Testing** of your non-mission-critical internal systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, internal testing expected to be completed by:

(d) Did your testing of internal non-mission-critical systems result in material exceptions that remain unresolved as of this filing?

Yes ☐ No ☐ not applicable ☐

(e) **Point-to-point testing** of your non-mission-critical systems (including testing with broker-dealers, custodians, transfer agents and other service providers):

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, point-to-point testing expected to be completed by:

(f) Did your point-to-point testing result in material exceptions that remain unresolved as of this filing?

Yes ☐ No ☐ not applicable ☐

(g) **Implementation of tested software** to address Year 2000 problems with your non-mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, implementation of software expected to be completed by:

9. Contingency plans

(a) Do you have a contingency plan for your systems if, after December 31, 1999, you have computer problems caused by the Year 2000?

Yes ☐ No ☐

(b) If *yes*, is the contingency plan in writing?

Yes ☐ No ☐

(c) If *no*, what is your progress in preparing a contingency plan?

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99%

MM/DD/YYYY

Contingency plan expected to be completed by:

(d) What is the scope of coverage of the contingency plan? (check all that apply)

☐ No systems ☐ Mission-critical systems ☐ Physical facilities ☐ Communications systems ☐ All systems

(e) Who has approved the contingency plan? (check all that apply)

☐ No approval ☐ Board of directors ☐ Corporate officers ☐ Executive management

☐ Head of Information Technology or equivalent ☐ Employees

10. Third parties who provide mission-critical systems

(a) Have you identified all third parties upon whom you rely for your mission-critical systems?

Yes ☐ No ☐

Form ADV-Y2K

(b) If *yes*, on how many third parties do you rely for your mission-critical systems:

(c) With what percentage of third parties upon whom you rely for mission-critical systems have you had contact regarding the third parties' readiness for the Year 2000?

☐ 0% ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ 100%

MM/DD/YYYY

If not all, contact expected to be completed by:

(d) Has any third party on whom you rely for mission-critical systems declined or failed to provide you with assurances that it is undertaking the necessary steps to prepare for the Year 2000?

Yes	No	not applicable
☐	☐	☐

(e) If *yes*, what number of third parties providing mission-critical systems have failed to provide such assurances:

(f) Does your contingency plan account for third parties whose systems may fail after December 31, 1999?

Yes	No	We have no contingency plan
☐	☐	☐

11. Indicate the amount of your assets managed as reported in your last amended Form ADV (add the two amounts reported in Items 18B and 19B of Part I of Form ADV).

$_____ (to the nearest whole dollar)

Form ADV-Y2K

PART II Information About Preparations by Investment Company Clients of Investment Advisers for the Year 2000

Instructions for Part II

1. If you are an adviser or sub-adviser to an investment company registered under the Investment Company Act of 1940 ("fund") you also must complete Part II with respect to that fund *and* any other fund in the same fund "complex" or "family" *unless* another adviser is submitting a Form ADV-Y2K that covers that investment company.

   Note: under this instruction, advisers to a fund complex with multiple advisers can decide among themselves which will complete and submit Form ADV-Y2K.

2. Answer Part II with respect to all computer systems used by the fund complex. If the complex has computer systems for which different amounts of progress in preparing for the Year 2000 problem have been made, base your responses on a qualitative average of the systems. Give greater weight to mission-critical systems than to other systems.

PART II

1. Identify the investment company or companies, or the fund complex, on whose behalf you are filing this form. Provide the name and ten-letter identifier for the complex used in Item 19C of Form N-SAR if available. If no answer to Item 19C was provided, provide the full name of the complex.

   Name of investment company or companies, or fund complex:

   Ten-letter identifier in Form N-SAR:

2. Year 2000 compliance plan

   (a) Does the investment company you advise have a plan for Year 2000 compliance to address whether its computer systems will operate correctly after December 31, 1999? Yes ☐ No ☐

   Consider as a plan, or as part of a plan, efforts to contact vendors of software systems used.

   (b) If ***no***, is the investment company:

   ☐ Developing a plan — it is scheduled to be completed by: MM/DD/YYYY

   ☐ Not developing a plan because the investment company does not plan to be conducting business after January 1, 2000 — plan to be out of business by: MM/DD/YYYY

   ☐ Other (please specify on a separate attachment)

   If the investment company has no plan, go on to question 3

   (c) Does the plan address external interfaces with third party computer systems that communicate with the investment company's systems? Yes ☐ No ☐

   (d) Is the Year 2000 compliance plan in writing? Yes ☐ No ☐

   (e) Who has approved the plan? (check all that apply)

   ☐ No approval ☐ Board of directors ☐ Corporate officers ☐ Executive management

   ☐ Head of Information Technology or equivalent ☐ Employees

   (f) Has the plan been discussed with outside auditors? Yes ☐ No ☐

   (g) What is the scope of coverage of the plan? (check all that apply)

   ☐ All systems ☐ Mission-critical systems ☐ Physical facilities ☐ Communications systems

Form ADV-Y2K

(h) Which facilities does the plan cover? (check all that apply)

☐ The primary facility ☐ Certain U.S. facilities ☐ All U.S. facilities ☐ Certain facilities worldwide

☐ All facilities worldwide ☐ There are no international facilities

(i) Who had primary responsibility for preparing the Year 2000 plan?

☐ The fund ☐ An adviser ☐ A sub-adviser ☐ An administrator ☐ A transfer agent

☐ A custodian ☐ A broker-dealer ☐ Other

3. Persons responsible for Year 2000 compliance

(a) Has one or more individuals been designated as responsible for Year 2000 compliance? Yes ☐ No ☐

Include employees and consultants

(b) If *yes*, provide the following information on the person primarily responsible:

Name:

Title:

Business Address:

(city) (state) (zip code)

Provide information for one person only

4. Staffing for Year 2000

(a) Is this a full-time project for at least one individual? Yes ☐ No ☐

Include employees and consultants

(b) If *yes*, how many individuals are working full time on Year 2000 compliance?

☐ 1 ☐ 2-5 ☐ 6-10 ☐ 11-20 ☐ 21-50

☐ 51-100 ☐ 101-200 ☐ over 200

(c) Have third parties been hired to assist on Year 2000 issues? Yes ☐ No ☐

(d) If *yes*, what function(s) are the third parties performing? (check all that apply)

☐ Assessment of the problem ☐ Correction of systems ☐ Replacement of systems ☐ Internal testing

☐ Point-to-point testing (including testing with broker-dealers, custodians, transfer agents and other service providers)

☐ Training ☐ SIA industry-wide testing ☐ Implementation of contingency plans ☐ Vendor assessment

☐ Other (please specify on a separate attachment)

(e) If the investment company has not completed staffing on the Year 2000 project, is it:

MM/DD/YYYY

☐ Defining resources — this will be completed by:

☐ Unable to find sufficient staffing resources

☐ Handling the staffing as part of ongoing business operations

5. Inventory of systems

(a) Has the investment company inventoried all of its systems? Yes ☐ No ☐

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(b) What is the nature of the computer systems utilized:

☐ Off-the-shelf ☐ Vendor provided ☐ Developed in-house (custom made) ☐ Other

(c) Has the investment company identified its mission-critical systems? Yes ☐ No ☐

MM/DD/YYYY

(d) If no, this will be completed by:

(e) Has the investment company determined which mission-critical systems are not currently Year 2000 compliant? Yes ☐ No ☐

6. Awareness of the problem

What steps have been taken to enhance **awareness** of potential Year 2000 problems? (check all that apply)

☐ None to date ☐ Designated individuals for Year 2000 compliance

☐ Presentations to the investment company's Board ☐ Presentations to management

☐ Presentations to employees ☐ Contacted third parties

7. Progress on preparing mission-critical systems for the Year 2000

What is the investment company's progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps the investment company will take to address Year 2000 problems with its mission-critical systems (including preparing an inventory of computer systems affected by Year 2000):

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, assessment expected to be completed by:

(b) **Implementation of steps** the investment company will take to address Year 2000 problems with its mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, implementation expected to be completed by:

(c) **Testing** of internal mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, internal testing of mission-critical systems expected to be completed by:

(d) Did testing of internal mission-critical systems result in material exceptions that remain unresolved as of this filing? Yes ☐ No ☐ not applicable ☐

(e) **Point-to-point testing** of mission-critical systems (including testing with broker-dealers, custodians, transfer agents and other service providers):

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, point-to-point testing of mission-critical systems expected to be completed by:

(f) Did point-to-point testing of mission-critical systems result in material exceptions that remain unresolved as of this filing? Yes ☐ No ☐ not applicable ☐

(g) **Implementation of tested software** to address Year 2000 problems with mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, implementation of software expected to be completed by:

Form ADV-Y2K

8. Progress on preparing all other systems for the Year 2000

What is the investment company's progress on the following stages of preparation for the Year 2000?

(a) **Assessment** of steps that must be taken to address Year 2000 problems with non-mission-critical systems (including preparing an inventory of computer systems affected by the Year 2000):

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, assessment expected to be completed by:

(b) **Implementation of steps** that must be taken to address Year 2000 problems with non-mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, implementation expected to be completed by:

(c) **Testing** of internal non-mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, internal testing expected to be completed by:

(d) Did testing of internal non-mission-critical systems result in material exceptions that remain unresolved as of this filing?

Yes ☐ No ☐ not applicable ☐

(e) **Point-to-point testing** of non-mission-critical systems (including testing with broker-dealers, custodians, transfer agents and other service providers):

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, point-to-point testing expected to be completed by:

(f) Did point-to-point testing of non-mission-critical systems result in material exceptions that remain unresolved as of this filing?

Yes ☐ No ☐ not applicable ☐

(g) **Implementation of tested software** to address Year 2000 problems with non-mission-critical systems:

☐ 0% complete ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ complete

MM/DD/YYYY

If not completed, implementation of software expected to be completed by:

9. Contingency plans

(a) Does the investment company have a contingency plan for its systems if, after December 31, 1999, it has computer problems caused by the Year 2000?

Yes ☐ No ☐

(b) If *yes*, is the contingency plan in writing?

Yes ☐ No ☐

(c) What is the scope of coverage of the contingency plan?

☐ No systems ☐ Mission-critical systems ☐ Physical facilities ☐ Communications systems ☐ All systems

(d) Who has approved the contingency plan? (check all that apply)

☐ No approval ☐ Board of directors ☐ Corporate officers ☐ Executive management

☐ Head of Information Technology or equivalent ☐ Employees

(e) If the investment company has no contingency plan, what is the progress in preparing a contingency plan?

☐ 0% ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99%

Form ADV-Y2K

10. Third parties who provide mission-critical systems

(a) Has the investment company identified all third parties upon whom it relies for mission-critical systems?

Yes ☐ No ☐

(b) If *yes*, upon how many third parties does it rely for mission-critical systems: _____

(c) With what percentage of third parties upon whom the investment company relies for mission-critical systems has the adviser had contact regarding the third parties' readiness for the Year 2000?

☐ 0% ☐ 1-25% ☐ 26-50% ☐ 51-75% ☐ 76-99% ☐ 100%

MM/DD/YYYY

If not all, contact expected to be completed by: _____

(d) Has any third party upon whom the investment company relies for mission-critical systems declined or failed to provide assurances that it is undertaking the necessary steps to prepare for the Year 2000?

Yes ☐ No ☐ not applicable ☐

(e) If *yes*, what number of third parties providing mission-critical systems have failed to provide such assurances: _____

(f) Does the contingency plan account for third parties whose systems may fail after December 31, 1999?

☐ Yes ☐ No ☐ The investment company has no contingency plan

11. How often is the board of directors of the investment company apprised of progress in the investment company's Year 2000 compliance efforts?

☐ Not informed ☐ Weekly ☐ Monthly ☐ Quarterly ☐ Annually ☐ From time to time

12. Indicate the amount of assets that are covered by this report. Do not double-count assets in arrangements where one investment vehicle is a mere conduit for an investment in another fund (*i.e.*, assets in a two-tier structure, such as a "master/feeder" structure or a unit investment trust that issues periodic payment plans or that is an insurance company separate account).

$_____(to the nearest whole dollar)

[FR Doc. 98–17927 Filed 7–6–98; 8:45 am]
BILLING CODE 8010–01–C

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA48

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Prime Enrollment Procedures

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed rule modifies the TRICARE Prime enrollment for active duty families by specifying that the enrollment period is continuous rather than a 12 month enrollment period and it allows monthly installment payments of enrollment fees for those beneficiaries required to pay an annual fee in order to enroll in TRICARE Prime. These modifications are being made because TRICARE will soon be available wordwide for active duty family members.

DATES: Public comments must be received by September 8, 1998.

ADDRESSES: Forward comments to: TRICARE Support Office (TSO), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 681–1742.

SUPPLEMENTARY INFORMATION:

I. Proposed Changes Regarding The TRICARE Prime Enrollment Period

This proposes a change to the TRICARE Prime enrollment period from a 12-month enrollment period to continuous enrollment until such time as the enrollee opts to disenroll from TRICARE Prime. TRICARE Prime was originally designed so that enrollees would be required to take positive action to continue their enrollment in TRICARE Prime at or before their 12-month anniversary date. Positive action to reenroll was required because TRICARE implementation was not available in all regions of the country and overseas locations. Now the TRICARE will soon be available worldwide for active duty family members, the requirement that beneficiaries must take positive steps to remain enrolled is not longer necessary. The proposed rule allows the enrollee to remain enrolled in TRICARE Prime until the enrollee takes positive steps to disenroll from TRICARE Prime, or is no longer eligible for TRICARE Prime.

II. Proposed Change to Installment Payments of Enrollment Fees

When we first instituted the requirement for annual TRICARE Prime enrollment fees for certain beneficiary categories, we allowed for quarterly installment payments of the enrollment fees. In keeping with the nature of continuous enrollment, retirees, their families, and other beneficiaries required to pay an annual enrollment fee will be offered additional flexibility in fee payment by allowing for monthly installment payments of enrollment fees.

III. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The proposed rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the permanent final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Administrative practice and procedures, Claims, Fraud, Health care, Health insurance, Individuals with disabilities, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

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

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.17 is proposed to be amended by revising paragraphs (o)(2) and (o)(3), redesignating paragraphs (o)(4) and (o)(5) as paragraphs (o)(5) and (o)(6), respectively, and adding a new paragraph (o)(4) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(o) *TRICARE program enrollment procedures.* * * *

(2) *Enrollment period.* Beneficiaries who select the TRICARE Prime option remain enrolled in TRICARE Prime until they take action to disenroll, are no longer eligible for enrollment in TRICARE Prime, or for failure to pay required enrollment fees. There is no minimum length of time an enrollee must remain enrolled in TRICARE Prime before they are eligible to disenroll. Disenrollment for failure to pay enrollment fees is outlined in paragraph (o)(3) of this section.

(3) *Installment payments of enrollment fee.* The enrollment fee required by § 199.18(c) may be paid in monthly or quarterly installments. For beneficiaries paying enrollment fees on an installment basis, failure to make a required installment payment on a timely basis (including a grace period, as determined by the Director, (CHAMPUS) will result in termination of the beneficiary's enrollment in Prime and disqualification from future enrollment in Prime for a period of one year.

(4) *Disenrollment.* Any beneficiary for whom enrollment in Prime is voluntary may disenroll at any time. Disenrollment will take effect in accordance with administrative procedures established by the Assistant Secretary of Defense (Health Affairs) or his or her designee. Beneficiaries who disenroll will not be eligible to reenroll in Prime for a one year period from the effective date of the disenrollment. This one year exclusion may be waived by the Assistant Secretary of Defense (Health Affairs) or his or her designee based on extraordinary circumstances.

* * * * *

Dated: June 30, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17849 Filed 7–6–98; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX NO. DC–25–2010a; FRL–6120–2]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; 15 Percent Plan for the Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia for the purpose of establishing the District's plan to meet the 15 percent reasonable further progress implementation plan (15% plan) requirements of the Clean Air Act for the District's portion of the Washington, DC ozone nonattainment area. In the Final Rules section of this **Federal Register**, EPA is approving the District's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the technical support document prepared for the direct final rule. If no adverse comments are received in response to the direct final 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 will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 6, 1998.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. 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 Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Pennsylvania 19103. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the District of Columbia Department of Health, Air Quality Division, 2100 Martin Luther King Ave, SE, Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps at the EPA Region III address above, or by telephone at (215) 814–2179. Questions may also be addressed via e-mail, at the following address: cripps.christopher@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information pertaining to the conditional approval of the District's 15% plan provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: June 23, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–17967 Filed 7–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6120–1]

Washington: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a revision to Washington's authorized hazardous waste program. In the final rules section of today's **Federal Register**, EPA is approving the State's request as an immediate final rule without a prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to the immediate final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, EPA will withdraw the immediate final rule before the effective date by publishing a notice of withdrawal in the **Federal Register**. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before August 6, 1998.

ADDRESSES: Written comments referring to Docket Number 6120–1 may be mailed to Nina Kocourek, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WCM–122, Seattle, WA 98101, Phone: (206) 553–6502. Copies of the materials submitted by Washington may be examined during normal business hours at the following locations: EPA Region 10 Library, 1200 Sixth Avenue, Seattle, WA 98101, contact: (206) 553–1259; and the Washington Department of Ecology, 300 Desmond Drive, Lacey, WA, 98503, contact Patricia Hervieux, (360) 407–6756.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WCM–122, Seattle, WA 98101. Phone: (206) 553–6502.

SUPPLEMENTARY INFORMATION:

For additional information see the immediate final rule published in the rules section of today's **Federal Register**.

Dated: June 24, 1998.

Chuck Clarke,

Regional Administrator.

[FR Doc. 98–17683 Filed 7–6–98; 8:45 am]

BILLING CODE 6560–50–U

Notices

Federal Register
Vol. 63, No. 129
Tuesday, July 7, 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

Food and Nutrition Service

RIN 0584–AC62

Federal Means-Tested Public Benefits

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The term ''Federal means-tested public benefit'' is used in several sections of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which restricts welfare and public benefits for aliens. The purpose of this notice is to set forth the U. S. Department of Agriculture's interpretation of the term as it applies to the food assistance programs administered by the Food and Nutrition Service (FNS). This notice announces that the Food Stamp Program and the food assistance block grant programs in Puerto Rico, the Commonwealth of the Northern Marianna Islands and American Samoa are Federal means-tested programs. It announces that the other food assistance programs administered by FNS, e.g., those under the Child Nutrition Act and the School Lunch Act are not Federal means-tested programs, or are excepted from the application of this term, for purposes of PRWORA. (Section 402 of PRWORA limits participation in the Food Stamp Program to certain specific categories of aliens. These restrictions as well as other related issues will be addressed in a separate rule.)

EFFECTIVE DATE: This notice is effective on July 7, 1998.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; Telephone: (703) 305–2520. The internet address is: Judy__Seymour@FCS.USDA.Gov.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice contains no reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995.

Executive Order 12866

This notice has been reviewed by the Office of Management and Budget under Executive Order 12866 and been determined to be significant.

Executive Order 12372

The food assistance programs administered by the Food and Nutrition Service are listed in the Catalog of Federal Domestic Assistance as follows:

10.550 Food Distribution
10.551 Food Stamps
10.553 School Breakfast Program
10.555 National School Lunch Program
10.556 Special Milk Program for Children
10.557 Special Supplemental Nutrition Program for Women, Infants and Children
10.558 Child and Adult Care Food Program
10.559 Summer Food Service Program for Children
10.564 Nutrition Education and Training Program
10.565 Commodity Supplemental Food Program
10.566 Nutrition Assistance for Puerto Rico
10.567 Food Distribution Program on Indian Reservations
10.569 Emergency Food Assistance Program (Food Commodities)
10.570 Nutrition Program for the Elderly
10.572 WIC Farmers' Market Nutrition Program
10.573 Homeless Children Nutrition Program.

The Food Stamp Program and the food assistance programs in Puerto Rico, American Samoa and the Commonwealth of the Northern Mariana Islands are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The other food programs listed above are not excluded.

Background

The term ''Federal means-tested public benefit'' is used in the following sections of PRWORA:

Section 402—This section contains the criteria for determining if qualified aliens can be eligible for food stamps, including the specific timeframes governing the eligibility of aliens for purposes of the Food Stamp Program. Subsection (a)(2)(B)(ii)(I) provides that any qualifying quarter of work creditable after December 31, 1996, in which an alien received a Federal means-tested public benefit cannot be included when determining whether the alien has the 40 quarters needed for eligibility for food stamp benefits.

Section 403—With specified exceptions, a qualified alien who enters the U.S. on or after August 22, 1996, is ineligible for any Federal means-tested public benefit for 5 years from the date of entry. As noted above the specific timeframes governing the Food Stamp Program are included in section 402.

Sections 421(a) and (b)—In determining the eligibility and benefits of an alien for any Federal means-tested public benefit, the income and resources of the alien are deemed to include the income and resources of any person who signs an affidavit of support. The deeming period continues until the alien becomes a citizen or has worked 40 qualifying quarters, not counting quarters in which the alien received any Federal means-tested public benefit.

Section 423—This section amended Title II of the Immigration and Nationality Act to add requirements for the sponsor's affidavit of support. It provides that no affidavit may be used to establish that an alien is not excludable as a public charge unless the affidavit is executed as a contract which is legally enforceable against the sponsor by any agency which provides any means-tested public benefits. Section 423(e) provides that upon notification that a sponsored alien has received any benefit under any means-tested public benefits program, the appropriate agency shall request reimbursement by the sponsor in the amount of such assistance. The Food Stamp Program is not listed among the benefits excepted from this provision. Assistance or benefits under the National School Lunch Act and Child Nutrition Act of 1966 are specifically

listed as benefits not subject to reimbursement.

Section 435—This section contains a description of qualifying quarters of work and disallows any quarter worked by a spouse or parent in which the spouse or parent received a Federal means-tested public benefit.

The law, however, does not include a definition of ''Federal means-tested public benefit.'' Therefore, each Executive Branch agency whose programs may be subject to the PRWORA provisions is responsible for identifying the benefits to which the term applies.

Definition of Federal Means-Tested Public Benefit

The Department has determined that the Food Stamp Program and the block grant food assistance programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands are ''Federal means-tested public benefit(s)'' for purposes of Title IV of PRWORA. Based on the legislative history of PRWORA, the Department interprets the term to refer only to mandatory spending programs. The Department of Health and Human Services (62 FR 45256, August 26, 1997) and the Social Security Administration (62 FR 45284, August 26, 1997) have interpreted the term in a similar fashion. The food assistance programs listed above are mandatory spending programs.

The Department has determined that the following Special Nutrition Programs are either not a Federal means-tested public benefit, or are exempted from the application of the term, for purposes of Title IV of PRWORA.

The Nutrition Program for the Elderly
Food services provided through Summer Camps pursuant to § 4(c) of the Agricultural and Nutrition Protection Act of 1973 (7 U.S.C. 612c note)
Disaster Commodity Distribution
The National School Lunch Program
The School Breakfast Program
The Special Milk Program
The Child and Adult Care Food Program
The Homeless Children Nutrition Program
The Summer Food Service Program for Children
The Special Supplemental Nutrition Program for Women, Infants, and Children
The WIC Farmers' Market Nutrition Program
The Commodity Supplemental Food Program
The Emergency Food Assistance Program
The Food Distribution Program on Indian Reservations

Regulatory Impact Analysis

Designation: This action has been designated as significant.

Decrease in Number of Eligible Aliens: Effective August 22, 1996 for applicants and no later than August 22, 1997 for participating households, PROWRA made most aliens ineligible for food stamps. Exceptions were made for certain asylees, refugees, Cubans, Haitian, Amerasians, deportees, and persons with a military connection. An exception was also made to allow aliens admitted as lawful permanent residents to be eligible if they have earned or can be credited with at least 40 quarters (about 10 years) of qualified work. This notice only affects the eligibility of lawful permanent residents who can be credited with at least 40 quarters of work. After 12/31/96, a quarter cannot count if the person was receiving a Federal means-tested public benefit during that quarter.

Savings: By counting food stamp benefits as a Federal means-tested public benefit, the Federal government may realize an estimated savings of as much as $10 million a year for 10 years. This occurs because most aliens admitted as a lawful permanent resident became ineligible 8/22/97, thus any period of food stamp participation between 1/1/97 and 8/22/97 would delay their fulfillment of the 40 quarter work requirement; which, in turn, delays their eligibility. This reduces program costs over the 10-year time period. The maximum length of time when participating permanent resident aliens could have been working and their work would not be counted toward the quarters of coverage is 8 months, the time between January 1, 1997, and August 22, 1997. In any one year, the estimated savings come from only those participants who would have achieved their 40 quarters in that year and do not when they are not allowed to include the quarters earned between January 1997 and August 1997 when they also received food stamps. Assuming that among those working, 1/40th are in their 39th quarter, 1/40th are in their 38th quarter, etc., then no more than 4/40th or 10 percent can have their benefits delayed in any year.

Consistency: A Department of Health and Human Service (HHS) notice published on 8/26/97 (62 FR 45256) and a Social Security Administration notice published on 8/26/97 (62 FR 45284) have determined that Federal means-tested public assistance benefits applies to means-tested mandatory spending programs. Therefore, this interpretation is consistent with that of other agencies. The DHHS determined that its notice was economically significant based on $5.1 billion in savings from all of the alien restrictions contained in PRWORA for purposes of the Medicaid Program rather than just the definition of a Federal means-tested public benefit. The Social Security Administration did not designate its notice. USDA is designating this notice as significant because it affects the eligibility of aliens, but it is limiting the cost estimate to the costs associated with the provisions concerning the definition of a Federal means-tested public benefit.

Effect on small entities: State and local welfare agencies are affected to the extent that they administer the Program. The notice will affect a number of aliens who could otherwise qualify for food stamp participation. The changes and the resulting decrease in benefits will have a negative secondary effect on revenues of the approximately 190,000 food stamp retailers nationwide.

Dated: June 25, 1998.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 98–17932 Filed 7–6–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–031N]

Technologies for the Detection and Reduction of Pathogens To Improve Food Safety

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; Request for Technical Papers and Presenters

SUMMARY: The Food Safety and Inspection Service will hold a conference on ''Technology to Improve Food Safety'' on July 28, 1998, in Washington, DC. The purpose of the conference is to focus on emerging technologies that aid in the detection of pathogens and on pathogen interventions that help to ensure food safety within the farm-to-table continuum. The emphasis will be on both existing and emerging technologies to detect pathogens, including those which are close to practical application within the farm-to-table continuum.

DATES: The conference will be held from 8:30 a.m. to 5:00 p.m. on July 28, 1998. Abstracts of scientific papers must be received no later than COB July 8, 1998; the final papers no later than COB July 20, 1998. The Conference will be held in two sessions: Technologies for Reducing Pathogens and Technologies for Detecting Pathogens. Please specify for which session the paper is intended. Two copies of the abstracts and final papers should be sent to Ms. Mary Harris at the address below.

ADDRESSES: The meeting will be held in the Federal Hall Ballroom of the Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005. To register for the meeting, contact Ms. Harris at (202) 501–7315, FAX to (202) 501–7615, or E-mail to mary.harris@usda.gov. If a sign language interpreter or other special accommodation is necessary, please contact Ms. Harris by July 14, 1998. Ms. Harris' address is FSIS, Franklin Court Building, Room 6904, 1099 14th Street, NW, Washington, DC 20250–3700. All technical papers, comments, and data about the meeting will be available for public viewing after August 15, 1998, in the FSIS Docket Room, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Hudnall, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation at (202) 205–0495 or FAX to (202) 401–1760.

SUPPLEMENTARY INFORMATION:

Background

On April 12 and 13, 1995, FSIS convened a scientific and technical conference in Chicago as part of a series of outreach activities associated with the Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) proposed rule. The purpose of the conference was to solicit public comment about what actions FSIS should take to encourage innovative technologies that could contribute to overall efforts to improve food safety. The upcoming July 28 conference is intended to be a follow-up to the 1995 conference. FSIS continues to believe that the development and proper use of technology can contribute significantly to ensuring the safety of the food supply, and the Agency will continue to foster such development and use. The upcoming conference will explore current food technology and should stimulate the development of beneficial innovations to ensure food safety, particularly with regard to the reduction of pathogens.

Since the 1995 conference, many meat and poultry plants have implemented 3 interventions, such as steam pasteurization and carcass rinses, that are effective in reducing pathogens on meat and poultry. New developments also have been made in irradiation technology. The conference will provide an opportunity to disseminate information that can lead to the timely introduction of these and other beneficial emerging technologies into more establishments.

1998 Conference Agenda

The conference will consist of two sessions:

Session I: ''Technologies for Reducing Pathogens''

This session will cover emerging technologies for reducing pathogens throughout the farm-to-table continuum. FSIS has stressed the importance of a farm-to-table approach to food safety. Although FSIS does not have authority to impose controls at the farm level, it continues to believe that public concerns about pathogens and foodborne illness will stimulate action at this level to help improve food safety. In slaughter and processing plants, the Agency continues to be interested in advances that will enhance the safety of meat and poultry products. In addition, FSIS is working with the Food and Drug Administration and State and local food regulatory officials to ensure that food safety issues are adequately addressed in transport, retail, storage, and food service settings. The Agency remains firmly committed to its farm-to-table strategy.

Session II: ''Technologies for Detecting Pathogens''

This session will address both existing and emerging technologies to detect pathogens, including those which are close to practical application within the farm-to-table continuum.

At each session, invited speakers from FSIS, other government agencies, industry, consumer groups, and academia will give presentations. In addition, FSIS is soliciting the submission of technical papers on emerging technology and will invite selected submitters to give 5-minute presentations summarizing their papers. If the same subject is covered in more than one paper, FSIS will have the authors combine their presentations for a single 5-minute presentation or select the author of the first paper submitted on the subject. FSIS will moderate each session and will be joined by a panel consisting of representatives from government agencies, industry, academia, and consumer groups. This panel will have an opportunity to question the presenters and to discuss the technology. Each session will conclude with an open discussion period to allow participants to briefly state their views and ask questions.

Speakers or other interested persons who will require exhibition space or special equipment to enhance their presentations should specify their needs by contacting Ms. Mary Harris at the address above. This request should be included with the paper. Based on the number of requests for space received by July 8, 1998, FSIS will determine whether it will be able to make exhibition space available.

Done in Washington, DC, on June 26, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–17837 Filed 7–6–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–034N]

Microbiology Laboratory Guidebook

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) is making available for purchase the revised, 1998, 3rd edition of the Microbiology Laboratory Guidebook.

FOR FURTHER INFORMATION CONTACT: Dr. Richard P. Mageau, U.S. Department of Agriculture, Food Safety and Inspection Service, Office of Public Health and Science, Microbiology Division, Room 3714—Franklin Court, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

SUPPLEMENTARY INFORMATION: The Microbiology Division of the Office of Public Health and Science, FSIS, announces the availability for purchase of the revised, 1998, 3rd edition of the Microbiology Laboratory Guidebook. The Guidebook contains current protocols for analytical tests required by FSIS in its regulation of meat, poultry and egg products. Specifically, microbiological methods are presented for sample preparation, isolation and identification of the major food borne pathogenic microorganisms and their toxins, meat tissue species identification, and the detection of extraneous materials and antimicrobial residues. Media and reagent formulations, and Most Probable Number Tables are contained in an appendix.

This document may be purchased as the Microbiology Laboratory Guidebook, 3rd edition, 1998, stock #001–000–04656–0, at a price of $57.00 Domestic and $71.25 Foreign from:

Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, (Fax) 202–512–2233.

Done in Washington, DC on: June 26, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–17838 Filed 7–6–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Meeting of Advisory Committee on Emerging Markets

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the second meeting of the Advisory Committee on Emerging Markets will be held July 16, 1998. The role of the committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the Emerging Markets Program. The committee will also advise USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging markets in food and rural business systems and review proposals submitted to the Program.

DATES: The meeting will be held Thursday, July 16, 1998, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review and discuss those proposals the Emerging Markets Office has received which may qualify for Emerging Markets Program funding. The minutes of the meeting announced in this Notice shall be available for review. The meeting is open to the public and members of the public may provide comments in writing to Douglas Freeman, Foreign Agricultural Service, room 6506 South Building, U.S. Department of Agriculture, 14th and Independence Ave., SW., Washington, DC 20250, but should not make any oral comments at the meeting unless invited to do so by the Co-chairpersons.

Signed at Washington, DC, June 26, 1998.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 98–17836 Filed 7–6–98; 8:45 am]

BILLING CODE 3410–10–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Additional Releases and Corrections

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on June 17, 1998, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Peter Voth, Assassination Records Review Board, Second Floor, Washington, DC 20530, (202) 724–0088, fax (202) 724–0457. The public may obtain an electronic copy of the complete document-by-document determinations by contacting <Eileen__Sullivan@jfk-arrb.gov>.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On June 17, 1998, the Review Board made formal determinations on records it reviewed under the JFK Act.

Notice of Formal Determinations

3 Church Committee Documents: Postponed in Part until 10/2017
5 CIA Documents: Postponed in Part until 05/2001
686 CIA Documents: Postponed in Part until 10/2017
212 FBI Documents: Postponed in Part until 10/2017
16 Ford Library Documents: Postponed in Part until 10/2017
2 HSCA Documents: Postponed in Part until 10/2017
2 JCS Documents: Postponed in Part until 10/2017
128 US ARMY Documents: Postponed in Part until 10/2017

Notice of Other Releases

After consultation with appropriate Federal agencies, the Review Board announces that documents from the following agencies are now being opened in full: 4 CIA documents; 712 FBI documents; 36 Ford Library documents; 3 HSCA documents; 33 JCS documents; 161 NSC documents; 82 U.S. Army (Califano) documents; 22 U.S. Army (IRR) documents.

Notice of Corrections

On April 13, 1998 the Review Board made formal determinations that were published in the April 30, 1998 **Federal Register** (FR 98–23717, 63 FR 12345). At that time, the following documents were not included in the list of formal determinations because record identification numbers had not yet been assigned to them:

HSCA Documents: Postponed in Part

180–10147–10327; 2; 10/2017
180–10147–10354; 16; 10/2017
180–10147–10355; 6; 10/2017
180–10147–10356; 13; 10/2017
180–10147–10357; 4; 10/2017
180–10147–10358; 8; 10/2017
180–10147–10359; 1; 10/2017

Dated: June 30, 1998.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 98–17977 Filed 7–6–98; 8:45 am]

BILLING CODE 6118–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: July 14, 1998; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded nonmilitary international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c) (2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Massey at (202) 401–3736.

Dated: July 2, 1998.

David W. Burke,

Chairman.

[FR Doc. 98–18124 Filed 7–2–98; 3:05 pm]

BILLING CODE 8230–01–M

COMMODITY FUTURES TRADING COMMISSION

Petition of the London Clearing House Limited for Exemption Pursuant to Section 4(c) of the Commodity Exchange Act

AGENCY: Commidity Futures Trading Commission.

ACTION: Notice of petition for exemption and request for comment.

SUMMARY: The London Clearing House Limited (''LCH'') has submitted a petition dated June 15, 1998 (''Petition'') to the Commodity Futures Trading Commission (''Commission'') requesting an exemption, pursuant to Section 4(c) of the Commodity Exchange Act (''Act'' or ''CEA''), in connection with LCH's proposed provision of clearing services for certain swap agreements. The Commission believes that publication of the Petition 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 Commission Exchange Act. The Petition also may be accessed on the Commission's Internet web site (http://www.cftc.gov) and may be obtained through the Commission's Office of the Secretariat.

DATES: Comments must be received on or before September 8, 1998.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5521 or by electronic mail to secretary @cftc.gov. Reference should be made to the Petition of LCH.

FOR FURTHER INFORMATION CONTACT: Thomas E. Joseph, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street NW Washington, DC 20581. Telephone number (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

By petition dated June 15, 1998, the LCH applied pursuant to Section 4(c) of the Act [1] for an exemption from all provisions of the Act (except for Sections 2(a)(1)(B), 4b and 4o of the Act, and the provisions of Sections 6(c) and 9(a)(2) of the Act to the extent these provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market and Section 32.9 of the CFTC's Rules) to qualified U.S. entities that utilize [the LCH facility] to clear transactions in ''swap agreements'' (as such term is defined in CFTC Rule 35.1(b)).[2]

LCH has developed a clearing facility for swap agreements (''SwapClear'') which is scheduled to commence operations in mid-1999.[3] The facility will be used to clear interest rate swaps and forward rate agreements in the following currencies: U.S. dollars, Japanese yen, Euros (and the eleven underlying currencies), British pounds, and possibly Canadian dollars.[4] Participation will be limited to large institutions that participate as dealers in the swap market and that meet specified financial and operational standards.[5]

LCH states that it will not provide any facility for arranging or executing transactions and will have no impact on the way counterparties negotiate or effect swap transactions.[6] It will perform credit enhancement, risk management, and position administration functions for those swaps that qualified participants choose to submit for clearing.[7] LCH will net payment amounts due to or from a clearing member related to swaps with other obligations due to or from the clearing member where possible, including amounts related to exchange-traded business.[8]

In the Petition, LCH summarizes the principal features of its risk management procedures.[9] It also describes the regulatory regime to which it is subject in the United Kingdom [10] and its internal governance procedures.[11]

LCH asserts that the Petition satisfies the statutory standards for relief. In particular, LCH argues that:

(1) The exchange trading requirements should not apply to swap agreements cleared through SwapClear because SwapClear will not impact current OTC trading arrangements;[12]

Swap agreements cleared through SwapClear will be entered into solely by wholesale market participants whose qualifications exceed Congressional standards regarding appropriate persons and Commission standards for ''eligible swap participants''; [13]

(3) The proposed relief is consistent with the public interest and the purpose of the Act; [14]

(4) The proposed relief will have no material adverse effect on Commission or contract market regulatory or self-regulatory responsibilities; [15] and

(5) The proposed Exemption is pro-competitive.[16]

II. Request for Comment

The Commission requests comment on all the aspect of the LCH Petition. In this regard, the Commission directs the attention of commenters to the issues raised in the discussion of swaps clearing in the OTC derivatives concept release.[17] In addition, the Commission requests comment on any specific features of the LCH proposal that may raise issues particular to that proposal. Such features might include the location of LCH outside the United States, the status of LCH as a regulated entity in the United Kingdom, and LCH's plans to integrate its proposed new clearing operations in some respects with its established exchange clearing operations.

Copies of the Petition 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 telephone at 202–418–5100 or on the Commission's Internet web site (http://www.cftc.gov).

Issued in Washington, DC, on June 30, 1998 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–17922 Filed 7–6–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Washington Headquarters Services, Real Estate and Facilities, Defense Protective Services.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Washington

[1] 7 U.S.C. 6(c).

[2] Petition at 2.

[3] Id.

[4] Id at 14.

[5] Id. at 12–13.

[6] Id. at 9.

[7] Id.

[8] Id. at 10.

[9] Id. at 15–17.

[10] Id. at 17–18.

[11] Id. at 19.

[12] Id. at 21–22.

[13] Id. at 23.

[14] Id. at 23–33.

[15] Id. at 34–39.

[16] Id. at 39–42.

[17] See 63 FR 26114, 26122–26123 (May 12, 1988).

Headquarters Services announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 8, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Department of Defense, Washington Headquarters Services, Real Estate and Facilities Directorate, Defense Protective Services, ATTN: Mr. Barry Jones, Room 2E170A, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Security Services, Defense Protective Services, Washington Headquarters Services, at (703) 695–4668.

Title, Associated Form, and OMB Number: DoD Building Pass Application; DD Form 2249; OMB Number 0704–0328.

Needs and Uses: The information is used by officials of Security Services, Defense Protective Services, Washington Headquarters Services to maintain a listing of personnel who are authorized a DoD Building Pass.

Affected Public: Individuals or households; Business or other for-profit.

Annual Burden Hours: 10,200.

Number of Respondents: 102,000.

Responses per Respondent: 1.

Average Burden per Response: 6 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This requirement provides for the collection of information from applicants for Department of Defense (DoD) Building Passes. The information collected from the DD From 2249, ''DoD Building Pass Application,'' is used to verify need and to issue a DoD Building Pass to DoD personnel, other authorized U.S. Government personnel, and DoD consultants and experts who regularly work in or require frequent and continuing access to DoD owned or occupied buildings in the National Capital Region.

Dated: June 30, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17847 Filed 7–6–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered will include matters related to the enhancement of Labor-Management Partnerships throughout DoD.

DATES: The meeting is to be held July 22, 1998, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by July 15, 1998, in order to be considered at the July 22 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: June 29, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17848 Filed 7–6–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board 1998 Summer Study Task Forces on Joint Operations Superiority in the 21st Century, and DoD Logistics Transformation

AGENCY: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board 1998 Summer Study Task Forces on Joint Operations Superiority in the 21st Century, and DoD Logistics Transformation will meet in closed session on August 3–14, 1998 at the Beckman Center, Irvine, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Forces will focus on how new capabilities, operational concepts, and different force characteristics can be developed and integrated to underwrite Joint Vision 2010; and focus on providing the warfighter with responsive logistic support across the range of missions, threats, and environments DoD is likely to face in the 21st Century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meeting will be closed to the public.

Dated: June 30, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17852 Filed 7–6–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Undersecretary of Defense (Acquisition and Technology)

ACTION: Notice of meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on July 15, 1998. The Committee was recently established to advise the Undersecretary of Defense (Acquisition and Technology) with respect to technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended 5 U.S.C., Appendix II, has been determined that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

DATES: Wednesday, 15, July 1998 (8:00 am to 4:00 pm).

ADDRESSES: Room 3E869, the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Maj Joseph D. Pierce, Defense Threat Reduction Agency Transition Team, Room 3B263, Pentagon, Washington, DC, 20301–3050. Telephone: (703) 695–5486.

Dated: June 30, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–17850 Filed 7–6–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 201. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 201 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 1, 1998.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 200. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletin published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: June 30, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ANCHORAGE [INCL NAV RES]						
05/01 -- 09/30	151		62		213	06/01/98
10/01 -- 04/30	86		56		142	03/01/98
BARROW	110		70		180	06/01/98
BETHEL	103		65		168	03/01/98
CORDOVA	85		62		147	03/01/98
CRAIG						
05/01 -- 08/31	95		66		161	05/01/97
09/01 -- 04/30	79		64		143	05/01/97
DENALI NATIONAL PARK						
06/01 -- 08/31	115		52		167	03/01/98
09/01 -- 05/31	90		50		140	03/01/98
DUTCH HARBOR-UNALASKA	110		69		179	03/01/98
EARECKSON AIR STATION	72		55		127	03/01/98
EIELSON AFB						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
ELMENDORF AFB						
05/01 -- 09/30	151		62		213	06/01/98
10/01 -- 04/30	86		56		142	03/01/98
FAIRBANKS						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
FT. RICHARDSON						
05/01 -- 09/30	151		62		213	06/01/98
10/01 -- 04/30	86		56		142	03/01/98
FT. WAINWRIGHT						
05/15 -- 09/15	121		60		181	03/01/98
09/16 -- 05/14	75		56		131	03/01/98
GLENNALLEN	86		53		139	08/01/97
HEALY						
06/01 -- 08/31	115		52		167	03/01/98
09/01 -- 05/31	90		50		140	03/01/98
HOMER						
05/01 -- 09/30	116		66		182	03/01/98
10/01 -- 04/30	87		64		151	03/01/98
JUNEAU	89		72		161	03/01/98
KENAI-SOLDOTNA						
04/01 -- 09/30	109		61		170	03/01/98
10/01 -- 03/31	74		59		133	03/01/98

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KENNICOTT	149	84	233	08/01/97
KETCHIKAN				
05/01 -- 09/30	100	74	174	03/01/98
10/01 -- 04/30	85	73	158	03/01/98
KLAWOCK				
05/01 -- 08/31	95	66	161	05/01/97
09/01 -- 04/30	79	64	143	05/01/97
KODIAK				
04/16 -- 09/30	98	69	167	03/01/98
10/01 -- 04/15	88	68	156	03/01/98
KOTZEBUE				
05/16 -- 09/15	101	81	182	04/01/97
09/16 -- 05/15	90	80	170	04/01/97
KULIS AGS				
05/01 -- 09/30	151	62	213	06/01/98
10/01 -- 04/30	86	56	142	03/01/98
MCCARTHY	149	84	233	08/01/97
MURPHY DOME				
05/15 -- 09/15	121	60	181	03/01/98
09/16 -- 05/14	75	56	131	03/01/98
NOME	83	63	146	03/01/98
PETERSBURG	76	62	138	03/01/98
SEWARD				
05/01 -- 09/15	114	62	176	03/01/98
09/16 -- 04/30	78	59	137	03/01/98
SITKA-MT. EDGECOMBE				
04/01 -- 09/04	101	60	161	03/01/98
09/05 -- 03/31	83	59	142	03/01/98
SKAGWAY				
05/01 -- 09/30	100	74	174	03/01/98
10/01 -- 04/30	85	73	158	03/01/98
SPRUCE CAPE				
04/16 -- 09/30	98	69	167	03/01/98
10/01 -- 04/15	88	68	156	03/01/98
TANANA	83	63	146	03/01/98
UMIAT	125	107	232	08/01/97
VALDEZ				
05/15 -- 09/15	105	65	170	03/01/98
09/16 -- 05/14	84	62	146	03/01/98
WASILLA	79	72	151	03/01/98
WRANGELL				
05/01 -- 09/30	100	74	174	03/01/98
10/01 -- 04/30	85	73	158	03/01/98

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	72	55	127	03/01/98
AMERICAN SAMOA:				
AMERICAN SAMOA	73	53	126	03/01/97
GUAM:				
GUAM (INCL ALL MIL INSTAL)	150	79	229	05/01/98
HAWAII:				
CAMP H M SMITH	110	61	171	07/01/97
EASTPAC NAVAL COMP TELE AREA	110	61	171	07/01/97
FT. DERUSSEY	110	61	171	07/01/97
FT. SHAFTER	110	61	171	07/01/97
HICKAM AFB	110	61	171	07/01/97
HONOLULU NAVAL & MC RES CTR	110	61	171	07/01/97
ISLE OF HAWAII: HILO	80	52	132	06/01/98
ISLE OF HAWAII: OTHER	100	54	154	06/01/98
ISLE OF KAUAI				
05/01 -- 11/30	115	62	177	06/01/98
12/01 -- 04/30	136	64	200	06/01/98
ISLE OF KURE	60	41	101	07/01/97
ISLE OF MAUI	112	64	176	06/01/98
ISLE OF OAHU	110	61	171	07/01/97
KANEOHE BAY MC BASE	110	61	171	07/01/97
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 -- 11/30	115	62	177	06/01/98
12/01 -- 04/30	136	64	200	06/01/98
KILAUEA MILITARY CAMP	80	52	132	06/01/98
LULUALEI NAVAL MAGAZINE	110	61	171	07/01/97
NAS BARBERS POINT	110	61	171	07/01/97
PEARL HARBOR [INCL ALL MILITARY]	110	61	171	07/01/97
SCHOFIELD BARRACKS	110	61	171	07/01/97
WHEELER ARMY AIRFIELD	110	61	171	07/01/97
[OTHER]	79	62	141	06/01/93
JOHNSTON ATOLL:				
JOHNSTON ATOLL	13	9	22	07/01/97
MIDWAY ISLANDS:				
MIDWAY ISLANDS [INCL ALL MIL]	60	41	101	07/01/97
NORTHERN MARIANA ISLANDS:				
ROTA	105	71	176	05/01/97
SAIPAN	170	78	248	05/01/97
[OTHER]	61	53	114	05/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO:				
BAYAMON				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
CAROLINA				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
DORADO	189	76	265	06/01/98
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]	82	60	142	03/01/98
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
LUIS MUNOZ MARIN IAP AGS				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
MAYAGUEZ	94	60	154	06/01/98
PONCE	96	67	163	06/01/98
ROOSEVELT ROADS & NAV STA	82	60	142	03/01/98
SABANA SECA [INCL ALL MILITARY]				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
SAN JUAN & NAV RES STA				
05/01 -- 11/28	108	66	174	06/01/98
11/29 -- 04/30	136	69	205	06/01/98
[OTHER]	66	54	120	06/01/98
VIRGIN ISLANDS (U.S.):				
ST. CROIX				
04/15 -- 12/14	109	80	189	07/01/97
12/15 -- 04/14	129	82	211	07/01/97
ST. JOHN				
06/01 -- 12/15	228	79	307	07/01/97
12/16 -- 05/31	344	91	435	07/01/97
ST. THOMAS				
04/15 -- 12/18	215	76	291	07/01/97
12/19 -- 04/14	322	87	409	07/01/97
WAKE ISLAND:				
WAKE ISLAND	60	40	100	07/01/98

[FR Doc. 98–17851 Filed 7–6–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Marine Corps Heritage Center at Marine Corps Base Quantico, VA

Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the U.S. Marine Corps intends to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of constructing and operating a Heritage Center complex at or adjacent to Marine Corps Base (MCB) Quantico for Marine Corps personnel, their families and the general public. This Center would consolidate existing interpretive and curatorial functions that are located at MCB Quantico, VA, and the Washington Navy Yard, Washington, DC.

The Marine Corps Air Ground Museum, located at MCB Quantico, holds many of the items in the Marine Corps collections and also provides items to other DOD museums, the Smithsonian Museum, and other civilian museums. The proposed Heritage Center would facilitate and enhance the presentation of Marine Corps artifacts and history, promote professional military educational opportunities and accommodate unique military events and conferences. Currently, the dispersed locations used to protect the heritage of the Marine Corps do not have adequate facilities for preservation of artifacts or adequate space for displays and historic interpretation presentations.

Locations on and off-base that meet requirements for siting the Heritage Center will be evaluated in the EIS. The siting criteria includes sufficient size and suitability in order to accommodate facilities (e.g., buildings, parking, roads), and provide visual and noise buffers; proximity to Interstate 95 and/or U.S. Route 1 in order to facilitate traffic to/from the site; and proximity to MCB Quantico in order to support educational requirements of the Base and obtain educational and facility support from the Base.

Environmental issues to be addressed in the EIS include: geological resources, biological resources, water resources, noise, air quality, land use compatibility, cultural resources, socioeconomics, environmental justice, public health and safety, transportation/circulation, aesthetics, utilities, hazardous materials, and solid waste.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed and identifying the significant issues related to this action. The Marine Corps will a hold public scoping meeting to assist in identification of important issues associated with the general development plan of the Heritage Center and alternative sites. The time and location of this meeting will be announced at a later date and advertised in local area newspapers. Questions regarding the scoping process should be mailed to: Commanding Officer, Engineering Field Activity Chesapeake, Naval Facilities Engineering Command, Building 212, Washington Navy Yard, Washington, DC 20374–2121 (Attn: Mr. Matthew Hess, code 20E), telephone (202) 685–3062.

Dated: June 29, 1998.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

Lou Rae Langevin,

LT, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 98–17833 Filed 7–6–98; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 8, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 30, 1998.

Hazel Fiers

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Regular
Title: Guaranty Agency Monthly Claims and Collection Report
Frequency: Annually
Affected Public: Business or other for-profit, State, local or Tribal Gov't SEAs or LEAs
Reporting and Recordkeeping Hour Burden:
Responses: 444
Burden Hours: 2,220
Abstract: The ED Form 1189 is used by a guaranty agency to request payments of reinsurance for default,

bankruptcy, death, disability claims paid to lenders and costs incurred for SPA, closed schools, false certification, lender of last resort and lender referral fee payments. Agencies use the form to make payments owed to ED for collections on defaulted loans.

[FR Doc. 98–17875 Filed 7–6–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 6, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 30, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 1999 National Household Education Survey (NHES: 99).

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 107,155.

Burden Hours: 15,826.

Abstract: The NHES: 99 will be a telephone survey of households remeasuring key indicators from past NHES surveys related to such topics as Early Childhood Care and Program Participation, Parent/Family Involvement in Education; Youth Civic Involvement, and Adult Education. Respondents will be parents of children from birth through 12th grade, youth enrolled in grades 6 through 12, and adults age 16 and older and not enrolled in grade 12 or below. The collection will provide information on the National Household Education Goals which pertain to school readiness (Goal 1), student achievement and citizenship (Goal 3), adult literacy and lifelong learning (Goal 6), and parental participation (Goal 8), and the U.S. Department of Education's Strategic Plan of 1998–2000.

Office of the Under Secretary

Type of Review: New.

Title: Local Implementation of Federal Programs.

Frequency: One time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 849.

Burden Hours: 872.

Abstract: The Department of Education is charged with evaluating Title I of ESEA and other elementary and secondary education legislation enacted by the 103rd Congress. These studies will collect information on the operations and effects at the district level of legislative provisions and federal assistance, in the context of state education reform efforts. Findings will be used in reporting to Congress and improving information dissemination. Respondents are local superintendents, directors of federal programs, directors of research and assessment, and school principals.

[FR Doc. 98–17874 Filed 7–6–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129B]

Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999.

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary.

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including Indian Tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Long-Term Training program.

Deadline for Transmittal of Applications: August 31, 1998.

Deadline for Intergovernmental Review: October 30, 1998.

Applications Available: July 10, 1998.

Available Funds: $1,900,000.

Estimated Range of Awards: $80,000 to $100,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 19.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: In no case does the Secretary make an award greater than $100,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b). The regulations for this program in 34 CFR Parts 385 and 386.

Priorities

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 386.1(b) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that would provide training in vocational rehabilitation counseling, which the Secretary has identified as an area of personnel shortage.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Master's Program

Projects that would offer training at the master's level through established graduate rehabilitation counseling programs that are accredited by the Council on Rehabilitation Education.

Invitational Priority 2—Doctoral Program

Projects that would offer training at the doctoral level through established graduate rehabilitation counseling programs that are accredited by the Council on Rehabilitation Education.

For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3317, Switzer Building), Washington, D.C. 20202–2550; or call (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Sylvia Johnson, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3318, Switzer Building), Washington, D.C. 20202–2649. Telephone (202) 205–9312. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletin and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 774.

Dated: June 30, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–17949 Filed 7–6–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES:

Monday, July 27, 1998:
- 1:00 p.m. (Nuclear Materials Management Subcommittee)
- 6:30 p.m.–7:00 p.m. (Public Comment Session)
- 7:00 p.m.–9:00 p.m. (Individual Subcommittee Meetings)

Tuesday, July 28, 1998:
- 8:30 a.m.–4:00 p.m.

ADDRESSES: All meetings will be held at: University of South Carolina—Aiken, 71 University Parkway, Aiken, South Carolina 29801.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802; (803) 725–5374.

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

Monday, July 27, 1998

1:00 p.m.
- Nuclear materials management

6:30 p.m.
- Public comment session (5-minute rule)

7:00 p.m.
- Issues-based subcommittee meetings

9:00 p.m.
- Adjourn

Tuesday, July 28, 1998

8:30 a.m.
- Approval of minutes, agency updates (~ 15 minutes)
- Public comment session (5-minute rule) (~ 10 minutes)
- Nuclear materials management subcommittee (~ 1 hour 30 minutes)
- —Surplus Plutonium Draft Environmental Impact Statement
- —SRS Draft Spent Nuclear Fuel Environmental Impact Statement

—Nuclear Regulatory Commission pilot program—receiving basin for offsite fuels
—National Academy of Science presentation (tentative)
Defense Nuclear Facilities Safety Board (tentative: ~ 30 minutes)
Intersite workshop trip report (~ 15 minutes)
Environmental Management integration position (~ 30 minutes)
—SRS Citizens' Advisory Board home page demonstration
12:00 p.m.
Lunch
Environmental remediation and waste management subcommittee report (~ 1 hour 30 minutes)
Administrative subcommittee report (~ 30 minutes)
—Bylaws ammendment proposal
—Election of budget chair
Risk management & future use subcommittee report (~ 1 hour)
Outreach subcommittee report (~ 15 minutes)
Public comment session (5-minute rule) (~ 10 minutes)
4:00 p.m.
Adjourn

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, July 27, 1998.

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 Gerri Flemming's office 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 Officer 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.

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 Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on June 29, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–17926 Filed 7–6–98; 8:45 am]

BILLING CODE 6450–01–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 (Pub. L. 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: Tuesday, July 28, 1998: 6:00 p.m.–9:00 p.m.; 6:30 p.m. to 7:00 p.m. (public comment session)

ADDRESSES: El Convento (near the U.S. Post Office), 1 Bond Street, Española, 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 by DOE
6:00 p.m. Welcome by Chair, Roll Call, Approval of Agenda and Minutes
6:30 p.m. Public Comments
7:00 p.m. Break
7:15 p.m. Board Business
9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five (5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer 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 July 1, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–17939 Filed 7–6–98; 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 (Pub. L. 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, July 20, 1998, 8:30 am–3:30 pm.

ADDRESSES: U.S. Department of Energy, DOE Training Center (Suite 800), 950 L'Enfant Plaza, SW, Washington, DC.

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, July 20, 1998

8:30–8:45 am—Welcome and Opening Remarks—Dr. Hanna Gray, Task Force Chair

8:45–11:30 am—Discussion of Scientific Literacy—Facilitated by Dr. Leon Lederman

11:30–12:30 pm—Lunch Break

12:30–2:45 pm—Presentation & Discussion of Teacher Training—Facilitated by Dr. Hanna Gray

2:45–3:15 pm—Discussion of Task Force Action Plan—Facilitated by Dr. Hanna Gray

3:15–3:30 pm—Public Comment Period

This agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chair 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, DC., 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, DC 20585.

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, DC, 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, DC, on July 1, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–17940 Filed 7–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2783–000]

Bridgeport Energy L.L.C.; Notice of Issuance of Order

June 30, 1998.

Bridgeport Energy L.L.C. (Bridgeport) filed an application for Commission authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Bridgeport requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Bridgeport. On June 24, 1998, the Commission issued an Order Accepting For Filing Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's June 24, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Bridgeport should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Bridgeport is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Bridgeport, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Bridgeport's issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 24, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17882 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–70–000]

Colorado Interstate Gas Company; Notice of Filing of Refund Report

June 30, 1998.

Take notice that on June 26, 1998, Colorado Interstate Gas Company (CIG) filed a refund report pursuant to Docket No. RP98–217–000. Refunds were paid by CIG on June 12, 1998.

CIG states that the report summarizes refunds made by CIG to its customers for the period January 1, 1997 through December 31, 1997, pursuant to Docket No. RP98–217–00.

CIG states that copies of CIG's filing have been served on CIG's transportation customers, interested state commissions, and all parties to the proceedings.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17897 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–218–001]

Colorado Interstate Gas Company; Notice of Tariff Filing

June 30, 1998.

Take notice that on June 25, 1998, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the Tariff sheets listed in Appendix A to the filing, to be effective June 15, 1998.

CIG states the tariff sheets are filed in compliance with Order issued June 10, 1998 in Docket No. RP98-218-000. This Order approved CIG's Park and Loan Service subject to conditions and further review. CIG further states it has requested waiver of Section 154.203(b) of the Commission's Regulations to make some minor housekeeping changes and has responded to questions asked in the Order.

CIG states that copies of this compliance filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17899 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–63–000]

Columbia Gas Transmission Corporation; Notice of Refund Report

June 30, 1998.

Take notice that on June 25, 1998, Columbia Gas Transmission Corporation (Columbia) filed a refund report to comply with the settlement of the Gas Research Institute's (GRI) Docket No. RP98–217–001.

On June 10, 1998 Columbia passed on the 1997 refund received on May 29, 1998, from the GRI, as a result of the settlement in Docket RP98–217–001. This Docket was approved by the Federal Energy Regulatory Commission (Commission) on April 29, 1998. The refund credits made on June 10, 1998 reflected Columbia's eligible firm customers pro rata amounts.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 0426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17890 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–255–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 30, 1998.

Take notice that on June 24, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheet bearing a proposed effective date of August 1, 1998:

Fifth Revised Sheet No. 456

Columbia states that pursuant to the Commission's Order issued April 16, 1998 in Docket No. RM96–1–007 (Order No. 587–G) Standards for Business Practices of Interstate Natural Gas Pipelines, Columbia tenders for filing the above listed tariff sheet adopting Version 1.2 as the current GISB standards. Columbia is also revising Sheet No. 456 to incorporate, by reference, Standard 4.3.16 (Version 1.2) which states that documents identified in GISB Standard 4.3.6 should be made available in HTML or RTF format.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any peson wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17901 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–62–000]

Columbia Gulf Transmission Company; Notice of Refund Report

June 30, 1998.

Take notice that on June 25, 1998, Columbia Gulf Transmission Company (Columbia Gulf) filed a refund report to comply with the settlement of the Gas Research Institute's (GRI) Docket No. RP98–217–001.

On June 10, 1998, Columbia Gulf passed on the 1997 refund received on May 29, 1998, from the GRI, as a result of the settlement in Docket RP98–217–001. This Docket was approved by the Federal Energy Regulatory Commission (Commission) on April 29, 1998. The refund credits made on June 10, 1998 reflected Columbia Gulf's eligible firm customers pro rata amounts.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be

filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17889 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–256–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 30, 1998.

Take notice that on June 24, 1998, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheet, bearing a proposed effective date of August 1, 1998:

Second Revised Sheet No. 286

Columbia Gulf states that pursuant to the Commission's Order issued April 16, 1998 in Docket No. RM96–1–007 (Order No. 587–G) Standards for Business Practices of Interstate Natural Gas Pipelines, Columbia Gulf tenders for filing the above listed tariff sheet adopting Version 1.2 as the current GISB standards. Columbia Gulf is also revising Sheet No. 286 to incorporate, by reference, Standard 4.3.16 (Version 1.2) which states that documents identified in GISB Standard 4.3.6 should be made available in HTML or RTF format.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as proved in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17902 Filed: 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–2680–000, ER98–2681–000 and ER98–2682–000]

Duke Energy Moss Landing LLC, Duke Energy Morro Bay LLC, Duke Energy Oakland LLC; Notice of Issuance of Order

June 30, 1998.

Duke Energy Moss Landing LLC (Duke/Moss Landing), Duke Energy Morro Bay LLC (Duke/Morro Bay), and Duke Energy Oakland LLC (Duke/Oakland), three separate subsidiaries of Duke Energy Corporation, filed separate proposals to sell power at wholesale at market-based rates. The power the applicants propose to sell at market-based rates will be produced from three generating units they are in the process of acquiring from Pacific Gas & Electric Company. Their applications also requested certain waivers and authorizations. In particular, Duke/Moss Landing, Duke/Morro Bay, and Duke/Oakland requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Duke/Moss Landing, Duke/Morro Bay, and Duke/Oakland. On June 25, 1998, the Commission issued an Order Accepting For Filing Proposed Tariffs For Market-Based Power Sales (Order), in the above-docketed proceedings.

The Commission's June 25, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Duke/Moss Landing, Duke/Morro Bay, and Duke/Oakland are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Duke/Moss Landing, Duke/Morro Bay, and Duke/Oakland, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 27, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17881 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2624–000]

Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.; Notice of Issuance of Order

June 30, 1998.

Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. (Duke New Smyrna), an indirect wholly-owned subsidiary of Duke Energy Corporation, filed an application requesting Commission authorization to sell electric capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Duke New Smyrna requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Duke New Smyrna. On June 25, 1998, the Commission issued an Order Accepting For Filing Proposed Tariffs For Market-Based Power Sales And Reassignment Of Transmission Capacity

(Order), in the above-docketed proceeding.

The Commission's June 25, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days of the date of this order any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Duke New Smyrna should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, Duke New Smyrna is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Duke New Smyrna, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Duke New Smyrna's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 27, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17880 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–69–000]

East Tennessee Natural Gas Company; Notice of Refund Report

June 30, 1988.

Take notice that on June 26, 1998, East Tennessee Natural Gas Company (East Tennessee) filed a refund report pursuant to Ordering Paragraph (c) of the Commission's February 22, 1995, order in Gas Research Institute (GRI), Docket No. RP95–124–000.

East Tennessee states that East Tennessee received a refund from GRI in the amount of $225,767.

East Tennessee states that it has these refunded amounts to firm transportation customers that received nondiscounted service during 1997 by adjustments to their June invoices.

East Tennessee states that copies of this filing have been mailed to each of East Tennessee's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17896 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–65–000]

El Paso Natural Gas Company; Notice of Report of GRI Refunds

June 30, 1998.

Take notice that on June 26, 1998, El Paso Natural Gas Company (El Paso) submitted its Report of Gas Research Institute (GRI) Refunds for 1997 pursuant to Subpart F of Part 154 of the Commission's Regulations and ordering paragraph (C) of the Commission's order issued on February 22, 1995 at Docket No. RP95–124–000.

On May 29, 1998, El Paso received a refund from GRI for overcollections for the calendar year 1997 in the amount of $435,572.00. On June 11, 1998, El Paso states that it refunded its eligible firm shippers as required by the February 22, 1995 order by crediting each shipper's applicable transportation invoice.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17892 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–019]

El Paso Natural Gas Company; Notice of Compliance Filing

June 30, 1998.

Take notice that on June 26, 1998, El Paso Natural Gas Company (El Paso) tendered for filing a Letter Agreement between El Paso and Dynegy Marketing and Trade, formerly Natural Gas Clearinghouse.

El Paso states that the Letter Agreement is being filed to comply with the Commission's order issued June 11, 1998 at Docket Nos. RP97–287–010 *et al.* and is proposed to become effective on that date.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings, Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17898 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–611–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

June 30, 1998.

Take notice that on June 15, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–611–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to certificate the existing Carencro Meter Station and appurtenant facilities in Lafayette Parish, Louisiana, constructed under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT states that the delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without deteriment or disadvantage to other customers. The proposed delivery point will not have an effect on FGT's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17885 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–61–000]

Florida Gas Transmission Company; Notice of Refund Report

June 30, 1998.

Take notice that on June 25, 1998, Florida Gas Transmission Company (FGT) tendered for filing a refund report reflecting a Gas Research Institute (GRI) refund received May 29, 1998, which FGT refunded to its eligible firm shippers on June 12, 1998.

In compliance with the Commission's February 22, 1995 Order in Docket No. RP95–124–000, FGT states that it has allocated refunds of $985,562 to firm shippers on a pro rata basis based on amounts paid through GRI surcharges during 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17909 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–254–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 30, 1998.

Take notice that on June 24, 1998, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1998.

First Revised Sheet No. 82–A
First Revised Sheet No. 101–A
Fourth Revised Sheet No. 128
Fourth Revised Sheet No. 129
Fourth Revised Sheet No. 131

Kern River states that the purpose of this filing is to submit tariff sheets which implement Version 1.2 of the GISB standards pursuant to Order No. 587–G and as required by Section 284.10(b) of the Commission's regulations.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17900 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–68–000]

KN Interstate Gas Transmission Co.; Notice of Refund Report Filing

June 30, 1998.

Take notice that on June 26, 1998, KN Interstate Gas Transmission Co. (KNI) filed a refund report pursuant to the Commission's February 22, 1995 Order issued in Docket No. RP95–124–000. The refund report shows the refund received by KNI from Gas Research Institute overcollections in the amount of $238,004 and the pro rata allocation of that refund amount to KNI's eligible firm customers.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17895 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–66–000]

Mojave Pipeline Company; Notice of Report of GRI Refunds

June 30, 1998.

Take notice that on June 26, 1998, Mojave Pipeline Company (Mojave) submitted its Report of Gas Research Institute (GRI) Refunds for 1997 pursuant to Subpart F of Part 154 of the Commission's Regulations and ordering paragraph (C) of the Commission's order issued on February 22, 1995 at Docket No. RP95–124–000.

On May 29, 1998, Mojave received a refund from GRI for overcollections for the calendar year 1997 in the amount of $204,730.00. on June 11, 1998, Mojave states that it refunded its eligible firm shippers as required by the February 22, 1995 order by crediting each shipper's applicable transportation invoice.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17893 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–259–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 30, 1998.

Take notice that on June 26, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1998:

Thirteenth Revised Sheet No. 5
Thirteenth Revised Sheet No. 6
Fifth Revised Sheet No. 162
First Revised Sheet No. 322
Fiirst Revised Sheet No. 323

NGT states that the purpose of this filing is to implement an Electric Power Costs (EPC) Tracker designed to recover the cost of electric power consumed in the operation of electric compressors on NGT's system. NGT further states that the EPC Tracker proposed in its filing will not result in incremental fuel costs to its shippers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17905 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–630–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

June 30, 1998.

Take notice that on June 23, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68103–0330, filed in Docket No. CP98–630–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon, by removal, 12 small volume measuring stations located in Iowa. Northern makes such request under its blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that ten landowners in Dallas County, Iowa; one landowner in Buchanan County; and one landowner in Boone County, Iowa have all, through written consent, requested that Northern remove the respective small volume measuring station from their property. In their request, each end-user specifically stated that they no longer desire natural gas service.

Any person or the Commission's staff may, within 45 days after issuance of

the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17907 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–257–000]

Northwest Pipeline Corporation; Notice of Compliance Filing

June 30, 1998.

Take notice that on June 25, 1998, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1998:

Fourth Revised Sheet No. 212
First Revised Sheet No. 265–B
Fourth Revised Sheet No. 279
First Revised Sheet No. 279–C
Fifth Revised Sheet No. 280
Third Revised Sheet No. 281
Sixth Revised Sheet No. 282

Northwest states that the purpose of this filing is to submit tariff sheets which implement Version 1.2 of the GISB standards pursuant to Order No. 587–G and as required by Section 284.10(b) of the Commission's regulations.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17903 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2878–000]

Ormond Beach Power Generation, L.L.C.; Notice of Issuance of Order

June 30, 1998.

Ormond Beach Power Generation, L.L.C. (Ormond Beach) filed an application for Commission authorization for market-based rates for the wholesale sale of electric power from an electric generating facility it is acquiring in Oxnard, California, and for certain waivers and authorizations. In particular, Ormond Beach requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Ormond Beach. On June 24, 1998, the Commission issued an Order Accepting For Filing Tariff For Market-Based Power Sales Rates (Order), in the above-docketed proceeding.

The Commission's June 24, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Ormond Beach should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Ormond Beach is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Ormond Beach, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Ormond Beach's issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 24, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17883 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–110]

Pacific Gas and Electric Company; Notice Extending Time To File Responses

June 30, 1998.

On May 19, 1998, a notice was issued extending until June 15, 1998 the time to file comments on Pacific Gas and Electric Company's (PG&E) March 31, 1998 submittal in this proceeding intended to implement fishery recommendations for the Potter Valley Project No. 77 that were jointly developed by PG&E with federal and state resource agencies (63 FR 28502). On June 24, 1998, PG&E requested an extension of time until July 10, 1998 to respond to the motions to intervene and protests of the Sonoma County Water Agency and the Round Valley Indian Tribes. An answer may not be made to a protest unless otherwise ordered by the decisional authority (18 CFR 385.213(a)(2)). Because the Round Valley Tribes have submitted an alternative proposal to PG&E's proposal and because it may otherwise assist the Commission's deliberations in this matter, responses to submittals made by June 15, 1998 will be permitted, and the

period for such responses is extended to July 10, 1998.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17884 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–60–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

June 30, 1998.

Take notice that on June 25, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing a report of refunds made for calendar year 1997 in accordance with the Commission's Order of September 27, 1996 (76 FERC ¶ 61,337 (1996)) in Gas Research Institute (GRI) Docket No. RP96–267–000 and the Commission's Orders of February 22, 1995 (70 FERC ¶ 61,205 (1995)) and May 3, 1995 (71 FERC ¶ 61,131 (1995)) in Gas Research Institute Docket Nos. RP95–124–000, *et al.*

PG&E GT–NW asserts these Orders required it to credit eligible firm customers with refunds received from GRI and to file a report with the Commission within 15 days of making such refunds. The refund is allocated to customers based on each customer's pro-rata contributions to PG&E GT–NW's GRI surcharge collections on non-discounted firm transportation during 1997, and has been reflected as credits on customer invoices issued June 9, 1998.

PG&E GT–NW further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies, and will be posted to all recipients of a share of the refund.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17908 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No GT98–59–000]

Questar Pipeline Company; Notice of Refund Report

June 30, 1998.

Take notice that on June 24, 1998, Questar Pipeline Company (Questar) tendered for filing a Gas Research Institute (GRI) Tier 1 Refund Report in compliance with the Commission's February 22, 1995, Order Approving Refund Methodology for 1994 Overcollection in Docket No. RP95–124–000 (February 22 Order).

Questar states that on May 29, 1998, it received a $517,396 refund from GRI, representing an overcollection of the 1997 GRI Tier 1 funding target level set for Questar by GRI. Questar states that on June 12, 1998, in compliance with the February 22 Order, it sent the GRI Tier 1 refund, pro rata, to its eligible firm customers. Questar further states, that in compliance with the February 22 Order, the GRI refund was exclusive of interest.

Questar states that a copy of the refund report has been served upon its affected transportation customers who received a refund and the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17888 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–258–000]

Sabine Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

June 30, 1998.

Take notice that on June 25, 1998, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1998:

First Revised Sheet No. 285
Second Revised Sheet No. 286

Sabine states that the instant filing reflects changes to Sabine's Tariff required to more closely reflect the requirements of Sections 250.16 and 161.3(f) of the Commission's regulations regarding the reporting of information related to the transportation of natural gas on Sabine's system with respect to Sabine's marketing affiliate.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commissin's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17904 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–64–000]

Southern Natural Gas Company; Notice of Refund Report

June 30, 1998.

Take notice that on June 25, 1998 Southern Natural Gas Company (Southern) tendered for filing with the Commission a Refund Report reflecting its refund of certain amounts to its eligible firm shippers. These amounts represent a flow-through of refunds received from the Gas Research Institute (GRI).

The report states that Southern refunded $1,546,985 to its eligible shippers on June 12, 1998, which represents the amount received from GRI as required by the Commission's Order dated February 22, 1996.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17891 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–67–000]

Tennessee Gas Pipeline Company; Notice of Refund Report

June 30, 1998.

Take notice that on June 26, 1998, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a refund report pursuant to Ordering Paragraph (c) of the Commission's February 22, 1995, order in Gas Research Institute (GRI), Docket No. RP95–124–000.

Tennessee states that Tennessee received a refund from GRI in the amount of $1,170,085.

Tennessee states that it has refunded these amounts to its firm transportation customers that received nondiscounted service during 1997 by adjustmenting their June invoices.

Tennessee states that copies of this filing have been mailed to each of Tennessee's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 7, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17894 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–633–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 30, 1998.

Take notice that on June 23, 1998, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP98–633–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate a delivery tap, located in Hopkins County, Kentucky, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to operate an existing delivery tap, located at Mile 4+2823 on Texas Gas' Slaughters-Nortonville 10-Inch Line in Hopkins County, Kentucky, to enable Western Kentucky Gas Company (Western), a local distribution company, to serve a right-of-way grantor with natural gas requirements which will exceed 200 MMBtu of natural gas per day.

Texas Gas states that this tap was constructed by Texas Gas under the automatic authorization of Section 157.211(a)(1) of the Commission's Regulation's following the execution of a letter agreement between Texas Gas and Western, dated January 29, 1998 (agreement), to permit Western to render gas service to right-of-way grantor Allen Hayden. Texas Gas declares that under the agreement, Western would own and operate the measurement facilities, placed into service on March 27, 1998, and reimburse Texas Gas for the cost of its facilities. Texas Gas asserts Western has informed them that the estimated daily usage for this facility is expected to be 250 Mcf per day. Texas Gas states that because such usage exceeds the 200 MMBtu required for automatic authorization for a delivery tap, Texas Gas requests authorization to deliver up to 250 Mcf of natural gas per day to Western at this delivery tap.

Texas Gas declares that the above proposal will not have a significant effect on Texas Gas' peak day and annual deliveries as Western has not requested an increase in contract quantity, and service to Western through this point can be accomplished without detriment to Texas Gas' other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is field within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17887 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–632–000]

Williams Gas Pipeline Central, Inc.; Notice of Request Under Blanket Authorization

June 30, 1998.

Take notice that on June 23, 1998, Williams Gas Pipeline Central, Inc. (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–632–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate a tap, measuring, regulating and appurtenant facilities, in Woodward County, Oklahoma, for the delivery of transportation gas to Arkla, a NorAm Energy Company (Arkla). Williams makes such request under its blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams is requesting authorization to install a tap on its Canadian-Blackwell 26-inch pipeline, in Woodward County, to deliver transportation gas to Arkla for use in a hog farm. Specifically, it is estimated that approximately 8,562 dekatherms (Dt) will be delivered the first year, increasing to approximately 105,282 Dt within five years. Williams further estimates the peak day volumes to be 159 Dt the first year, increasing to approximately 1,056 Dt within five years. Williams indicates that it does not anticipate such deliveries will have any effect on existing customers, because the estimated delivery volumes will not exceed previously authorized volumes.

Williams estimates the cost to construct these facilities to be $42,488.00, stating Arkla has reimbursed Williams for the facilities. Accordingly, Arkla will own and Williams will operate and maintain the facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17886 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–260–000]

Wyoming Interstate Company, Ltd., Notice of Proposed Changes in FERC Gas Tariff

June 30, 1998.

Take notice that on June 26, 1998, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to be effective August 1, 1998.

WIC states that the purpose of this filing is to conform WIC's Second Revised Volume No. 2 tariff to requirements of Order No. 587–G that interstate pipelines transporting pursuant to Section 284.223 of the Commission's Regulations conform their tariffs to include Version 1.2 of the GISB Standard.

WIC further states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–17906 Filed 7–6–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6121–4]

Science Advisory Board; Notification of Public Advisory Committee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notification is hereby given that various committees/subcommittees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Environmental Engineering Committee (EEC) Subcommittee

The EEC's Quality Management Subcommittee will meet Tuesday July 21, 1998 in Room 3709 of the Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The meeting will begin at 9:30 am and adjourn no later than 6:00 pm. The Subcommittee reviewed the quality management program and project-level documents at its April 27–29, 1998 public meeting (see 63 FR 17000, April 7, 1998). The Subcommittee is scheduled to complete its review September 22–24, 1998 (location to be determined) to review implementation of EPA's quality system. The purpose of the July 21 meeting is to define what needs to be done and to schedule and assign the work for the September meeting.

For Further Information—For further information concerning this meeting, please contact the following individuals. Any member of the public wishing further information concerning the meeting should contact Mr. Robert

Flaak, Team Leader and Designated Federal Officer (DFO), Committee Operations Staff, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; (202) 260–5133; FAX (202) 260–7118; or E-Mail at flaak.robert@epa.gov. Copies of the agenda will be available from Mrs. Dorothy Clark, Management Assistant, approximately a week before the meeting. Mrs. Clark can be reached at (202) 260–4126, FAX (202) 260–7118, or E-Mail at clark.dorothy@.epa.gov, or at the above address.

Any member of the public wishing to submit oral comments at the meeting must contact Mr. Robert Flaak (address above) *in writing* no later than noon on July 16. The request should identify the name of the individual who will make the presentation, the organization represented, and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Committee and the interested public.

2. Environmental Engineering Committee (EEC)

The Environmental Engineering Committee will meet Wednesday through Friday, July 22–24, 1998 in Room 3709 of the Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The meeting will begin at 8:30 am on July 22 and adjourn no later than 3:30 pm on July 24.

At its February 5–6, 1998 meeting, the EEC authorized members to draft commentaries on four initiative areas: (a) Uncertainty in Environmental Technology Performance; (b) TCLP: From Waste Classification to Source Term Prediction; (c) Natural Hazards: A Framework for Control of Environmental Impacts; and (d) Waste Utilization. The Committee also authorized members to develop information on the five following areas: (a) P2: Barriers to Implementation and Social Science; (b) Potential Sources of Endocrine Disruptors; (c) Potential Sources of $PM_{2.5}$; (d) Potential Use of Measurements for Process Control to Reduce Dioxin Emissions from Combustion Sources; and (e) EPA (and other environmental) Strategy & Goals.

EEC members will brief the Committee on: (a) the four proposed initiatives, and on what information they have developed in the other five areas; (b) the progress of the EEC's Retrospective Subcommittee efforts to establish attributes for successful proactive technical advice; and (c) on the activities of the EEC's Quality Management Subcommittee. The EEC will discuss potential FY 98 and FY 99 activities. SAB staff may brief the Committee on the progress of tasks identified at the Science Advisory Board's (SAB) November 1997 Strategic Retreat and the SAB's Integrated Risk Project. Technical staff from EPA and the public may also brief the Committee on relevant Agency activities that bear on these efforts.

For Further Information—For further information concerning this meeting, please contact the following individuals. Any member of the public wishing further information concerning the meeting should contact Mr. Robert Flaak, Team Leader and DFO, Committee Operations Staff, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; (202) 260–5133; FAX (202) 260–7118; or E-Mail at flaak.robert@epa.gov. Copies of the agenda will be available from Mrs. Dorothy Clark, Management Assistant, approximately a week before the meeting. Mrs. Clark can be reached at (202) 260–4126, FAX (202) 260–7118, or E-Mail at clark.dorothy@.epa.gov, or at the above address.

Any member of the public wishing to submit oral comments at the meeting must contact Mr. Robert Flaak (address above) *in writing* no later than noon on July 16. The request should identify the name of the individual who will make the presentation, the organization represented, and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Committee and the interested public.

3. Radiation Advisory Committee (RAC)

The Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC) will conduct a public meeting on Wednesday, July 22 and Thursday, July 23, 1998. The meeting will convene each day at 9:00 am in the Administrator's Conference Room 1103 West Tower, U.S. EPA Headquarters, 401 M Street, S.W., Washington, DC 20460 and adjourn no later than 5:30 pm each day.

At this meeting, the RAC will briefly discuss projects that are planned for review in Fiscal Year (FY) 1999, conduct closure reviews on two draft reports being developed by subcommittees of the RAC, and be briefed on a number of radiation-related topics by the staff of the Office of Radiation and Indoor Air (ORIA).

Beginning on Wednesday, July 22, 1998, the RAC will attempt a closure review of a draft report prepared by its Uncertainty in Radiogenic Risk Subcommittee (URRS) on its review of the Agency's draft ''Uncertainty Analysis for Estimating Radiogenic Cancer Risks,'' dated October 1997. The URRS held two public meetings on November 20, 1997 (62 FR 55249, October 23, 1997) and on March 4, 1998 (63 FR 6927, February 11, 1998). The charge questions to the Subcommittee are: (a) Are the relevant major sources of uncertainties addressed?; (b) Is the overall approach to quantifying and combining uncertainties appropriate?; and (c) Are the mathematical functions used to characterize the various sources of uncertainty reasonable, in view of available scientific information?

The RAC will also attempt a closure review of a draft report being prepared by its Federal Guidance Report Review Subcommittee (FGRRS) on its review of the Agency's Interim Version of Federal Guidance Report (FGR) Number 13, Part I, Health Risks From Low-Level Environmental Exposure to Radionuclides, EPA 402–R–97–014, dated January 1998. This report provides cancer mortality and morbidity risk coefficients for internal and external exposures to about 100 radionuclides. The methodology combines the radiogenic cancer risk models previously reviewed by the SAB's RAC (EPA–SAB–RAC–LTR–93–004—see end of notice for ordering information) with dose rates from radionuclide intakes or external exposures to calculate health risks to the public.

The RAC's FGRRS held a public meeting on May 7 and 8, 1998, and a public teleconference on June 2, 1998. Both were advertised in 63 FR 17000, April 7, 1998. The charge to the RAC's FGRRS is as follows: (a) Is the methodology employed for calculating health risks from radionuclide intakes and external exposure acceptable?; (b) In light of available scientific information, have the major uncertainties been identified and put into proper perspective?; and (c) Is the proposed method for extending the list of radionuclides to include all those tabulated in Federal Guidance Reports 11 and 12 reasonable?

The RAC will be briefed on: (a) Biological Effects of Ionizing Radiation (BEIR) VI; (b) the status of a white paper on estimating cancer risks for indoor radon as a basis for establishing cancer risks for radon; (c) a revised radon risk assessment which looks at the National Academy of Sciences (NAS) recommendations for a model coming out of their final peer reviews; (d) the NAS study of Diffuse Naturally-

Occurring Radioactive Material (NORM) and the forthcoming ORIA draft scoping document; and (e) Multi-Agency Laboratory Analytical Procedures (MARLAP). The RAC also plans to discuss the Agency's response to the SAB's review of the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM), dated December 4, 1997. Other topics may be discussed as time permits.

For Further Information—For further information on the meeting contact Dr. K. Jack Kooyoomjian, Designated Federal Officer, Radiation Advisory Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202)–260–2560; fax (202)–260–7118; or via E-Mail at: kooyoomjian.jack@epa.gov. Any member of the public wishing further information concerning the meeting, including a draft meeting agenda, should contact Mrs. Diana L. Pozun, Management Assistant, at (202) 260–8432; FAX (202) 260–7118, or via E-Mail at: pozun.diana@epa.gov. Members of the public who wish to make a brief oral presentation to the Committee during the meeting must contact Dr. K. Jack Kooyoomjian in writing (address above) no later than noon, Wednesday, July 15, 1998 in order to be included on the Agenda.

For questions pertaining to the review of uncertainty analysis for estimating radiogenic cancer risks or pertaining to the review of the Federal Guidance Report 13, Part I and to obtain copies of the documents to be discussed, please contact Mr. Brian Littleton, ORIA (6601J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 564-9216; FAX (202) 565–2043; or via E-Mail at: littleton.brian@epa.gov.

4. Secondary Data Use Subcommittee of the Executive Committee (EC)

The Secondary Data Use Subcommittee of the Science Advisory Board's (SAB) Executive Committee will meet Thursday, July 30, 1998 in Conference Room 3709 Mall, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The meeting will begin at 9:00 am and adjourn no later than 5:00 pm.

Purpose—The purpose of this meeting is to begin the SAB's project to provide advice to the Agency on the appropriate secondary use of EPA regulatory data bases. This review was requested by the Center for Environmental Information and Statistics (CEIS) in EPA's Office for Policy, Planning and Evaluation (OPPE).

The CEIS is in the process of reviewing 30 major EPA regulatory databases for their potential use in secondary data analyses (i.e., for uses other than that for which they were originally collected). The Agency's regulatory data bases were designed to be used in making enforcement, compliance and standard setting decisions. The CEIS reviews will try to determine the extent to which these observational data bases can be used for other purposes such as assessment of environmental conditions and trends, scientifically based studies of cross-media relationships, and human health or environmental risk assessment.

The tentative charge to the Subcommittee is to: (a) Provide consultations on the overall process of suitability review; (b) Review CEIS's reviews for technical quality, comprehensiveness and clarity; (c) Provide consultation on developing minimum criteria or characteristics that a database should possess if it is to be used for scientific purposes such as exposure assessment; (d) Make recommendations for areas where the CEIS should develop new quantitative methods for the use of secondary EPA databases; and (e) Set up a workshop which brings together Agency and external experts to discuss the various issues and concerns regarding the secondary use of administrative and observational EPA databases.

At the July 30 meeting, the Subcommittee expects to hear a briefing on the Agency's secondary use review program, discuss the overall approach, and plan the Subcommittees work, which is expected to extend over several meetings.

For Further Information—Copies of the review documents and background materials are available from Dr. N. Phillip Ross, Chief Statistician, Center for Environmental Information and Statistics (2163), U.S. EPA, 401 M Street SW, Washington, D.C. 20460, telephone (202) 260–5244, fax (202) 260–5880, or via E-Mail at: ross.np@epa.gov.

Copies of the meeting agenda are available from Mrs. Priscilla Tillery-Gadson, Staff Secretary, Executive Committee, Science Advisory Board (1400), U.S. EPA, Washington DC 20460, telephone (202) 260–4126, fax (202) 260–9232, or via E-Mail at: tillery.priscilla@epa.gov.

Members of the public who wish to make a brief oral presentation to the Committee during the meeting must contact Mrs. Anne Barton, Designated Federal Officer (DFO) for the Secondary Data Use Subcommittee, *in writing* no later than noon Thursday July 23, at Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; FAX (202) 260–9232; or via E-Mail at barton.anne@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Subcommittee and the interested public. To discuss technical aspects of the meeting, please contact Mrs. Barton by telephone at (202) 260–9280.

5. Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) will meet on Friday, July 31, 1998 in Conference Room 3709 of the Mall, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The meeting will begin at 8:30 am and adjourn no later than 5:00 pm.

Purpose—The purpose of the meeting is to advise EPA on science-related aspects of its FY 2000 budget request. The Committee will use resource data (figures) from EPA's FY 1998 operating plan and FY 1999 proposed budgets. The review will include the entire science and technology (S&T) account, not simply the ORD budget, which was the focus of the February 1998 RSAC review (see 63 FR 6927, February 11, 1998). While the Committee will not receive quantitative information concerning the FY 2000 budget (since this information is neither complete nor publicly available at this time), the Agency will provide general information about the priorities that will likely be reflected in the FY 2000 budget.

The SAB is being asked to advise the Agency on: (a) the budget allocations and trends that are reflected in the FY 1998 and the FY 1999 budget figures; (b) the priorities identified for FY 2000; and (c) the thrusts and balances that they would recommend for FY 2000.

For Further Information—Single copies of the review materials are available from Mr. Robert Flaak, Designated Federal Officer for the Research Strategies Advisory Committee (see below for contact information).

Copies of the meeting agenda are available from Mrs. Mary Winston, Management Assistant, Committee Operations Staff, Science Advisory Board (1400), U.S. EPA, 401 M Street SW, Washington DC 20460, telephone (202) 260–4126, fax (202) 260–7118, or via E-Mail at: winston.mary@epa.gov.

Members of the public who wish to make a brief oral presentation to the Committee during the meeting must contact Mr. Flaak *in writing* no later

than noon Thursday July 23, at Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; (202) 260–5133; FAX (202) 260–9232; or via E-Mail at flaak.robert@epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Subcommittee and the interested public.

6. Residual Risk Strategies Subcommittee of the Executive Committee (EC)

The Residual Risk Subcommittee of the Executive Committee of the Science Advisory Board (SAB) will meet on Monday, August 3, 1998 in the Main Auditorium of the US EPA, Office of Research and Development, Environmental Research Center, 86 T.W. Alexander Drive Research Triangle Park, North Carolina 27711. The meeting will begin at 8:30 am and adjourn no later than 5:00 pm.

Purpose—The purpose of the meeting is to conduct a review of the Agency's Draft Residual Risk Report to Congress. This document presents the Agency's response to the section 112(f)(1) mandate and the proposed strategy for addressing the risks remaining from particular classes of air emission sources once Maximum Achievable Control Technology (MACT) standards have been adopted.

The tentative charge to the SAB is as follows: (a) Within the context and scope of the section 112(f)(1) requirements, has the Draft Residual Risk Report to Congress (Report) properly interpreted and considered the technical advice from previous reports, including: (1) the NRC's 1994 report ''Science and Judgment in Risk Assessment'' and (2) the 1997 report from the Commission on Risk Assessment and Risk Management in developing its risk assessment methodology and residual risk strategy?; (b) Does the Report identify and appropriately describe the most relevant methods (and their associated Agency documents) for assessing residual risk from stationary sources?;© Does the Report provide an adequate characterization of the data needs for the risk assessment methods?; (d) Does the Report provide an adequate approach to describing the inherent uncertainties associated with assessment of residual risks?; and (e) Does the Report adequately address the range of scientific and technical issues that underlie a residual risk assessment?

For Further Information—Copies of the draft Report may be obtained from the Air and Radiation Docket and Information Center (MC–6102), Docket No. A–97–39, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between the hours of 8:00 am and 4:00 pm, Monday through Friday, excluding legal holidays. Copies may also be downloaded from the following Internet address: http://www.epa.gov/ttn/oarpg/t3rc.html . Contact Mr. Dennis Pagano, Office of Air Quality Planning and Standards (OAQPS); (919) 541–0502; or via E-Mail at: pagano.dennis@epa.mail if you have question about the Report.

Any member of the public wishing to submit brief oral comments at the meeting must contact Dr. Donald Barnes, Designated Federal Officer (DFO) for the Subcommittee, in writing no later than noon on Monday, July 20. Dr. Barnes can be reached at Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; (202) 260–4126; FAX (202) 260–9232; or E-Mail at barnes.don@epa.gov. The request should identify the name of the individual who will make the presentation, the organization represented, and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Committee and the interested public.

7. Environmental Engineering Committee (EEC) Subcommittee

The EEC's Retrospective Subcommittee will meet Friday August 14 from 9:00 am to 4:00 pm in Room E–308, Kitson Hall, Francis College of Engineering, University of Massachusetts, Lowell, One University Avenue, North Campus, Lowell, MA 01854. At this meeting, the Subcommittee plans to prepare a commentary on attributes for successful proactive technical advice.

For Further Information—For further information concerning this meeting, please contact the individuals listed below. Any member of the public wishing further information concerning the meeting should contact Mrs. Kathleen Conway, DFO for the EEC, Committee Operations Staff, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; (202) 260–2558; FAX (202) 260–7118; or via E-Mail at: conway.kathleen@epa.gov. Copies of the agenda will be available from Mrs. Dorothy Clark, Management Assistant, a week before the meeting. Mrs. Clark can be reached at (202) 260-4126, FAX (202) 260–7118, or via E-Mail at: clark.dorothy@.epa.gov, or at the above address.

Members of the public who wish to make a brief oral presentation to the Committee during the meeting must contact Mrs. Kathleen Conway (address above) *in writing* no later than noon on Wednesday, July 29. The request should identify the name of the individual who will make the presentation, the organization represented, and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to the DFO no later than the time of the presentation; these will be distributed to the Committee and the interested public.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for meetings, opportunities for oral comment will usually be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting. Public comments (written or oral) should focus on scientific or technical aspects of the matters before the Committee at its meeting.

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in the current Annual Report of the Staff Director, as well as copies of SAB prepared reports mentioned in this FR document. These are available from the SAB's Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, Washington, DC 20460 or via telephone (202) 260–4126 or via fax (202) 260–1889. Please provide the SAB report number, if known, when making a request. Many of the reports and additional information concerning the SAB can be found on the SAB Home Page at: http://www.epa.gov/sab.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 30, 1998.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 98–17965 Filed 7–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–814; FRL–5795–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–814, must be received on or before August 6, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Bipin Gandhi (PM 5)	Rm. 4W53, CS #2, 703–308–8380, e-mail:gandhi.bipin@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 229, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–814] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24,1998.

Peter Caulkins, Acting

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Rhodia Inc.

PP 6E4714

EPA has received a pesticide petition (PP 6E4714) from Rhodia Inc., CN 7500 Cranbury NJ 08512-7500 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.1001 to establish an exemption from the requirement of a tolerance for Sucroglycerides derived from 21 CFR-approved fats and oils in or on the raw agricultural commodity after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of

the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305) (FRL 3190-1), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient.

The data we believe supports establishing an exemption from tolerances is summarized below. More detailed information has been provided to the Agency in previous submissions.

Sucroglycerides are a mixture of substances, primarily of mono- and di-glycerides and sucrose esters of fatty acids. The product is produced through a process of transesterification of an edible fat or oil with sucrose in the presence of a solvent. The resulting crude mixture is purified by vacuum distillation, counter-current extraction, and further distillation to remove solvent and other impurities.

Rhodia has conducted studies on the physicochemical characteristics of a sucroglyceride derived from palm oil. The studies evaluated the product chemistry, solubility, and the octanol/water partition coefficient of sucroglycerides.

1. *Acute toxicity*. The LD_{50} of palm oil-derived sucroglyceride is estimated to be greater than 30 grams/kg. In addition, early studies of sucroglycerides use in the diets of bottle-feeding calves indicated a lack of toxic response and an increased weight gain and improved food utilization.

Sucrose esters of fatty acids are approved for food use and mono- and di-glycerides are GRAS-approved additives; sucroglycerides are GRAS-approved and approved for food use in Europe; sucrose esters of fatty acids and mono- and di-glycerides are unlikely to be dermally absorbed.

Preliminary attempts to examine the potential environmental toxicity of Sucroglycerides have been made, but were not possible due to the physicochemical properties of the material. Sucroglycerides have the consistency of wax at low temperatures and petroleum jelly when warmed. In addition, as can be seen from the determination of the octanol/water partition coefficient, sucroglycerides are not water soluble (estimated Ko/w > 3.38 x 106), thereby precluding aquatic toxicity testing.

2. *Genotoxicty*. The components of sucroglycerides already have regulatory acceptance as agricultural inerts exempted from tolerance; sucroglycerides are a complex mixture of sucrose esters of fatty acids and mono- and di-glycerides derived from FDA-approved edible fats and oils. None of the components of sucroglycerides are genotoxic.

3. *Reproductive and developmental toxicity*. An early study of the potential effects of Sucroglycerides on reproduction in rats indicated that there were no effects on reproduction, pup survival and development, or pup anomalies at dietary dose levels up to 2%.

4. *Subchronic toxicity*. In 1980 a 13-week subchronic toxicity study of Sucroglycerides with an 8-week ''recovery period'' was conducted in beagle dogs. This study utilized doses as high as 20% of the total dietary intake. Decrease body weight gains (bwt) were observed in the 10% and 20% dose groups. These animals showed a significant weight gain recovery during the post-treatment period. No dose-related changes were noted in hematology, urinalysis, ophthalmoscopy, gross pathology or organ weights. Increased alkaline phosphatase and SGPT levels and fatty changes in the liver were noted for some animals in the high dose group, but most returned to normal during the recovery phase. Results should be interpreted keeping in mind that 20% of sucroglycerides in the diet represents a significant change in the normal dietary composition and could possibly cause changes in the nutritional status of the animals.

5. *Chronic toxicity*. A chronic toxicity/carcinogenicity study of Sucroglycerides was conducted in rats in 1982. Sprague-Dawley rats received 0%, 5%, 10%, or 20% sucroglycerides in the diet for 2-years. Clinical observations associated with treatment were pale feces and poor grooming. Survival was greater among treated rats than controls. Treated rats showed a dose-related decrease in weight gain during the early part of the study, particularly in males. Weight gain then became similar to that of controls until the last few weeks of the study when control rats lost more weight than did treated rats. Alkaline phosphatase and SGPT levels were elevated for high dose animals until week 25, but were comparable to controls during weeks 51-102. No treatment-related changes in hematology, ophthalmoscopy, gross pathology, organ weights, or tumorigenesis were reported.

6. *Animal metabolism*. Sucroglycerides are derived from a variety of 21 CFR-approved edible fats and oils including, but not limited to, lard, tallow, palm oil, rapeseed (canola) oil, and coconut oil. Mono- and di-glycerides are GRAS substances 21 CFR 184.1505 and already have regulatory acceptance as agricultural inerts and adjuvants exempted from tolerance requirements (under 40 CFR 80.1001(c)), as do sucrose, fatty acids conforming to 21 CFR 172.860, methyl esters of edible fats and oils, and sucrose esters of fatty acids such as sorbitan fatty acid esters.

7. *Metabolite toxicology*. The components of sucroglycerides and related substances already have regulatory acceptance as agricultural inerts exempted from tolerance requirements

8. *Endocrine disruption*. Sucroglycerides are not derived from, nor contain any compounds which are known to be, or are suspected to be, endocrine disruptors. Sucroglycerides are derived from a variety of 21 CFR-approved edible fats and oils including, but not limited to, lard, tallow, palm oil, rapeseed (canola) oil, and coconut oil. Mono- and di-glycerides are GRAS substances 21 CFR 184.1505 and already have regulatory acceptance as agricultural inerts and adjuvants exempted from tolerance requirements (under 40 CFR 180.1001(c)), as do sucrose fatty acids conforming to 21 CFR 172.860, methyl esters of edible fats and oils, and sucrose esters of fatty acids such as sorbitan fatty acid esters.

B. Aggregate Exposure

Consistent with section 408(c)(2)(B) of FFDCA, Rhodia, Inc. believes that, based on our prior submissions (as Rhone-Poulenc, Inc.), EPA now has sufficient data to assess the hazards of sucroglycerides and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerance exemptions for the residues of sucroglycerides on growing crops, raw agricultural commodities after harvest and animals.

1. *Dietary exposure*—i. *From food and feed uses, drinking water, and non-dietary exposures*. For the purposes of assessing the potential dietary exposure under these exemptions, Rhodia, Inc. considered that under these exemptions sucroglycerides could be present in all raw and processed agricultural commodities although, due to a lack of water solubility (octanol/water partition coefficient was estimated as Ko/w > 3.38 x 106) no drinking water exposure

was possible. Non-occupational, non-dietary exposure is highly unlikely given that the inhalation potential or dermal absorption of these substances are not feasible. No concerns for risks associated with any potential exposure scenarios are reasonably foreseeable.

ii. Sucroglycerides are derived from a variety of 21 CFR-approved edible fats and oils including, but not limited to, lard, tallow, palm oil, rapeseed (canola) oil, and coconut oil. Mono- and di-glycerides are GRAS substances 21 CFR.184.1505 and already have regulatory acceptance as agricultural inerts and adjuvants exempted from tolerance requirements (under 40 CFR 180.1001(c)), as do sucrose fatty acids conforming to 21 CFR 172.860, methyl esters of edible fats and oils, and sucrose esters of fatty acids such as sorbitan fatty acid esters.

iii. Sucroglycerides derived from edible fats and oils have been granted Self-Affirmed GRAS status in the U.S and are approved for food use in Europe and by the WHO Joint Expert Committee on Foods (JECFA), with an Acceptable Daily Intake (ADI) of 0-20 mg/kg/day. Sucroglycerides are currently marketed by Rhodia, Inc. for food use. Sucroglycerides, including those derived from palm oil, hydrogenated palm oil, tallow, rapeseed oil, castor oil, and coconut oil have been used safely in foods in Europe since the early 1960s.

2. *Drinking water*. Sucroglycerides are insoluble in water, hence exposure from drinking water is not considered to be a route of exposure.

3. *Non-dietary exposure*. Non-occupational, non-dietary exposure is highly unlikely given that the inhalation potential or dermal absorption of these substances are not feasible. No concerns for risks associated with any potential exposure scenarios are reasonably foreseeable.

C. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' In the case of sucroglycerides, the lack of observed toxicity of these substances after acute and chronic exposure would suggest that a cumulative risk assessment is therefore not necessary.

D. Safety Determination

1. *U.S. population*. Sucroglycerides derived from edible fats and oils have been granted Self-Affirmed GRAS status in the U.S and are approved for food use in Europe and by the WHO Joint Expert Committee on Foods (JECFA), with an Acceptable Dietary Intake (ADI) of 0-20 mg/kg/day. Sucroglycerides are derived from a variety of 21 CFR-approved edible fats and oils including, but not limited to, lard, tallow, palm oil, rapeseed (canola) oil, and coconut oil. Mono- and di-glycerides are GRAS substances 21 CFR 184.1505 and already have regulatory acceptance as agricultural inerts and adjuvants exempted from tolerance requirements (under 40 CFR 180.1001(c)), as do sucrose, fatty acids conforming to 21 CFR 172.860, methyl esters of edible fats and oils, and sucrose esters of fatty acids such as sorbitan fatty acid esters.

Based on these materials' low-risk profiles, there is a reasonable certainty that no harm to the U.S. population will result from aggregate exposure to sucroglycerides.

2. *Infants and children*. 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 postnatal toxicity and the completeness of the data base unless EPA concludes 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 the use of margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the extensive available toxicology database including a reproductive toxicity study and studies of sucroglycerides in the diets of bottle-fed calves, and the low expected toxicity of these compounds, Rhodia, Inc. does not believe a safety factor analysis is necessary in assessing the risk of these compounds. For the same reasons we believe the additional safety factor is unnecessary.

E. International Tolerances

Sucroglycerides derived from edible fats and oils are approved for food use in Europe and by the WHO JECFA, with an ADI of 0-20 mg/kg/day. Sucroglycerides are currently marketed by Rhodia, Inc. for food use. Sucroglycerides, including those derived from palm oil, hydrogenated palm oil, tallow, rapeseed oil, castor oil, and coconut oil have been used safely in foods in Europe since the early 1960s.

There are no Codex Alimentarius Commission (Codex), Canadian or Mexican residue limits for sucroglycerides, which have been granted self-affirmed GRAS status in the U.S.

F. Conclusion

Based on the information and data considered, Rhodia, Inc. proposes that exemption from the requirements of a tolerance be established for Sucroglycerides derived from 21 CFR-approved fats and oils when used in accordance with good agricultural practice as inert ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest (under 40 CFR.180.1001(c)).

2. Rhone-Poulenc Ag Company

PP 8F4969

EPA has received a pesticide petition (PP 8F4969) from Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of fosetyl-Al (aluminum tris(O-ethylphosphonate) in or on the raw agricultural commodity bananas at 3.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of fosetyl-Al in plants is adequately understood. Adequate data on the nature of the residues in plants, including identification of major metabolites and degradates of fosetyl-Al, are available. Radiolabeled studies on the uptake, translocation and metabolism in plants show that the chemical proceeds through hydrolytic cleavage of the ethyl ester. The major residues are fosetyl-Al, phosphorus acid and ethanol. The tolerances are established for the parent only, that is fosetyl-Al. There is no reasonable expectation of residues occurring in eggs, milk, and meat of livestock and poultry since there are no livestock feed items associated with commodities treated with fosetyl-Al. Relating specifically to the proposed tolerance on bananas, no processed food or livestock feed items are associated with this commodity. Accordingly, tolerances in meat, animal byproducts and milk are not necessary.

2. *Analytical method*. Adequate methods are available for enforcement purposes. There are two analytical methods acceptable for determining residues of fosetyl-Al in plants: a gas chromatography method is available for enforcement of tolerance in pineapple and is listed as Method I in PAM, Vol. II; a GC/phosphorus specific flame photometric detector (FPD-P) method (Rhone-Poulenc Method No. 163) for citrus has undergone a successful method tryout on oranges and has been sent to the FDA for inclusion in PAM as Method II.

3. *Magnitude of residues*. Seven field sites in six Latin American countries were treated in two applications at the rate of 4.8 Kg/ha/application. Two of the seven trials also included a 2x rate application. Applications were made by two methods: foliar spray by ground equipment and tree injection into the pseudostem. The applications were made approximately 70-days apart with a PHI of 0- days for the foliar treatments and 1-day for the injection treatments. Each plot included both bagged and unbagged bunches. Fosetyl-Al residues greater than the LOT were found in 22 of the 96 treated banana samples. Residues were highest in the 1x and 2x foliar unbagged treatments, averaging 0.45 ppm from the 1x treatment and 0.69 ppm from the 2x treatment. Residues were very low from all foliar bagged and all injection treatments, averaging at or below the LOT. Residues from all treated samples ranged from no detects to 1.99 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Fosetyl-Al presents a minimal acute hazard. The acute toxicity data support that acute exposure is unlikely to constitute any significant risk. A complete battery of acute toxicity studies for fosetyl-Al technical have been conducted. The LD_{50} from the acute oral rat is 5.4 g/kg and the LD_{50} from an acute dermal rabbit study is >2 g/kg. The LC_{50} for a rat inhalation study is >1.73 mg/L. The acute oral rat and primary dermal irritation studies indicate category IV toxicity. A guinea pig dermal sensitization study shows fosetyl-Al is not a skin sensitizer. The primary eye irritation study in rabbits shows fosetyl-Al to be an eye irritant with Category I toxicity.

2. *Genotoxicity*. Fosetyl-Al is neither mutagenic nor genotoxic. The genetic toxicity potential of fosetyl-Al was assessed in several assays. Eight mutagenicity tests performed with fosetyl-Al were negative. The tests included two Ames assays with S. typhimurium, two phase induction assays using *E. coli*, two micronucleus studies in mice, one DNA repair assay using *E. coli* and one mutation assay in Saccharomyces cereviseae.

3. *Reproductive and developmental toxicity*. Fosetyl-Al is not a reproductive toxicant and shows no evidence of estrogenic or androgenic related effects. In a 3-generation reproduction study, fosetyl-Al was administered to rats at dietary levels of 0, 6,000, 12,000 or 24,000 ppm. No adverse effects on reproductive performance or pup survival were observed in any dose group. The LEL was established at 12,000 ppm based on effects on animal weights and urinary tract changes. The NOEL for all effects was 6,000 ppm. Developmental toxicity studies were conducted with technical grade fosetyl-Al in rats and rabbits. These studies are summarized below.

i. *Rat*. A teratology study in rats dosed via oral gavage at 500, 1,000 or 4,000 mg/kg/day showed a developmental NOEL of 1,000 mg/kg. At 4,000 mg/kg, there was maternal toxicity, as evidenced by effects on animal weights, maternal deaths, increased resorptions and delayed fetal ossification.

ii. *Rabbit*. A rabbit teratology study showed no toxic effects at oral doses up to 500 mg/kg. Effects of fosetyl-Al on fetal development were observed only in the rat at a dose producing severe maternal toxicity. In the absence of maternal toxicity, no adverse effects on fetal development were observed, i.e. at 1,000 milligram/kilograms/day (mg/kg/day) in rats or at 500 mg/kg/day in rabbits.

4. *Subchronic toxicity*. In subchronic studies, no significant toxicity was observed even at doses exceeding the limit of 1,000 mg/kg/day.

i. A 21-day dermal study in rabbits showed mild to moderate skin irritation and a NOEL of 1.5 g/kg/day.

ii. A 90-day feeding study in rats showed a NOEL of >5,000 ppm; the LEL was 25,000 ppm with extramedullary hematopoiesis in the spleen.

iii. A 90-day dog feeding study showed a NOEL of 10,000 ppm and a LEL at 50,000 ppm, at which the test animals had a lower serum potassium level than untreated animals.

5. *Chronic toxicity*. Chronic toxicity studies have been conducted in dogs and rats.

i. *Dog*. Fosetyl-Al was fed to dogs for 2-years at concentrations of 0, 10,000, 20,000, and 40,000 ppm. The NOEL was 10,000 ppm, equivalent to 250 mg/kg/day. The LEL was 20,000 ppm based on a slight degenerative effect on the testes. These testicular changes, as well as a few scattered clinical changes, were seen in the high dose dogs. No effects were observed in the urinary tract.

ii. *Rat*. Fosetyl-Al was administered via admixture in the diet to CD rats at target levels of 0, 2,000, 8,000, and 30,000/40,000 ppm for approximately 2-years. Based on these levels, respective doses were 100, 400 and 2,000/1,500 mg/kg/day. After 2-weeks at 40,000 ppm, this dietary level was reduced to 30,000 ppm due to the occurrence of red coloration of the urine and a decrease in body weight gain. Although these findings were no longer apparent after week 2, analytical verification of dietary levels revealed that the highest dietary level ranged from approximately 38,000 to 61,000 ppm during the first 32 weeks of the study. No significant differences in bwt or food consumption were noted at 2,000 or 8,000 ppm. No biologically significant differences were observed in ophthalmoscopy, hematology, clinical chemistry, or urinalysis for treated and control animals. Calculi in the urinary bladder were observed for several male and female rats in the high dose group. Non-neoplastic findings consisted of epithelial hyperplasia and inflammation in the urinary bladders of males at 30,000/40,000 ppm. Increased incidences of hydronephrosis, inflammation, and epithelial hyperplasia in the kidney were also observed in males from the high dose group. Females from the same group exhibited increased incidences of epithelial hyperplasia in the urinary bladder and hydronephrosis in the kidney. The NOEL in the chronic rat study was 8,000 ppm (400 mg/kg/day).

iii. *Conclusion*. The lowest NOEL for chronic effects of fosetyl-Al is 10,000 ppm (250 mg/kg/day) based on the dog study. This NOEL is based on minor changes at 20,000 ppm. In the rat, calculi in the urinary bladder and related histopathological changes in the bladder and kidneys of males and females were observed at 30,000/40,000 ppm.

6. *Carcinogenicity*. Long-term feeding studies were conducted with technical grade fosetyl-Al in mice and rats and with monosodium phosphite, the primary urinary metabolite of fosetyl-Al, in rats. These studies, in addition to a mechanistic study in rats, are described below:

i. *Rat*. Fosetyl-Al was administered via admixture in the diet to CD rats at target levels of 0, 2,000, 8,000, and 30,000/40,000 ppm for approximately 2-years. After 2-weeks at 40,000 ppm, this dietary level was reduced to 30,000 ppm due to the occurrence of red coloration of the urine and a decrease in body weight gain. Although these findings were no longer apparent after week 2,

analytical verification of dietary levels revealed that the highest dietary level ranged from approximately 38,000 to 61,000 ppm during the first 32 weeks of the study. Calculi in the urinary bladder were observed for several male and female rats at 30,000/40,000 ppm. Microscopic examination revealed transitional cell carcinomas and papillomas in the urinary bladders of high dose males. In addition, a statistically significant increase in adrenal pheochromocytomas (benign and malignant combined) was observed in males at 8,000 and 30,000/40,000 ppm. The adrenal slides were independently reread by two consulting pathologists who found no significant dose-related increases in the incidence of pheochromocytomas or hyperplasia. The NOEL for fosetyl-Al in the chronic rat study was 8,000 ppm. A subsequent mechanistic study in rats conducted with dietary levels of 8,000, 30,000 and 50,000 ppm demonstrated that the massive doses of 30,000 and 50,000 ppm fosetyl-Al alter calcium/phosphorous homeostasis resulting in severe acute renal injury, similar to that observed in the chromic rat study, and the formation of calculi in kidneys, ureters, and bladder. Under conditions of chronic exposure, these effects could lead to the formation of bladder tumors as seen in the chronic rat study. At 8,000 ppm, no evidence of renal injury was observed, a result consistent with the absence of bladder tumors. Thus, the bladder tumors induced by fosetyl-Al were the result of acute renal injury followed by a chronic toxic reaction rather than a true carcinogenic effect. An oncogenicity study in rats was conducted with monosodium phosphite administered via dietary mixture at levels of 2,000, 8,000, and 32,000 ppm. No evidence of oncogenicity was observed in this study.

ii. *Mouse*. A 2-year feeding/carcinogenicity study was conducted in mice fed diets containing fosetyl-Al at 0, 2,500, 10,000, or 20,000/30,000 ppm. The 20,000 ppm dose was increased to 30,000 ppm during week 19 of the study. The NOEL for all effects was 20,000/30,000 ppm (3,000/4,500 mg/kg/day). There were no carcinogenic effects observed under the conditions of this study.

iii. *Conclusion*. The Office of Pesticide Programs', Health Effects Division, Carcinogenicity Peer Review Committee (CPRC) concluded in their report of June 29, 1993 that the pesticidal use of fosetyl-Al is unlikely to pose a carcinogenic hazard for humans given that:

a. Tumors develop in rats under extreme conditions that are unlikely to be achieved other than under laboratory conditions (at a dose in excess of the OPP dose limit for carcinogenicity studies).

b. Tumors in rats are believed to develop only at doses that produce stones.

c. Human dietary exposure to fosetyl-Al is only about one-500,000th of the NOEL for stone formation in the rat (the most sensitive experimental model).

d. The dose of fosetyl-Al which can be absorbed dermally by applicators is also probably too low to result in stone formation. EPA has therefore chosen to use the Reference Dose (RfD) to quantify dietary risk to humans.

7. *Neurotoxicity*. No evidence of neurotoxic potential has ever been observed with fosetyl-Al. Fosetyl-Al does not have a chemical function associated with neurotoxicity. No signs of neurotoxicity have been recorded in any study conducted with fosetyl-Al.

8. *Animal metabolism*. Rat metabolism studies showed that most of the radiolabel rapidly appeared in exhaled carbon dioxide. There was also some radiolabel excreted in the urine as phosphite, along with a smaller amount as the unchanged parent compound. It appears that fosetyl-Al is essentially completely absorbed after ingestion and extensively hydrolyzed to carbon dioxide which is exhaled. The phosphite is excreted in the urine without further oxidation to phosphate. Aluminum does not appear to be absorbed to a significant extent from the gastrointestinal tract.

9. *Metabolite toxicology*. There are no metabolites of toxicological concern. The tolerances are established for the parent only, that is fosetyl-Al.

10. *Endocrine disruption*. No evidence of estrogenic or androgenic effects were noted in any study with fosetyl-Al. No adverse effects on mating or fertility indices and gestation, live birth, or weaning indices were noted in a 3-generation rat reproduction study at doses well above EPA's limit of 1,000 mg/kg/day. Therefore, fosetyl-Al does not have any effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Chronic risk*. Based upon all available data, EPA has established an RfD of 3.0 mg/kg/day using a 100 fold safety factor to account for inter- and intra-species differences and a NOEL of 250 mg/kg/bwt/day from a 2-year feeding study in dogs. A chronic dietary risk assessment was prepared using established and proposed tolerance residue levels, 1987 food consumption data, and 100% crop treated. The calculated potential exposure for the U.S. population is 0.065760 mg/kg bwt/day. Potential exposure for nursing and non-nursing infants less than 1-year old, children aged 1 to 6-years, and children aged 7 to 12-years is calculated to be 0.022485, 0.134076, 0.116682, and 0.069637 mg/kg bwt/day, respectively. This results in utilization of 2.2, 4.5, 3.9, and 2.3% of the RfD for the whole U.S. population, non-nursing infants less than 1-year old, children aged 1 to 6- years, and children aged 7 to 12-years, respectively. Thus, the dietary exposure for fosetyl-Al is well below the RfD of 3.0 mg/kg/day and is negligible for all segments of the population including infants and children.

ii. *Acute risk*. Based on a lack of acute toxicity and the large margins of exposure in the chronic dietary assessment, fosetyl-Al does not pose any acute dietary risks.

2. *Food*. The dietary exposure assessment accounts for all anticipated dietary exposure for a tolerance of 3.0 ppm on bananas, which is the subject of this request, and all other active and pending tolerances for fosetyl-Al. The active tolerances are for asparagus, avocados, blueberries, brassica, caneberries, citrus, cucurbits, ginseng, hops (dried), leafy vegetables, pineapple, onions (dry bulb), pome fruit, strawberries, and tomatoes. Pesticide petitions proposing the establishment of tolerances for Fosetyl-Al on grapes and macadamia nuts (IR-4) have also been submitted to the Agency.

3. *Drinking water*. There is no established maximum contaminant level (MCL) or health advisory level (HAL) for fosetyl-Al. The potential for ground water and/or surface water contamination by fosetyl-Al and its degradates is expected to be very low, in most cases, due to the rapid degradation of the compound in soil to non-toxic degradates under both aerobic and anaerobic conditions. Under aerobic laboratory conditions, the half-life of fosetyl-Al is between 1 and 1.5 hours in loamy sand, silt loam, and clay loam and 20 minutes in sandy loam soil. The degradation proceeds through the hydrolysis of the ethyl ester bond, resulting in the formation of phosphorous acid and ethanol. The ethanol is further degraded into carbon dioxide. Based on the short half-life of fosetyl-Al and the known fate of phosphates under anaerobic conditions, EPA determined that an anaerobic soil metabolism study was not necessary. An anaerobic aquatic soil metabolism study was conducted. When anaerobic conditions were established by flooding soil, the half-life was 40 hours with silty

clay loam, and 14 hours with sandy loam soil.

4. *Non-dietary exposure*. In addition to agricultural uses, fosetyl-Al is registered on ornamentals and turf under the brand names CHIPCO Aliette WDG, and Aliette HG. CHIPCO Aliette WDG is sold to professional applicators only, which includes lawn care operators (LCO). All residential uses of CHIPCO Aliette WDG are applied by an LCO. Typically, LCOs use fungicides for ornamentals and turf on an as needed basis only in part because of high cost, variable performance, and little residual control. In 1994, LCOs made an estimated 206,200 acre treatments in total for all fungicides representing less than 1% of the available acreage of 32,740,000 assuming each acre was treated once (Kline & Company, Inc.). CHIPCO Aliette WDG is estimated to have been used on less than 3% of the acres treated with commercial landscapes (turf and ornamentals) constituting the majority of the use by LCOs. Therefore, fosetyl-Al is used by LCOs on less than 0.03% of the total available acres. Aliette HG is not currently being sold but plans are to introduce this product on the market in 1998 on a limited geographical scale. The product will be available to the home consumer in single dose packages for residential use on turf and ornamentals. Available market research information indicates that a total of 1.7 million pounds fungicide (active ingredient) are sold annually for use by the home owner. Since Aliette HG will just be entering the market, only very small quantities of the product are expected to be sold. The maximum amount expected to be sold for the next few years is approximately 1% of the total 1.7 million pounds of fungicide products available to the home owner for residential use on turf and ornamentals. This use of the product is therefore expected to have a negligible impact on the aggregate exposure for fosetyl-Al.

5. *Conclusion*. Considering that fosetyl-Al is applied by LCOs on about 0.03% of available lawn acres (the majority being commercial landscapes), the likelihood of post application exposure occurring, particularly in a residential situation, is extremely low. The use of fosetyl-Al by the homeowner constitutes a minor use of the product since only small quantities are expected to be sold in 1998. Other applications by professional operators, e.g. golf courses, nurseries, sod farms, present only very limited exposure to a limited population of adults but do not pose any exposure to small children. Thus, the ornamental and turf uses are not expected to add significantly to the aggregate exposure for fosetyl-Al, and only dietary exposure has been taken into consideration for risk assessment purposes.

D. Cumulative Effects

Effects associated with fosetyl-Al are unlikely to be cumulative with any other compound. The formation of calculi and bladder tumors in rats is the only significant toxicological effect observed with fosetyl-Al. These effects were observed in rat only at a dose which not only exceeds estimated human exposure by several orders of magnitude but is in excess of the OPP dose limit for carcinogenicity studies. Therefore, an aggregate assessment based on common mechanisms of toxicity is not appropriate as exposure to humans will be well below the levels producing calculi and bladder tumors in rats. Further, considering the rapid elimination of fosetyl-Al in the rat metabolism study, any effects associated with fosetyl-Al are unlikely to be cumulative with any other compound. Based on these reasons, only the potential risks of fosetyl-Al are considered in the exposure assessment.

E. Safety Determination

1. *U.S. population*. Based upon all available data, EPA has established an RfD of 3.0 mg/kg/day using a 100 fold safety factor to account for inter- and intra-species differences and a NOEL of 250 mg/kg bwt/day from a 2-year feeding study in dogs. A chronic dietary risk assessment using established and proposed tolerance residue levels, 1987 food consumption data, and 100% crop treated results in utilization of 2.2, 4.5, 3.9, and 2.3% of the RfD for the whole U.S. population, non-nursing infants less than 1-year old, children aged 1 to 6-years, and children aged 7 to 12-years, respectively. Thus, the dietary exposure for fosetyl-Al is well below the RfD of 3.0 mg/kg/day and is negligible for all segments of the population including infants and children.

2. *Infants and children—Adequate margin of safety*. In assessing the potential for additional sensitivity of infants and children to residues of fosetyl-Al, the available developmental and reproductive toxicity studies and the potential for endocrine modulation were considered. Developmental toxicity studies in two species indicate that fosetyl-Al has no teratogenic potential at any dose level. Further, no adverse effects on fetal development were observed in rabbits at doses up to 500 mg/kg/day or in rats at doses up to 1,000 mg/kg/day. In a 3-generation rat reproduction study, no adverse effects on reproductive performance or pup survival were observed up to 24,000 ppm (equivalent to a dose well above EPA's limit dose of 1,000 mg/kg/day). Maternal and developmental NOELs and LELs were comparable in all studies indicating no increase in susceptibility of developing organisms. Further, fosetyl-Al has no endocrine-modulation characteristics as demonstrated by the lack of endocrine effects in developmental, reproductive, subchronic, and chronic studies. Since registration of fosetyl-Al in 1983, EPA has assessed the safety of this molecule several times and has concluded repeatedly that the level of dietary exposure is sufficiently low to provide ample margins of safety to guard against any potential adverse effects of fosetyl-Al. Considering the conservative exposure assumptions in setting the tolerances and the dietary risk assessment assuming 100% crop treated, less than 5% of the RfD is utilized for non-nursing infants less than 1-year old, children aged 1 to 6-years, and children aged 7 to 12-years. The probability of non-occupational sources of exposure to fosetyl-Al is negligible. Therefore, based upon the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from exposure to the residues of fosetyl-Al and no additional uncertainty factor is warranted.

F. International Tolerances

There are presently no Codex maximum residue levels established for residues of fosetyl-Al on any crop.

[FR Doc. 98–17808 Filed 7–6–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6121–3]

Proposed CERCLA Administrative De Minimis Contributor Settlement With Mesa Oil, Inc.—Rocky Flats Industrial Park Site in Jefferson County, Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of 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 *de minimis*

settlement under section 122(g) of CERCLA, 42 U.S.C. 622(g) with Mesa Oil, Inc. (''MESA''), concerning the Rocky Flats Industrial Park site located in the 17000 block of Colorado Highway 72, approximately 2 miles east of the intersection of Colorado Highways 93 and 72, in Jefferson County, Colorado (the ''Site''). The settlement, embodied in a proposed Administrative Order on Consent (''AOC''), is designed to resolve Mesa's liability at the Site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973, subject to certain reopening provisions. The proposed AOC requires Mesa to pay a total of $2,000.00 in cash together with the approximately $50,000.00 of in-kind work contributed by Mesa to site investigation and remediation efforts at the Site, to address its liability to the United States related to past and future response actions at the Site.

Opportunity for comment

For thirty (30) days following the date of publication of this notice, 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 EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, CO. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before August 6, 1998.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, in Denver, CO. Comments and requests for a copy of the proposed settlement should be addressed to Carol Pokorny, Enforcement Specialist (8ENF-T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202–2466, and should reference the Rocky Flats Industrial Park Site, Jefferson County, CO and EPA Docket No. CERCLA–VIII–98–13.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6970.

SUPPLEMENTARY INFORMATION: Notice of proposed administrative *de minimis* contributor settlement under section 122(g) of CERCLA, 42 U.S.C. 9622(g): In accordance with section 122(i) of CERCLA, 42 U.S.C. 9622(i), notification is hereby given that the terms of the AOC have been agreed to by Mesa. By the terms of the proposed AOC, Mesa will pay $2,000.00 cash to the Hazardous Substance Superfund for its release of 75 gallons of used oil containing hazardous substances. In addition to its cash payment, Mesa has contributed in-kind services valued at approximately $50,000.00 to the characterization and remediation of the Site. The in-kind services represent work Mesa has conducted in anticipation of this settlement and were not otherwise required by law. The total dollar amount which Mesa will pay to the Agency represents approximately 0.01538% of the estimated total cost of remediation. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the United States and by private parties to be approximately $13,000,000.00.

In exchange for payment and Mesa's remediation and investigatory work at the Site, EPA will provide Mesa with a covenant not to sue under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act), which will resolve Mesa's liability at the Site. The settlement also provides Mesa with contribution protection. Under the terms of the AOC, the United States reserves the right to institute judicial or administrative proceedings against Mesa seeking to compel Mesa to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information not contained in EPA's administrative site file as of the effective date of the AOC is discovered which indicates that Mesa contributed hazardous substances to the Site in an amount greater than 6,690 gallons or hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

Dated: June 16, 1998.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 98–17964 Filed 7–6–98; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the July 9, 1998 regular meeting of the Farm Credit Administration Board (Board) will not be held. The Board will hold a special meeting at 9:00 a.m. on Tuesday, July 14, 1998. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: July 1, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–18048 Filed 7–2–98; 11:33 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–1317]

North American Numbering Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On July 1, 1998, the Commission released a public notice announcing the July 22–23,1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, at (202) 418–2330 or via the Internet at lsimms@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: June 30, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Wednesday, July 22, 1998, from 8:30 a.m., until 5:00 p.m., and on Thursday, July 23, 1998, from 8:30 a.m., until 12 noon at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Linda Simms at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

The planned agenda for the July 22–23, meeting is as follows:

1. Approval of meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report. Report out on estimate of times to complete preport (PP) with efficient data representation (EDR), and port on demand (POD) architectures.
3. N11 Ad Hoc Working Group Report and Recommendation. Responsibilities under First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket 92–105, FCC 97–51.
4. Numbering Resource Optimization Working Group Report. Discussion and review status of telephone number reservation recommendation.
5. Industry Numbering Committee Report. Tutorial on service provider inventory and industry inventory intervals; including service provider request date to the pooling administrator; pooling administrator allocation date and actual effective date for a block to be put into service.
6. Cost Recovery Working Group Report.
7. COCUS and Proposed Line Number Utilization Survey. Discussion and review of contributions on question of complete, timely and accurate data reporting; obtaining forecasts from resellers, and the issue of audits.
8. North American Numbering Plan Administration (NANPA) report on statement of work for net costs associated with extension to 1000s block number pooling administration.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–17976 Filed 7–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–1239]

Notice of Publix Network Corporation's Telecommunications Relay Services (TRS) Certification; CC Docket No. 90–571 and NSD-L–98–65

Released: June 30, 1998.

Notice is hereby given that the application for certification of the Publix Network Corporation's Interstate Telecommunication Relay Services (TRS) program has been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act of 1990, 47 U.S.C. 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). On the basis of Publix Network Corporation's application, the Commission has determined that:

(1) The TRS program of Publix Network Corporation meets or exceeds all operational, technical, and functional minimum standards contained in section 64.604 the Commission's rules, 47 CFR 64.604;

(2) The TRS program of Publix Network Corporation makes available adequate procedures and remedies for enforcing the requirements of the program; and,

(3) the TRS program of Publix Network Corporation in no way conflicts with federal law.

On May 14, 1998, the Commission adopted a Notice of Proposed Rulemaking that proposes ways to enhance the quality of existing telecommunications relay services (TRS) and expand those services for better use by individuals with speech disabilities. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, FCC 98–90 (rel. May 20, 1998). Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with any new rules ultimately adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, is effective immediately and shall remain in effect until July 25, 2003. One year prior to the expiration of this certification, July 25, 2002, Publix Network Corporation may apply for renewal of their TRS program certification by filing documentation in accordance with the Commission's rules, pursuant to 47 CFR 64.605(a) and (b).

A copy of the certification letter is available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, NW, Washington, DC, Monday through Thursday, 8:30 a.m. to 3:00 p.m. (closed 12:30 to 1:30 p.m.) and the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC, daily, from 9:00 a.m. to 4:30 p.m..

FOR FURTHER INFORMATION CONTACT: Al McCloud, (202) 418–2499, amccloud@fcc.gov; Helene Nankin, (202) 418–1466, hnankin@fcc.gov; or Kris Monteith, (202) 418–1098, kmonteit@fcc.gov, (TTY, 202–418–0484), at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–17925 Filed 7–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 98–102, FCC 98–137]

Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. On June 23, 1998, the Commission adopted a *Notice of Inquiry* to solicit information from the public for use in preparing the competition report that is to be submitted to Congress in December 1998. The *Notice of Inquiry* will provide parties with an opportunity to submit

comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due by July 31, 1998, and reply comments are due by August 31, 1998.

ADDRESSES: Office of the Secretary, Room 222, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Cable Services Bureau, (202) 418–7200 or TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* in CS Docket No. 98–102, FCC 98–137, adopted June 23, 1998, and released June 26, 1998. The complete text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service (''ITS, Inc.''), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Synopsis of the Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended (''Communications Act''), 47 U.S.C. 548(g), requires the Commission to deliver an annual report to Congress on the status of competition in markets for the delivery of video programming. The *Notice of Inquiry* (''*NOI*'') is designed to assist the Commission in gathering the information, data and public comment necessary to prepare its fifth annual report on competition in markets for the delivery of video programming (''1998 Competition Report''). The Commission expects to use the information submitted by commenters to supplement publicly available information and relevant comments that have been filed in other Commission proceedings.

2. For the 1998 Competition Report, we request information and comment regarding the cable industry, existing and potential competitors in markets for the delivery of video programming, and the prospects for increasing competition in these markets. We seek information to update our assessment of the status of competition and on changes in the competitive environment since our *1997 Competition Report*, summarized at 63 FR 10222 (March 2, 1998), was submitted to Congress. Commenters also are invited to identify and comment on existing statutory provisions and Commission regulations they perceive as restraining competition or inhibiting development of robust competition in markets for the delivery of video programming. We note that, pursuant to section 623(c)(4) of the Communications Act, the Commission's authority under section 623(c)(3) to review complaints submitted by local franchising authorities concerning increases in rates for cable programming service (''CPS'') tiers sunsets on March 31, 1999. *See* 47 U.S.C. 543(c)(3) and (c)(4). The information gathered in this report will present the last comprehensive picture of the state of cable competition prior to the sunset date. For this year's report, to the extent feasible, we ask parties to submit data and information that are current as June 30, 1998.

3. As in previous reports, we seek factual information and statistical data regarding the status of video programming distributors using different technologies, and changes that have occurred in the past year. We ask for information on multichannel video programming distributors (''MPVDs'') using predominantly wired distribution technologies, including cable systems, private cable or satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). We also request data for those relying predominantly on wireless distribution technologies, such as over-the-air broadcast television, multichannel multipoint distribution service (''MMDS''), instructional television fixed service (''ITFS''), local multipoint distribution service (''LMDS''), direct broadcast satellite (''DBS'') service, and home satellite dish (''HSD'') service.

4. In addition to statistical data on each of these delivery services, we seek information regarding: (a) the number of homes passed (for wired technologies) and the number of homes capable of receiving service (for wireless technologies); (b) the number of operators; (c) the identities of the ten largest operators (national market only); (d) the number of subscribers and penetration rates; (e) channel capacities and the number and types of channels offered; and (f) the number and types of services offered. In addition, we request financial information for each technology, including firm and industry revenues, in the aggregate and by sources (e.g., subscriber revenues, advertising revenues, programming revenues); cash flow; changes in stock prices; investments; capital acquisition; and capital expenditures.

5. For each video programming distribution technology, we also request information describing: (a) technological advances (e.g., deployment of digital services) that make or may make the technology competitive; (b) the effort (including steps, costs and time) needed to increase the number of homes passed or capable of receiving service; (c) the effort (including steps, costs and time) needed to increase the number of channels and types of services offered; and (d) regulatory and judicial developments that affect the use of different technologies. In addition, in evaluating the extent of competition among various MVPDs' services or technologies, we seek information and analysis on the degree to which viewers or consumers consider the different types of MVPDs to be substitutes and on the extent to which customers have switched from one provider or technology to another one.

6. In the *NOI*, we request information on interservice competition and service to multiple dwelling unit (''MDU'') buildings. We further seek information that will allow us to compare the cost to consumers of subscriptions to, and equipment needed to receive, alternative MVPD services (cable, DBS, MMDS, SMATV, or OVS) and to permit us to better understand the factors considered by consumers when choosing among alternative MVPDs. Further, we seek comment on the appropriate method for comparing the services and costs of different MVPDs.

7. As in prior reports, we will provide updated information in the 1998 Competition Report on the structure of, and rivalry in, markets for the delivery of video programming. To evaluate market concentration at the local, regional and national levels, we ask commenters to provide updated information on industry transactions, including information on mergers, acquisitions, consolidations, swaps and trades, cross-ownership, and other structural developments that affect distributors' delivery of video programming. In local markets where incumbent cable operators face competition from one or more other video programming distributors, we seek information on: (a) the identity of the competitors; (b) the distribution technology used by each competitor; (c) the date that each competitor entered the market; (d) the location of the market, including whether it is predominantly urban or rural; (e) an estimate of the subscribership and market share for the services of each competitor; (f) a description of the service offerings of each competitor; (g) differentiation strategies each competitor is pursuing; and (h) the prices charged for the service offerings.

8. With respect to regional concentration (i.e., ''clustering''), for cable and other MVPDs, we seek information on the geographic areas served by particular companies and comment regarding the effects industry consolidation and clustering have had on competition. We also seek data regarding current national subscribership levels of all MVPDs, changes in these levels since the *1997 Competition Report*, and the reasons for these changes, including whether such changes are the result of merger and acquisition activity, marketing strategies, or other factors. We also would like to evaluate MVPD service providers in the economic context of the larger communications marketplace based on their relative size and resources (e.g., revenues) and the extent to which participants have the ability to enter each others' market.

9. In the 1998 Competition Report, we will update information on existing and planned programming services, with particular focus on those programming services that are affiliated with video programming distributors. We seek information and ask a variety of questions on programming services that are affiliated with cable operators, affiliated with non-cable video programming distributors and unaffiliated with any MVPD.

10. For this year's report, we also request information on the various program options offered by each MVPD technology, including exclusive program offerings, the number of channels available, and the comparability of the program options and packages available with each technology. We ask whether there are certain programming services or specific classes of service that an MVPD needs to provide to subscribers in order to be successful. We request information regarding the extent that local cable operators or broadcasters are providing local or regional news or sports channels. In addition, we solicit information on the extent to which MVPDs offer or plan to offer electronic programming guides. We also seek information on the extent to which MVPDs are now offering or plan to offer consumers discrete programming choices (i.e., service on an ''a la carte'' or individual channel basis) rather than programming service packages (i.e., tiers of programming services) and the technical feasibility of offering programming in a customized manner. Moreover, we seek information and comment regarding public, educational and governmental (''PEG'') access and leased access channels.

11. We further seek information and analysis regarding the effect of increased programming costs on rates, especially for cable service. We request information and comment on the factors that affect programming costs for cable operators and other MVPDs. We also ask about the extent to which the increased programming costs are passed through to MVPD subscribers and to advertisers.

12. As in previous reports, we will update our assessment of our program access, program carriage and channel occupancy rules. Commenters are asked to provide information regarding the effectiveness of these rules. We request information on whether the coverage of the program access rules is appropriate, on whether there have been any cases of MVPDs being denied programming when a satellite delivered service becomes terrestrially delivered or by non-vertically integrated programmers, and on any other issues of concern relating to the availability and distribution of programming.

13. We seek updated information on various technological advances that may affect industry structure and competition in markets for the delivery of video programming, including system upgrades and the deployment of digital technology. We ask whether upgrades are being undertaken only in specific geographic areas and whether they are conducted mainly in response to competitive entry. We seek information on the feasibility of combining distribution technologies (e.g., DBS and SMATV) and data regarding MVPDs' current use of combined distribution technologies. We also solicit data on estimated roll-out or launch dates for new technologies. In addition, we note that an important aspect of the technological developments taking place relates to the deployment of set top boxes, integrated receiver/decoders, or receivers that facilitate or differentiate MVPD service offering. We ask commenters to identify and describe each type of device, including its function and capabilities, its costs and availability to consumers.

14. Currently, basic and cable programming service rates are deregulated where a cable operator faces ''effective competition'' as defined in the Communications Act, 47 U.S.C. 543(l). We seek comment on whether the existing test for effective competition is an appropriate measurement of the existence of competition. Where commenters believe it is not the correct measure of competition, all or in part, we ask for suggested alternative means for determining competition.

15. In the last two reports, we examined several case studies of local markets where cable operators faced actual competition from MVPD entrants. We seek updated information on the effects of actual and potential competition in these and other local markets where consumers have, or soon will have, a choice among MVPDs, including specific data regarding areas where head-to-head competition exists between cable and other MVPDs, or among various types of MVPDs, and information on how such competition has affected prices, service offerings, quality of service, and other relevant factors.

16. We also would like to gather information on video delivery competition for and within MDUs. We request information on how common is it for consumers to have options to choose between or among MVPD services within a particular MDU and how program offerings and prices charged by competing MVPDs serving MDUs compare. We solicit information on how many exclusive service contracts, and how many so-called ''perpetual'' exclusive contracts, exist in MDUs at present and whether their use is increasing or decreasing. We request comment on the impact that the recent inside wiring, over-the-air reception device (''OTARD''), and cable bulk rate rules have had on MDU competition.

17. Finally, we request information regarding existing or potential regulatory impediments that may deter entry or prevent expansion of competitive opportunities in video program delivery markets. We also ask commenters to identify specific Commission rules, policies or regulations that ought to be reexamined in light of current competitive opportunities within multichannel video programming markets.

Administrative Matters:

Ex Parte

18. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(a)(4).

Comment Dates

19. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 31, 1998, and reply comments on or before August 31, 1998. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants

want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

Ordering Clauses

20. This Notice of Inquiry is issued pursuant to authority contained in sections 4(i), 4(j), 403 and 628(g) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–17831 Filed 7–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Wednesday, July 1, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Mr. Richard M. Riccobono, acting in the place and stead of Director Ellen S. Seidman (Director, Office of Thrift Supervision), Director Julia L. Williams (Acting Comtroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: July 1, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–18024 Filed 7–2–98; 10:22 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m., Wednesday, July 8, 1998.

PLACE: Board Room, Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

—Revisions to Procedures for Review of Disputed Supervisory Determinations

—Appointment of Federal Home Loan Bank Directors of Dallas and Topeka

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–18122 Filed 7–2–98; 3:10 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. 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 July 20, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Lonnie E. Clark, Chandler, Minnesota; to acquire additional voting shares of Chandler Bancshares, Inc., Chandler, Minnesota, and thereby indirectly acquire State Bank of Chandler, Chandler, Minnesota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Leonard R. Scoleri and Synthia L. Scoleri, both of Guernsey, Wyoming; to acquire voting shares of Community Bankshares of Wyoming, Guernsey, Wyoming, and thereby indirectly acquire Oregon Trail Bank, Guernsey, Wyoming.

Board of Governors of the Federal Reserve System, June 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17864 Filed 7–7–98; 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 July 30, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to acquire 100 percent of the voting shares of FirstBank, Dallas, Texas.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Illinois Bancorp, Inc., East St. Louis, Illinois; to acquire 100 percent of the voting shares of Duchesne Bank, St. Peters, Missouri.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Merchants Holding Company, Winona, Minnesota; to acquire 100 percent of the voting shares of Primo Financial Services, Inc., Hastings, Minnesota, and thereby indirectly acquire Hampton Bank, Hampton, Minnesota.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Commerce Bancshares, Inc., Kansas City, Missouri, and its wholly owned subsidiary, CBI-Kansas, Inc., Missouri; to acquire and thereby merge with Columbus Bancshares, Inc., Columbus, Kansas, and thereby indirectly acquire Columbus State Bank, Columbus, Kansas.

Board of Governors of the Federal Reserve System, June 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17866 Filed 7–6–98; 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 July 31, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Marfa Bancshares, Inc., Marfa, Texas, and Marfa Delaware Bancshares, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The Marfa National Bank, Marfa, Texas.

Board of Governors of the Federal Reserve System, July 1, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17945 Filed 7–6–98; 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 July 20, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BOK Financial Corporation, Tulsa Oklahoma; to acquire Alliance Securities Corp., Tulsa, Oklahoma, and thereby indirectly acquire Leo Oppenheim & Co., Inc., Oklahoma City, Oklahoma, and thereby continue to engage in previously authorized underwriting and dealing in, to a limited extent, certain municipal revenue bonds,1-4 family mortgage related securities, consumer recievable related securities, and commercial paper; acting as agent in the private placement of all types of securities pursuant to § 225.28(b)(7)(iii) of Regulation Y, providing investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y, underwriting and dealing in bank-eligible securities, pursuant to § 225.28(b)(8)(i), and providing securities brokerage services, pursuant to § 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17862 Filed 7–6–98; 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 July 21, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to acquire Princeton Federal Bank, FSB, Princeton, Kentucky, and thereby engage in the activities of operating a thrift, pursuant to § 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–17946 Filed 7–6–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 13, 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 items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, 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: July 2, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–18142 Filed 7–2–98; 3:42 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 981–0173]

Global Industrial Technologies, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 8, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joseph Krauss, FTC/H–383, Washington, D.C. 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: Pusuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 26, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202)326–3627. Public comment is invited. Such commenters or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Agreement'') from Global Industrial Technologies, Inc. (''proposed respondent'').

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The Commission's investigation of this matter concerns the proposed acquisition by Global of all of the outstanding shares of AP Green Industries, Inc. (''AP Green'') through a cash tender offer. Global and AP Green are two leading U.S. manufacturers of refractories. Refractories are heat-resistant materials used to line furnaces in industries that involve the heating or containment of solids, liquids, or gases at high temperatures. The Commission's proposed complaint alleges that Global and AP Green compete with each other in the United States market for glass-furnace silica refractories. Glass-furnace silica refractories are used in the glass industry to build the roofs and other portions of glass-melting furnaces.

The Agreement Containing Consent Order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the production and sale of glass-furnace silica refractories in the United States and lead to a monopoly in that line of commerce. The Commission has reason to believe that the acquisition agreement violates Section 5 of the Federal Trade Commission Act and the acquisition would have anticompetitive effects and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act if consummated, unless an effective remedy eliminates such anticompetitive effects.

The Commission's Complaint alleges that glass-furnace silica refractories provide unique characteristics, and that as a result, the use of these materials would not be diminished by even a large price increase. The Complaint further alleges that imports of glass-furnace silica refractories are small.

Global and AP Green are the only two producers of glass-furnace silica refractories in the United States, and entry of other producers is unlikely and would be time consuming. The Commission's Complaint alleges that the proposed acquisition, which would result in a monopoly in the United States, would lessen competition by eliminating competition between Global and AP Green, and would lead to higher prices and less product innovation.

The proposed Order accepted for public comment contains provisions that would require Global to divest AP Green's glass-furnace silica refractories business to Robert R. Worthen and Dennis R. Williams (jointly or through a corporation called Utah Refractories Corp.) in a manner that receives the prior approval of the Commission within 30 days of the date the proposed Order was accepted for public comment, or if such divestiture fails, to another buyer that receives the prior approval of the Commission in a manner that receives the prior approval of the Commission within 90 days of the date the proposed Order was accepted for public comment. The divestiture includes the AP Green manufacturing plant located in Lehi, Utah, where AP Green produces silica refractories, together with the sources of raw materials used to manufacture silica refractories and all other assets relating to the research, development, production, sale, or distribution of silica refractories, but excluding AP Green's manufacturing facility in Sproul, Pennsylvania. Global's divestiture of the AP Green silica refractories business, if completed, would satisfy the requirements of the Order and remedy the lessening of competition alleged in the Complaint.

If Global fails to divest AP Green's silica refractories business within 90 days of the date the proposed Order was accepted for public comment, then the Commission may appoint a trustee to divest AP Green's silica refractories business, or, at the option of the trustee, Global's Northeast, Maryland manufacturing plant, where Global produces silica refractories, together with the sources of raw materials used to manufacture silica refractories and all other assets relating to the research, development, production, sale, or distribution of silica refractories, but excluding Global's manufacturing facility in Calhoun, Georgia.

The Order also contains a provision requiring Global to maintain the viability and marketability of the Global and AP Green silica refractories businesses pending the divestiture.

The consent is crafted to preserve the current competitive state of the U.S. market for glass-furnace silica refractories. The consent will maintain the AP Green silica plant as an independent supplier of glass-furnace silica refractories for U.S. customers. Thus, there will continue to be two domestic sources of the product, as there were prior to the proposed merger.

The purpose of this analysis is to facilitate public comment on the proposed Order. Comments should also be directed to whether the pre-approved buyers, Robert R. Worthen and Dennis R. Williams and their corporation, Utah Refractories Corp., will be financially viable and able to replace the competition lost by this acquisition. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–17933 Filed 7–6–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 972–3157]

Herbal Worldwide Holdings Corp., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 8, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Tom Carter or Susan Arthur, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX. 75201. (214) 979–9350.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 26, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Herbal Worldwide Holdings Corp., José Diaz, and Eduardo N. Naranjo (hereinafter ''respondents''). Respondents are marketers of an over-the-counter weight loss product called ''Fattaché.''

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter has focused on respondents' Spanish-language television advertisement for Fattaché. The ingredients in Fattaché include psyllium, chitosan, glucomannan, and apple pectin.

The proposed complaint alleges that respondents made unsubstantiated claims that: (1) Fattaché causes weight loss without a change in diet: (2) Fattaché prevents the absorption of ingested fat; (3) Fattaché helps eliminate ingested fat before it is absorbed, and (4) testimonials from consumers appearing in advertisements for Fattaché reflect the typical or ordinary experience of

members of the public who use Fattaché.

Parts I and II of the proposed order prohibit the respondents from making the challenged claims, unless at the time of the representation, the respondents possess and rely on competent and reliable scientific evidence that substantiates the representation. Part II of the order also requires that if the respondents do not have substantiation for claims made through the use of consumer testimonials, that the advertisement disclose the results that users can generally expect to achieve, or the limited applicability of the endorser's experience to what users can generally expect to achieve.

Because this matter involves substances that could be regulated by the FDA as a food or drug, Part III of the order includes a ''safe harbor'' allowing the respondents to make any claims approved in any new drug application, or in any tentative final or final standard promulgated by that agency. In addition, Part IV of the proposed order includes a safe harbor for representations specifically permitted by regulations promulgated by the FDA pursuant to the Nutrition Labeling and Education Act of 1990.

The proposed order also requires the respondents to maintain materials relied on to substantiate clams covered by the order; to provide a copy of the consent agreement to all employees or representatives with duties affecting compliance with the terms of the order; and to file one or more compliance reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Benjamin J. Berman.

Acting Secretary.

[FR Doc. 98–17934 Filed 7–6–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 972–3071]

Nutrivida, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—emobodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 8, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Erika Wodinsky, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA. 94103. (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 26, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Nutrivida Inc. (''Nutrivida'') and Frank Huerta, an officer and director of the company.

The proposed consent order has been placed on the public record for sixty (60) days for the receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns Spanish language television advertisements, including program length ''infomercials,'' for the proposed respondents' Cartilet shark cartilage capsules. The Commission's complaint alleges that the proposed respondents made unsubstantiated representations that: (1) Cartilet shark cartilage capsules are effective in the symptomatic relief, treatment, or cure of cancer; (2) Cartilet shark cartilage capsules are effective in the symptomatic relief or treatment of rheumatism, arthritis, diabetes, fibroids, bursitis, circulatory problems, and cysts; and (3) testimonial from a consumer who appears in the advertisements for Cartilet shark cartilage capsules reflects the typical or ordinary experience of members of the public who use the product. The Commission's complaint also alleges that the proposed respondents falsely represented that studies prove that Cartilet shark cartilage capsules are effective in the symptomatic relief or treatment of cancer, arthritis, and diabetes and that the proposed respondents misrepresented that their infomercial for the Cartilet shark cartilage capsules was an independent television program and not paid advertising.

Paragraph I of the proposed order prohibits proposed respondents from representing that Nutrivida's Cartilet shark cartilage capsules or any other product are effective in the symptomatic relief, treatment, or cure of cancer or that Nutrivida's Cartilet shark cartilage capsules are effective in the symptomatic relief or treatment of rheumatism, arthritis, diabetes, fibroids, bursitis, circulatory problems, and cysts; unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order would prohibit for Cartilet shark cartilage capsules or any food, dietary supplement, or drug, representations about the health benefits, performance, or efficacy of such product unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the proposed order would prohibit for Cartilet shark cartilage capsules or any food, dietary supplement or drug, misrepresentations about the existence, contents, validity,

results, conclusions, or interpretations of any test, study, or research.

Paragraph IV of the proposed order would prohibit for any food, dietary supplement or drug the representation that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the food, dietary supplement or drug, unless: at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or respondents disclose in the same language as the predominant language that is used in the advertisement, clearly and prominently, and in close proximity to the endorsement or testimonial, either (1) what the generally expected results would be for users of the food, dietary supplement or drug, or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, the consumers should not expect to experience similar results.

Part V and VI of the proposed order contain provisions permitting certain claims that are approved for labeling by the FDA, either under the Nutrition Labeling and Education Act, a tentative or final standard or under any new drug application approved by the FDA.

Part VII of the proposed order would require proposed respondents to disclose ''THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]'' in television advertisements fifteen (15) minutes in length or longer, and to disclose a similar audio message in radio advertisements of fifteen (15) minutes in length or longer.

Part VIII of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict claims covered by the proposed order. Part IX of the proposed order requires distribution of a copy of the order to current and future officers and agents. Part X provides for Commission notification upon a change in the corporate respondent and Part XI requires Commission notification when the individual respondent changes his business or employment. Part XII requires the proposed respondents to keep and maintain all records demonstrating compliance with the terms and provisions of the order. Part XIII provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–17935 Filed 7–6–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 981–0211]

Sky Chefs, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 8, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Broyles, FTC/S–2105, Washington, DC 20580. (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 29, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted from Sky Chef, Inc., and its parents, Onex Corporation and Gerald W. Schwartz (collectively ''Proposed Respondents'') an Agreement Containing Consent Order (''Proposed Consent Order''). The Proposed Consent Order remedies the likely anticompetitive effects in the delivery of catering services to airlines at McCarran International Airport in Las Vegas, Nevada, that arise from the proposed acquisition of Ogden Aviation Food Services, Inc., by Proposed Respondents.

II. Description of the Parties and the Transaction

Sky Chefs, Inc., headquartered in Arlington, Texas, provides catering services to airlines in the United States and abroad. Its parent company, Onex Corporation, operates through a number of other subsidiaries that are involved in chain restaurant food service, electronics manufacturing, and other businesses. During 1997, Sky Chefs had total revenues of over $1 billion.

Ogden Corporation, headquartered in New York, is a global company providing a wide range of services in the aviation, entertainment, and energy industries. Ogden's wholly-owned indirect subsidiary, Ogden Aviation Food Services, Inc., and its wholly-owned subsidiary, Ogden Aviation Food Services (ALC), Inc., operate 11 kitchens serving in-flight food to more than 85 airlines at a number of locations, including eight major U.S. airports. Revenues for in-flight catering in 1997 are reported at $164 million.

On March 6, 1998, the parties signed a letter of intent contemplating that Sky Chefs, Inc., would purchase 100% of the voting common stock of Ogden Aviation Food Services, Inc., from Ogden Corporation. On May 7, 1998, the parties signed a stock purchase agreement that excluded the assets of Ogden's Las Vegas flight kitchen. On May 22, 1998, Ogden entered into an agreement to sell the Las Vegas flight kitchen to Dobbs International Services, Inc.

III. The Proposed Complaint and Consent Order

The Commission has entered into an agreement containing a Proposed Consent Order with Proposed Respondents in settlement of a proposed complaint alleging that the acquisition as originally proposed violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and that consummation of the acquisition as originally proposed would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act. The complaint alleges that the acquisition will lessen competition in the delivery of catering services to airlines at McCarran International Airport in Las Vegas, Nevada.

To remedy the alleged anticompetitive effects of proposed acquisition, the Proposed Consent Order prohibits Proposed Respondents, for ten (10) years after the consent order becomes final, from acquiring any concern that controls Ogden's Las Vegas catering operations without prior approval from the Commission. It also requires that, for ten (10) years, Proposed Respondents provide prior notice to the Commission before acquiring their only in-flight catering competitor at any airport in the United States.

Proposed Respondents are required to file annual compliance reports with the Commission for the next ten (10) years, with the first report due one year after the proposed order becomes final.

IV. Resolution of Antitrust Concerns

The Proposed Consent Order alleviates the alleged antitrust concerns arising from the acquisition in the delivery of catering services to airlines at McCarran International Airport in Las Vegas, Nevada.

In-flight caterers provide meals and beverages for consumption during aircraft flights. Catering services include the purchasing of food in accordance with airline specifications, preparation of meals, stocking of beverage carts, delivery of meals and carts to the aircraft, loading the galley, unloading of in-coming carts, utensils and trash, and cleaning and storage of carts and utensils.

Both Sky Chefs and Ogden provide in-flight catering services at McCarran International Airport in Las Vegas through their flight kitchens located at or near that airport. McCarran International Airport is a relevant antitrust geographic market because caterers at that airport could profitably raise prices by a small but significant and nontransitory amount without losing enough sales to flight kitchens in other areas to make such an increase unprofitable. Airlines cannot economically turn to other areas to obtain their Las Vegas catering services because of additional costs and quality problems associated with flying food in from more distant sources.

Sky Chefs and Ogden are the only companies that sell catering services to airlines at McCarran International Airport. The acquisition as originally proposed would eliminate Sky Chefs and Ogden as independent competitors in the provision of in-flight catering services at McCarran International Airport. The acquisition also would increase the ability of the combined Sky Chefs/Ogden business unilaterally to raise prices and reduce the quality of catering services at McCarran International Airport. New entry would not be timely, likely or sufficient to defeat an anticompetitive price increase or quality reduction. An entrant would need to capture a large share of the catering business at McCarran International Airport in order to reach a viable scale of operation. Such new entry would entail substantial sunk costs.

To remedy the potential anticompetitive effects of the transaction as originally proposed, Proposed Respondents and Ogden amended their stock purchase agreement to exclude Ogden's in-flight catering assets serving the Las Vegas airport. Subsequently, Ogden sold its Las Vegas in-flight catering assets to Dobbs International Services. The Proposed Consent Order prohibits Proposed Respondents, for ten (10) years, from acquiring an interest in those assets.

V. Opportunity for Public Comments

The Proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make the order final.

The purpose of this analysis is to invite public comment on the Proposed Consent Order to aid the Commission in its determination of whether to make final the Proposed Consent Order. This analysis does not constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–17936 Filed 7–6–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10 (d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of July 1998:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: July 10, 1998 8:30 a.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Montrose Room, Rockville, Maryland 20852.

Open July 10, 8:30 a.m. to 9:00 a.m. Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications requesting support for small research projects focused on the quality, appropriateness, and effectiveness of health care services and access to those services.

Agenda: The open session of the meeting on July 10, from 8:30 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the Panel will be reviewing and discussing grant applications. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b (c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Jenny Griffith, Committee Management Officer, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1455 × 1036.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 23, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–17924 Filed 7–6–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

General Reorganization; Statement of Organization, Functions, and Delegations of Authority

Part E, Chapter E (Agency for Health Care Policy and Research), of the Statement of Organization, functions, and Delegations of Authority for the Department of Health and Human Service (61 FR 15955–58, April 10, 1996, and 62 FR 61511–12, November 18, 1997) is amended to reflect organizational changes within the Agency for Health Care Policy and Research (AHCPR). This action is necessitated by a reordering of Agency priorities and the need to more effectively align and utilize Agency resources. The principal organizational and functional changes required by this action involve:

A. Abolishing the Office of Planning and Evaluation, with certain functions being reassigned to other components in AHCPR;

B. Abolishing the Center for Information Technology, with a limited number of its functions absorbed by other components of the Agency;

C. Retitling the Office of Scientific Affairs to be more reflective of expanded functions, and;

D. Establishing a staff-level office within the Office of the Administrator to carry out the functions of the Center for Health Information Dissemination, which will subsequently be abolished by this action.

Other minor changes have been made consistent with this reorganization.

Under *Section E–10, Organization,* delete entries A. through M. and insert the following:

A. Immediate Office of the Administrator
B. Office of Management
C. Office of Policy Analysis
D. Office of Research Review, Education, and Policy
E. Office of Health Care Information
F. Center for Cost and Financing Studies
G. Center for Organization and Delivery Studies
H. Center for Outcomes and Effectiveness Research
I. Center for Primary Care Research
J. Center for Quality Measurement and Improvement
K. Center for Practice and Technology Assessment

Under *Section E–20, Functions,* delete the titles and statements for the *Office of Planning and Evaluation (EAB),* the *Office of Scientific Affairs (EAE),* the *Center for Health Information Dissemination (EF),* and the *Center for Information Technology (EG).*

Within the statement for the *Immediate Office of the Administrator (EA),* delete (2) and insert the following: ''(2) plans, directs, coordinates, and evaluates the Agency's research, training programs, and dissemination activities, including particular focus areas, such as special populations, initiatives, and administrative policies and procedures;''.

Within the statement for the *Office of Policy Analysis (EAC),* make the following changes:

Delete (6) and insert the following: ''(6) coordinates the legislative activities of the Agency including the development of legislative proposals and analysis of health legislative initiatives, and reports to Congress;''

Following (8), insert the following: ''(9) coordinates review and clearance of Department and other Federal policies and regulations; and'' and renumber the old (9) as (10).

Following the statement for the *Office of Policy Analysis (EAC),* insert the following:

Office of Research Review, Education, and Policy (EAE). Directs the scientific review process for grants and Small Business Innovation Research (SBIR) contracts, the assignment of applications to Agency Centers, manages Agency research training programs, and evaluates the scientific contribution of proposed and on-going research, demonstrations, and evaluations. Specifically: (1) directs the process for selecting, reviewing, and funding grants and reviewing SBIR contracts for scientific merit and program relevance; (2) assigns grant applications to Centers for administrative action; (3) manages the process for making funding decisions for grants; (4) directs Agency research training programs and implementation of the National Research Service Award authority; (5) manages the committee management and scientific integrity processes for the intramural and extramural programs of the Agency; (6) develops and coordinates clearance of peer review regulations, as required, policy notices and program announcements; (7) facilitates Agency-wide communication and coordination regarding extramural policy, planning, and analysis; and (8) represents the Agency in meetings with experts and organizations on issues related to the administration of the Agency's scientific programs.

Office of Health Care Information (EAF). Designs, develops, implements, and manages programs for disseminating the results of Agency activities. Specifically: (1) Communicates the results and significance of health services research and other AHCPR initiatives to the health care industry, health care providers, consumers and patients, policy makers, researchers, and the media with particular emphasis on communicating AHCPR initiatives in the ways each of these constituencies are most interested; (2) manages the editing, publication, and information distribution processes of the Agency, including Freedom of Information Act administration; (3) provides the administrative support for reference services and the distribution of technical information to Agency staff; (4) manages the public affairs activities of the Agency, Agency clearinghouse for responding to requests for information and technical assistance, and a program for consumer information about health care research findings; (5) directs a user liaison program to provide health care research and policy findings to Federal, State and local public officials, and other audiences as appropriate; (6) evaluates the effectiveness of Agency dissemination strategies and implements changes indicated by such evaluations; and (7) represents the Agency in meetings with Department and Public Health Service representatives on press releases, media events, and publication clearance.

All delegations and redelegations of authority to officers and employees of the Agency for Health Care Policy and Research which were in effect immediately prior to the effective date of this reorganization shall continue in effect pending further redelegation, provided they are consistent with this reorganization.

These changes are effective upon date of signature.

Dated: June 18, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–17923 Filed 7–6–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

Name: CLIAC, Workgroup on Genetic Testing.

Times and Dates: 8:30 a.m.–5 p.m., July 30, 1998; 8:30 a.m.–5 p.m., July 31, 1998.

Place: CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 85 people.

Purpose: This workgroup advises CLIAC on issues related to Genetic Testing.

Matters to be Discussed: The workgroup will discuss and revise recommendations for general or specific Clinical Laboratory Improvement Amendments (CLIA) requirements for pre-analytic, analytic, and post-analytic components of genetic testing.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: John C. Ridderhof, Dr. P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NW Mailstop G–25, Atlanta, Georgia 30341, telephone 770/488–8076, FAX 770/488–8282.

Dated: June 26, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17917 Filed 7–6–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Laboratory Evaluation of Novel Personal Heat Strain Monitors in Young and Older Wearers of Protective Clothing.

Time and Date: 1 p.m.–3:30 p.m., July 21, 1998.

Location: NIOSH, CDC, Room H–203, 1095 Willowdale Road, Morgantown, WV 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 35 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding the technical and scientific aspects of the study protocol, A Laboratory Evaluation of Novel Personal Heat Strain Monitors in Young and Older Wearers of Protective Clothing, being conducted at NIOSH. Participants on the peer review panel will review the study protocol and provide individual advice on the conduct of this study. Viewpoints and suggestions from industry, labor, academia, other governmental agencies, and the public are invited.

Contact Person for Additional Information: Nina L. Turner, NIOSH, CDC, M/S 35, 1095 Willowdale Road, Morgantown, West Virginia, 26505–2888, telephone 304/285–5976.

Dated: June 30, 1998.

Carolyn J. Russell.

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–17916 Filed 7–6–98; 8:45 am]

BILLING CODE 4160–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0492]

ICI PLC; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ICI PLC has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of N,N-bis (2-hydroxyethyl) alkyl (C_{13}-C_{15}) amine as an antistatic agent in polypropylene homo- and copolymers intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 8B4602) has been filed by ICI PLC, c/o ICI Surfactants, P.O. Box 8340, Wilmington, DE 19803–8340. The petition proposes to amend the food additive regulations in § 178.3130 *Antistatic and/or antifogging agents in food-packing materials* (21 CFR 178.3130) to provide for the expanded safe use of N,N-bis (2-hydroxyethyl) alkyl (C_{13}-C_{15}) amine as an antistatic agent in polypropylene homo- and copolymers intended for contact with food.

The agency has determined under 21 CFR 25.32(i) 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.

Dated: June 17, 1998.

Linda M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–17877 Filed 7–6–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Team Biologics; Workshop for Manufacturers of Licensed In Vitro Diagnostics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER) and the Office of Regulatory Affairs (ORA) is announcing the following workshop for the biologics industry: Team Biologics: Workshop for Manufacturers of Licensed In Vitro Diagnostics. The topics to be discussed include information for manufacturers of licensed in vitro diagnostics on team biologics, good manufacturing practices, and compliance and enforcement issues. Questions submitted by industry prior to the workshop will be addressed by FDA staff.

Date and Time: The workshop will be held on Friday, August 7, 1998, 8 a.m. to 5 p.m.

Location: The workshop will be held at the Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, MD 20814, 301–657–6406.

Contact: Kathy A. Eberhart, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–49), 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX 301–827–3079, e-mail ''eberhart@cber.fda.gov''.

Registration: Fax registration information (including name, title, firm name, address, telephone, and fax number) and questions to the contact person by Friday, July 24, 1998. There is no registration fee for the workshop. Space is limited, therefore interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact Kathy A. Eberhart at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA has established a framework for a partnership between ORA and CBER called Team Biologics. This partnership will use the diverse skills and knowledge of both ORA and CBER staffs to focus resources on inspectional and compliance issues in the biologics area.

The goal of Team Biologics is to ensure the quality and safety of biological products and quickly resolve inconsistencies and bring products into compliance. It is designed to promote uniformity between CBER and the field and among FDA field components associated with inspections, policy implementation, and current good manufacturing practice interpretation.

In April 1998, the responsibility for inspecting manufacturers of licensed in vitro diagnostics was transferred to Team Biologics investigators. The purpose of this workshop is to provide an overview of the Team Biologics concept to this segment of regulated industry, share the agency's experience with Team Biologics' inspections of manufacturers of licensed in vitro diagnostics to date, and provide manufacturers with an overview of FDA's expectations under this program.

The agenda and any other relevant information will be available electronically via the Internet at ''http://www.fda.gov/cber/scireg.htm''.

Transcripts: Transcripts of the workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the workshop at a cost of 10 cents per page. FDA will videotape the workshop and copies of the tapes will also be made available through the Freedom of Information Office.

Dated: June 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–17878 Filed 7–6–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–96–6000]

Memorandum of Understanding Between the Food and Drug Administration and the Defense Alliance for Advanced Medical Terminology

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Defense Alliance for Advanced Medical Terminology (DAAMT). The purpose of the MOU is to enable government agencies to exchange information and jointly pursue research endeavors related to medical device safety and effectiveness.

DATES: The agreement became effective October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas B. Shope, Center for Devices and Radiological Health (HFZ–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3314, ext. 32.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of an MOU.

Dated: June 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

BILLING CODE 4160–01–F

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DEFENSE ALLIANCE FOR ADVANCED MEDICAL TECHNOLOGY
AND THE
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION
September 1996

I. Purpose: A collaborative arrangement will be established between the Food and Drug Administration's Center for Devices and Radiological Health (FDA) and the Defense Alliance for Advanced Medical Technology (DAAMT). As the Department of Defense and other Government agencies move toward dual use and application of emerging technologies, especially in the area of applying these technologies to the development of new medical devices, improved cooperation, coordination and communication between the agencies sponsoring research and the FDA is in the national interest. This agreement will enable engineers, physicians and scientists from each organization to exchange information and jointly pursue research endeavors related to medical device safety and effectiveness.

II. Background: Over the past century, a vast array of technologies and technology support infrastructure has been developed for the national security requirements of the United States. Most of these resources reside under either the Department of Defense or the Department of Energy and are part of the science and technology base within the national laboratory structure. These resources have been directed primarily toward developing conventional and nuclear weapons systems used in defense.

With the recent changes in policy, priorities and alignments occasioned by the dissolution of the Soviet Union and the changing face of world political/social/economic realities, goals and resource utilization within the U.S. Government have been reevaluated, especially in the defense-related agencies. As a result, new priorities in technological development have emerged. Chief among these is the concept of dual-use technologies. Dual-use technology is basically the application of technologies to fields outside the initial field developing the technology. Increasing emphasis has been placed upon dual use by the current administration. As a result, the defense technology base is having to adapt to new paradigms in the area of technology development and cross-agency cooperation. Adding to the emphasis on dual use is the necessity for maintaining a viable technology base that can still meet the needs of the national defense. Meaningful dual-use technology guarantees a broader application base for the technology, while in no way detracting from the primary mission or capability of the laboratory performing the research. These highly desirable attributes are beginning to foster a wave of innovative thinking on multiple applications for defense technologies.

One of the most attractive and beneficial areas in which dual-use technology can be applied is the field of medical technology. Many of the technologies that have been

developed for defense applications are directly applicable to the medical field. This is not surprising given the striking similarities that can be found between the medical and the defense fields. For example, the concepts of target, target signature, identification of friend or foe, all have close analogs in the medical field (tissue identification, tissue biopsy, determination of benign versus malignant tissue). Further, not just technologies, but methodologies developed for use in the defense fields can also be applied to medical programs (test and evaluation planning, problem solving, and technology strategies to name a few). Unfortunately, there has been limited communication between the medical and defense technology communities. There are a variety of reasons for this, not the least of which are differences in culture and training between the two communities. Nonetheless, there still remain significant ways in which these two communities can work together for the benefit of both, as well as society.

Toward this end, the Defense Alliance for Advanced Medical Technology (DAAMT) was organized to provide a basis and framework to:

› break down the barriers that impede communication between the two communities.

› generate and promote innovative concepts and applications of defense technologies to the medical field and vice versa.

› identify and pursue resources and support for these applications and concepts.

› develop, improve, and enable the transition of these technologies and concepts to the Government and private sector to promote current national goals of improved health care and national defense.

The DAAMT was established by a Memorandum of Understanding between the USAF Wright Laboratory and the Walter Reed Army Institute of Research in October 1994 for an Alliance for the Cooperate Pursuit and Development of Defense Technologies for Medical Applications. Since its establishment, several other Federal agencies have joined DAAMT.

III. Substance of Agreement:

A. FDA's Center for Devices and Radiological Health will participate as a full member in the DAAMT without any transfer of funds from the FDA to the DAAMT. In place of the DAAMT membership fee, FDA will, through CDRH, contribute to the DAAMT goals and objectives by providing to DAAMT members, their contractors and other interested parties expert consultation regarding the regulatory process for medical devices and medical device development, testing and evaluation (both pre-clinical and clinical). The FDA will also provide consultation and training on regulatory requirements applicable to new devices. The FDA will also collaborate with DAAMT members by both providing access to FDA specialized laboratory

facilities and participating in projects utilizing DAAMT-member specialized laboratory facilities for specific projects of mutual interest. Specific projects will be planned and executed on a project-by-project basis by mutual agreement of the parties involved. Should specific projects require the transfer of funds, assignment of staff or permanent transfer of equipment, an appropriate Interagency Agreement will be developed for that purpose.

B. The DAAMT will include the FDA in its projects and endeavors to promote dual use of medical device technology and technology relevant to medical device development. DAAMT members will collaborate with FDA by providing access to their specialized laboratory facilities and participate in projects utilizing FDA's specialized laboratories. Specific projects will be planned and executed on a project-by-project basis by mutual agreement of the parties involved.

C. The Memorandum of Understanding between USAF Wright Laboratory and Walter Reed Army Institute of Research, Division of Surgery for an Alliance for the Cooperative Pursuit and Development of Defense Technologies for Medical Applications dated 4 October 1994 and the Addendum to that Memorandum of Understanding dated 10 February 1995 shall provide the basis for the organization and operation of the Defense Alliance for Advanced Medical Technology and the Food and Drug Administration's participation in the DAAMT.

IV. Name and Address of Participating Parties:

Defense Alliance for Advanced Medical Technology
Colonel William P. Wiesmann, Chair
Walter Reed Army Institute of Research
Division of Surgery, Building 40
14th and Dahlia Streets
Washington, DC 20307
TELEPHONE: (202) 782-3791

Center for Devices and Radiological Health
Food and Drug Administration, DHHS
9200 Corporate Boulevard
Rockville, Maryland 20850
TELEPHONE: (301) 443-4690

V. Liaison Officers:

For the Defense Alliance for Advanced Medical Technology:

William P. Wiesmann, M.D.
Colonel, USA, Medical Corps
Director, Division of Surgery, Walter Reed Army Institute of Research
Chair, Defense Alliance for Advanced Medical Technology
Division of Surgery, Building 40
14th and Dahlia Streets
Washington, DC 20307
TELEPHONE: (202) 782-3791

For the Food and Drug Administration:

Elizabeth D. Jacobson, Ph.D.
Deputy Director for Science, Center for Devices and Radiological Health, FDA
9200 Corporate Boulevard (HFZ-2)
Rockville, Maryland 20850
TELEPHONE: (301) 443-4690

FDA Technical Liaison:

Thomas B. Shope, Ph.D.
Acting Director, Division of Electronics and Computer Science (HFZ-140)
Office of Science and Technology
Center for Devices and Radiological Health, FDA
Rockville, Maryland 20857
TELEPHONE: (301) 443-3314, Extension 32

VI. Period of Agreement: This agreement becomes effective upon acceptance by both parties, and will continue in effect for a period of five (5) years from date of signature. It may be modified by mutual written consent or terminated by either party upon a 30-day advance written notice to the other party. During the last six (6) months of the agreement, it will be reviewed by both parties as to the need to continue the agreement.

VII. Funding of Project: No funding will be provided by the FDA to DAAMT as part of this agreement. FDA personnel and laboratories will collaborate with other members of the DAAMT on projects of mutual interest. Facilities and equipment of each party will be made available to the other in accordance with individual project plans and agreements.

VIII. Reporting Requirements: Reporting responsibility will be determined on a case-by-case basis based upon project requirements. Reports will be provided as necessary to all DAAMT members.

IX. Schedules and Milestones: Schedules and milestones for collaborative projects will be developed by mutual agreement for individual projects.

X. Disposition of Data: The project plan for each collaborative project will specify the disposition of data which may result from the project. Data collected by DAAMT members, including FDA, in the course of collective activities will be shared as described in the specific project plan. If the results of data collected in joint activities are published, both DAAMT and the FDA will be acknowledged. Data, whose disclosure by FDA is prohibited, will not be shared unless appropriate safeguards are established in the individual project plan.

XI. Sharing Data and Information: FDA and DAAMT recognize the need to protect trade secret, confidential commercial, financial, personal and medical information from disclosure. However, FDA and DAAMT believe that an exchange of data and information to the extent allowed by law is necessary to achieve the ends of this agreement. Therefore, to the extent allowed under 21 U.S.C. § 331(j), 21 U.S.C. § 360j(c), 42 U.S.C. § 353g(d), 42 U.S.C. § 263i(e), and 21 C.F.R. Part 20, FDA agrees to share data and information with DAAMT upon request.

XII. Disclosure of Data and Information in Response to Requests: If disclosure of data or information exchanged under this MOU is requested by a request under the Freedom of Information Act, a Congressional inquiry, or pursuant to other regulatory responsibilities, the agency that receives the request shall notify the agency that provided the information if they are not the same agency. The notified agency will be responsible for making any needed contact with the submitter of the protected information and will accept the responsibility for evaluating the submitter's comments prior to rendering the disclosure determination.

To preserve maximum control over actual disclosure of its own records, each agency shall retain legal authority and the commensurate responsibility over disclosure of those documents provided to the other agency.

XIII. Government Property/Facilities: Both parties will make available personnel and facilities as required by individual projects based on the mutually developed project plans.

APPROVED AND ACCEPTED for the Defense Alliance for Advanced Medical Technology

BY _____ 10/17/96
William P. Wiesmann, M.D. DATE
COL, USA, MC
Chair, Defense Alliance for Advanced Medical Technology

APPROVED AND ACCEPTED for the Food and Drug Administration

BY _____ 10/17/96
Elizabeth D. Jacobson, Ph.D. DATE
Deputy Director for Science
Center for Devices and Radiological Health
Food and Drug Administration

[FR Doc. 98–17859 Filed 7–6–98; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-0265]

Guidance for Industry on Qualifying for Pediatric Exclusivity; Availability; Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for submissions.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act.'' FDA is also requesting the submission of proposed pediatric study requests. This guidance is intended to assist industry in interpreting newly enacted provisions of the Food and Drug Administration Modernization Act of 1997 (Modernization Act). This guidance will remain in effect until superseded by regulations or new guidance.

DATES: Written comments may be submitted on the guidance by October 5, 1998. General comments on agency guidance documents are welcome at any time. Sponsors of applications for marketed drugs that appear in the priority section of the ''List of Approved Drugs for Which Additional Pediatric Information May Produce Health Benefits in the Pediatric Population'' (the list) (see Docket No. 98N–0056) (63 FR 27733) for which any exclusivity or patent period expires on or before March 31, 1999, should submit proposed pediatric study requests to the appropriate new drug review division with a facsimile copy to Khyati N. Roberts (address below) on or before August 31, 1998, for expedited consideration.

ADDRESSES: Submit written requests for single copies of ''Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Manufacturers Assistance and Communications Staff (HFM–42), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **Supplementary Information** section of this document for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Khyati N. Roberts, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779, FAX 301–594–5493, e-mail ''robertsk@cder.fda.gov'', or David W. Feigal, Center for Biologics Evaluation and Research (HFM–6), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0376, FAX 301–827–0440, e-mail ''feigal@cber.fda.gov''.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a guidance for industry entitled ''Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act.'' Section 111 of the Modernization Act (Pub. L. 105–115), signed into law by President Clinton on November 21, 1997, created section 505A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355a). Section 505A of the act permits certain applications to obtain an additional 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits information relating to the use of the drug in the pediatric population. FDA plans to issue regulations through notice-and-comment rulemaking to implement the pediatric exclusivity provisions of the Modernization Act. The agency is publishing this procedural guidance to explain how the agency intends to implement section 505A of the act in the interim. The guidance will be updated as appropriate. This guidance will remain in effect until superseded by regulations or new guidance.

This guidance describes FDA's current thinking on how sponsors may qualify for pediatric exclusivity under section 505A of the act. The guidance includes the following topics: (1) Whether studies for certain drugs will be requested under section 505A(a) or (c), (2) the definition of pediatric studies, (3) the content and format of an FDA request for pediatric studies, (4) how an applicant can obtain an FDA written request, (5) the content of a written agreement for the conduct of pediatric studies, (6) the definition of commonly accepted scientific principles, (7) the filing of reports of studies, (8) acceptance of studies by FDA, (9) scope and nature of pediatric exclusivity, (10) publication of exclusivity determinations, and (11) treatment of information submitted in support of a request for pediatric exclusivity.

This guidance document is being implemented immediately without prior public comment because the guidance is needed to implement the Modernization Act. However, the agency wishes to solicit comment from the public, and it is providing a 90-day comment period and establishing a docket for the receipt of comments. FDA will also consider comments on pediatric exclusivity submitted to Docket No. 98N–0056 (containing the ''List of Approved Drugs for Which Additional Pediatric Information May Produce Health Benefits in the Pediatric Population'') before July 7, 1998.

This guidance document represents the agency's current thinking on the implementation of section 505A of the act and pediatric exclusivity. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one

copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

II. Request for Proposed Pediatric Study Requests

Sponsors of applications for marketed drugs that appear in the priority section of the list (see Docket No. 98N–0056) for which any exclusivity or patent period expires on or before March 31, 1999, should submit proposed pediatric study requests to the appropriate new drug review division with a facsimile copy to Khyati N. Roberts (address above) on or before August 17, 1998, for expedited consideration. These sponsors should label their proposals ''Proposed Pediatric Study Request—Expiration on or Before March 31, 1999.'' FDA will endeavor to issue Written Requests on or before October 15, 1998, for adequate proposals or as soon thereafter as possible. FDA will ask sponsors of proposals that are submitted before August 31, 1998, and that are not adequate to resubmit their proposal. The resubmitted proposal will be processed based on the date of resubmission. Other proposed pediatric study requests may also be submitted during this period, but they will be processed in the order described in the guidance. As FDA gains experience with this process, it may provide additional guidance regarding the timing of a proposed pediatric study request.

III. Paperwork Reduction Act of 1995

This notice contains no new collections of information. The information requested for proposed pediatric studies is already covered by the collection of information on IND regulations (21 CFR part 312) submitted to OMB for review and clearance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB approved the information collection and assigned OMB control number 0910–0014. The approval expires on December 31, 1999.

IV. Electronic Access

Copies of this guidance for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' and at 'http://www.fda.gov/cber/guidelines.htm''.

Dated: June 24, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–17876 Filed 7–6–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–844263

Applicant: Dr. Brenda Molano-Flores, Illinois Natural History Survey/Midewin National Tallgrass Prairie, Wilmington, Illinois.

The applicant requests a permit to take (collect infructescence, flowers, and leaf tissue samples) endangered Leafy Prairie Clover (*Dalea foliosa*) plants located in the Midewin National Tallgrass Prairie (Federal jurisdiction). Activities are proposed for scientific research aimed at survival and enhancement of the species in the wild.

PRT–842503

Applicant: Robert Mies and Kimberly Williams, The Organization for Bat Conservation, Williamston, Michigan.

The applicant requests an amendment to permit number PRT–842503 to take (capture, handle, band) endangered Indiana Bat (*Myotis sodalis*) at locations within the States of Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin) where they occur. Activities are proposed for scientific research aimed at survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5332); FAX: (612/713–5292).

Dated: June 25, 1998.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–17860 Filed 7–6–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24–1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0034

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information from those persons who wish to transfer interest in oil and gas or geothermal leases by assignment of record title, or transfer operating rights (sublease) in oil and gas or geothermal leases under the terms of the mineral leasing laws.

DATES: Comments on the proposed information collection must be received by September 8, 1998, to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401 LS Bldg., Washington, D.C. 20240.

Comments may be sent via Internet to: !WO140attmail.com. Please include ''Attn: 1004–0034'' and your name and return address in your Internet message.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401 L Street, NW, Washington, D.C.

Comments will be available for public review at the L Street address during regular business hours (7:45 A.M. to 4:15 P.M., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Barbara Gamble, Fluids Minerals Group, (202) 452–0340.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed collection of information is

necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) authorize the Secretary of the Interior to issue leases for development of Federal oil and gas and geothermal resources. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands), authorizes the Secretary to lease lands acquired by the United States (30 U.S.C. 341–359). The Department of the Interior Appropriations Act of 1981 (42 U.S.C. 6508) provides for the competitive leasing of lands for oil and gas in the National Petroleum Reserve-Alaska (NPR–A). The Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41) provides the basis under which the Secretary can issue certain leases for lands being drained of oil and gas. The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*) provides the authority for leasing lands acquired from the General Services Administration.

The regulations at 43 CFR 3106, 3135, and 3206 outline the procedures for assigning record title interest and transferring operating rights in a lease to explore for, develop, and produce oil and gas resources and geothermal resources respectively.

The information provided by an applicant is needed to comply with the regulations in order to process assignments of record title interest or transfers of operating rights (sublease) in a lease for oil and gas or geothermal resources issued under the provisions of the laws cited above.

The information collection requirements are submitted to the BLM by the assignor/transferor in accordance with 30 U.S.C. 187a, which specifies that leases may be assigned or subleased ''subject to final approval by the Secretary,'' and with the regulations at 43 CFR 3106, 3135, and 3241. The forms are submitted to the appropriate BLM office only when the transferor/assignor initiates the action and are used to assign/transfer all or part of a record title interest, of operating rights, or overriding royalty or similar interest in a lease to another party under the terms of the mineral leasing laws.

Since the filing of the assignment or transfer for final Secretarial approval is required by law, the forms are used to help the assignor/transferor provide the basic information needed by the BLM to identify ownership of the interest being assigned/transferred and qualifications of the transferee/assignee to take interest. The information is necessary to ensure that the assignee/transferee is qualified, in accordance with the statutory requirements, to obtain the interest sought in an oil and gas or geothermal lease and that excessive acreage is not acquired in violation of statutory limits.

It is estimated that approximately 60,000 reports will be filed annually with an estimated completion time of ½ hour each, for a total annual burden of 30,000 hours. Respondents are individuals, small businesses, and large corporations.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: June 29, 1998.

Carole Smith,

Bureau Clearance Officer.

[FR Doc. 98–17931 Filed 7–6–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 27, 1998. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 22, 1998.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Lawrence County

Buercklin, Dr. F.W., House, 104 Main St., Portia, 98000882

Faulkner County

Sailor, C.L., House, Wilson St., Bigelow, 98000880

Little River County

St. Barnabas Episcopal Church, Jct. of Tracy Lawrence Ave. and Bell St., Foreman, 98000910

Prairie County

Barrett—Rogers Building, 100 N. Hazen Ave., Hazen, 98000881

COLORADO

Jefferson County

Churches Ranch, 17999 W. 60th Ave., Arvada, 98000883

CONNECTICUT

Fairfield County

Kings Highway North Historic District, Roughly along Kings Hwy. N, from Wilton Rd. to Woodside Ave., Westport, 98000884

GEORGIA

Gwinnett County

Alcovy Road Grist Mill, 1564 Alcovy Rd., Dacula vicinity, 98000885

HAWAII

Honolulu County

Schofield Barracks Historic District, Roughly bounded by Foote Ave., Wright Ave., McMahon Rd., and Wright-Smith Rd., Wahiawa vicinity, 98000889

MARYLAND

Anne Arundel County

Howard's Inheritance, 721 Howard's Loop, Annapolis vicinity, 98000887

Charles County

Hermitage, The, Washington Ave., La Plata, 98000886

MONTANA

Chouteau County

Square Butte Jail, Salsbury Ave., Square Butte, 98000888

NEBRASKA

Douglas County

Beebe and Runyan Furniture Showroom and Warehouse (Warehouses in Omaha MPS), 105 S. 9th St., Omaha, 98000895

Hospe, Anton, Music Warehouse (Warehouses in Omaha MPS), 109–111 S. 10th St., Omaha, 98000896

Kirschbraun and Sons Creamery, Inc. (Warehouses in Omaha MPS), 901 Dodge St., Omaha, 98000894

Saline County

Sokol Pavilion, 315 S. Wilson St., Wilber, 98000892

Sarpy County

Springfield Community Hall, 104 Main St., Springfield, 98000893

Scotts Bluff County

Fontenelle Apartment House, 1424 Fourth Ave., Scottsbluff, 98000891

NORTH CAROLINA

Cabarrus County

Boger—Hartsell Farm, Jct. of US–801 and NC1148, Concord vicinity, 98000890

PENNSYLVANIA

Fayette County

Gallatin School, 165 Gallatin Ave., Uniontown, 98000902
Newmyer, Peter and Jonathan, Farm, 3165 Richey Rd., Bullskin Township, 98000901

Mifflin County

Embassy Theatre, 6 S. Main St., Lewistown, 98000899

Montgomery County

Oak Park Historic District, Roughly along Oak Park Rd., Park Ave., Oak Blvd., Forest Ave., and Squirrel Ln., Hatfiels Township, 98000897

Philadelphia County

Fair Hill Burial Ground, Roughly along Germantown, and Indiana Aves., Ninth, and Cambria Sts., Philadelphia, 98000900

Pike County

Milford Historic District, Roughly along Broad, Harford, Ann, Catharine, High, and Fourth Sts., Milford, 98000898

Westmoreland County

Mount Pleasant Historic District, Roughly along Main, S. Church, Eagle, Walnut and College Sts., Mount Pleasant, 98000903
New Kensington Downtown Historic District (Aluminum Industry Resources of Southwestern Pennslyvania), Roughly bounded by 8th Ave., 3rd St., 11th Ave., and Barnes Ave., New Kensington, 98000904

UTAH

Sanpete County

Metcalf, James and Caroline M., House, 290 E 500 S, Gunnison, 98000905

VERMONT

Orange County

Fairlee Railroad Depot, Between US 5 and Boston and Maine Railroad Tracks, Failee, 98000906

WYOMING

Albany County

North Albany Clubhouse, Address Restricted, Garrett Route vicinity, 98000908

Park County

Ralston Community Clubhouse, 969 Carbon St., Ralston, 98000907

Sweetwater County

Taliaferro House, 106 Cedar St., Rock Springs, 98000909

A Request for Removal has been received for the following resources:

OREGON

Lincoln County

Drift Creek Covered Bridge (Oregon Covered Bridges TR), Drift Creek Rd., over Drift Creek, Lincoln City vicinity, 79002106

Yamhill County

Dayton Opera House (Dayton MPS), 318 Ferry St., Dayton, 87000342
Dayton Auto and Transfer Co. Building (Dayton MPS), 411 Ferry St., Dayton, 87000337

[FR Doc. 98–17861 Filed 7–6–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance

[OJP(BJA)–1150]

Prison Industry Enhancement Certification Program Guideline

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), Justice.

ACTION: Proposed Guideline for public comment.

SUMMARY: The Office of Justice Programs, Bureau of Justice Assistance (BJA), is issuing this proposed revision to the Prison Industry Enhancement Certification Program (PIECP) Guideline, 50 FR 12661–64 (March 29, 1985). Under Title 18 U.S.C. 1761(c), BJA certification excepts participating agencies from certain Federal restraints placed on the marketability of prison-made goods by permitting the transport of such goods in interstate commerce and the sale of such goods to the Federal government. This guideline reflects efforts by the Bureau of Justice Assistance to enhance guidance to the field through amendments proposed to the initial guideline published in March 1985. Since that time, there have been amendments to the statutory authority governing the administration of the PIECP and operations issues emerging at cost accounting centers. As a result, BJA seeks to clarify for the field the applicable statutes and guidelines. This revision provides a more comprehensive and responsive document to promote compliance with and direction for PIECP.

The publication of this proposed guideline is considered to be a Federal action that will not significantly affect the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

DATES: All comments received on or before September 8, 1998 will be considered in drafting the Final Guideline.

ADDRESSES: Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, N.W., Washington, D.C. 20531.

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I. Introduction: Program Purposes and Objectives

The Prison Industry Enhancement Certification Program (PIECP), codified at 18 U.S.C. 1761(c), was first

authorized by the Justice System Improvement Act of 1979, Pub. L. 96–157, 93 Stat. 1215. The PIECP was expanded from 7 to 20 pilot projects under the Justice Assistance Act of 1984, Pub. L. 98–473 § 609k(a)(1), 98 Stat. 2077, 2102. In 1990, The Crime Control Act of 1990, Pub.L. 101–647 § 2906, 104 Stat. 4789, 4914, raised to 50 the number of PIECP projects that may be excepted by the Bureau of Justice Assistance (BJA) from certain Federal restrictions on the marketability of prison-made goods, including the Ashurst-Sumners Act (18 U.S.C. 1761(a)) and the Walsh-Healey Act (41 U.S.C. 35).

PIECP has grown since its inception in 1979, with 38 prison work pilot projects now certified throughout the country. Prison administrators find PIECP participation an effective way to address idleness among ever-increasing prison populations and as a cost-efficient method for providing inmates with marketable job skills. Taxpayers benefit because PIECP inmate wage deductions result in reductions in incarceration costs. Inmate wages benefit society, generally, in that deduction amounts are authorized to address victim compensation, inmate family support needs, and taxes. Lastly, PIECP industries obtain broad market access for their products because they are excepted from the Ashurst-Sumners Act prohibition against the interstate transport of prison-made goods and from the Walsh-Healey Act prohibition against certain contract sales of prison-made goods to the Federal government.

BJA issued a Guideline to implement this program (50 FR 12661–64) on March 29, 1985 and now publishes revisions in this Proposed Guideline to provide programmatic clarification based on experience gained over the past 13 years. The legislative underpinnings of relevant laws are examined to ensure that program administration practices are consistent with Congressional intent and that the scope of their applicability is clearly defined. Refined administrative practices are set forth for comment.

II. Background of the Prison Industry Enhancement Certification Program (PIECP)

a. Legislative History

1. Unregulated Prison Labor

The 19th Century evolution of industrial capitalism and private sector use of prisoner labor spawned a number of conditions that adversely affected several major segments of society. By the turn of the 20th Century, these segments joined in an organized appeal to Congress and state legislatures nationwide. They collectively asserted that the production and distribution of unregulated prisoner-made goods in interstate commerce needed to be eliminated or, at a minimum, controlled.

Human rights activists turned the public's attention to poor prison work conditions and inmate exploitation. Organized labor argued that the demand for prison-made products, anywhere, necessarily displaced a possible demand for the product of free labor. Free enterprise manufacturers were disturbed because manufacturers of prison-made goods did not bear the burden of overhead costs borne by private industry competitors, such goods were being sold at below market prices. The viability of private industry competition was thereby undercut. In December 1924, Herbert Hoover, as Secretary of Commerce, held a conference on the subject of the ''ruinous and unfair competition between prison-made products and free industry and labor.'' 70 *Cong. Rec.* S656 (1928).

Then-Secretary Hoover authorized an advisory committee to study the problem. This committee issued a report in 1928 wherein Arthur Davenport, Chairman of the Advisory Committee on Prison Industries, submitted the following report conclusions to Congress:

> (1) Certain major factors in the normal cost of production which must be met by all manufacturers are entirely absent in the case of prison industries. If anything approaching normal efficiencies of operation can be attained with the use of prison facilities and labor, the total costs of production are obviously below those of the manufacturer who must meet large overhead expenses as well as employ free labor.
>
> (2) It is the universal belief that prisoners should be usefully occupied whether as a part of their punishment or as a means of rehabilitation by teaching them the habits of industry. To this end nearly every State * * * provid[es] productive work for their prisoners * * *
>
> (3) The volume of goods produced by prison labor is already very large in some lines, but as more prisoners are put to work, and the industries become more efficient, the output of our prisons will be greatly increased.
>
> (4) The effect of placing on the open market a volume of goods which have been produced below normal costs, is to lower prices and disorganize the market * * *. The increase in prison production which is predicted will exaggerate this evil and make it difficult if not impossible for manufacturers employing free labor to exist in trade where the prison output becomes heavy.
>
> (5) The solution of this problem, if prison production is to continue * * *. would seem to be the elimination, in one way or another, of the direct price competition of the prison products with so called ''free products'' * * *. 70 *Cong. Rec.* S656 (1928).

In closing, Chairman Davenport urged that solutions be found, ''[o]therwise either prison industries must cease and prisoners kept in idleness or the manufacture of products competing with prison output will become impossible. Either of these developments would be disastrous * * *.'' *See* S. Rep. No. 344, 70th Cong., 1st Sess., re-printed, *Cong. Rec.* S656 (Dec.15, 1928), ''Statement of Prison Labor Problems as Shown by Report of Senate Committee.''

Even if a state prohibited its own correctional institutions from producing and marketing prison-made goods, that same state had no jurisdiction to control such goods produced in other states, transported in interstate commerce and sold within its boundaries. As an initial solution to this problem, Congress enacted the Hawes-Cooper Act in 1929, Pub. L. 70–669, 45 Stat. 1084, re-codified by Pub. L. 95–473, 92 Stat. 1449 (1978) [formerly codified at 49 U.S.C. 11507, omitted in the revision of Title 49 by Pub. L. 104–88, Title I § 102(a), 109 Stat. 804 (effective January 1, 1996); *See* S. Rep. No. 104–176]. This law divested prison-made products of their interstate character upon their arrival in the state of their destination and permitted the laws of that state to become operative with respect to the sale and distribution of such products. It was described, at the time of enactment, as an enabling act because it did not prohibit the transportation of convict-made goods or force the enactment of state legislation.

In 1935, Congress enacted the Ashurst-Sumners Act, Pub. L. 74–215, 49 Stat. 494 (1935), which authorized Federal criminal prosecutions of violations of state laws enacted pursuant to the Hawes-Cooper Act. Subsequent amendments to this law, including Pub. L. 76–851, 54 Stat. 1134 (1940), strengthened Federal enforcement authority by making any transport of prison-made goods in interstate commerce a Federal criminal offense. As amended, 18 U.S.C. 1761(a) now provides:

> Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined [under this title] or imprisoned not more than two years, or both. [herein referred to as the Ashurst-Sumners Act].

Certain prison-made products were excepted by statute from the Ashurst-Sumners Act prohibition, including ''agricultural commodities or parts for the repair of farm machinery'' as well as ''commodities manufactured in a Federal, District of Columbia or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State or not-for-profit organizations.'' Title 18 U.S.C. 1761(b).

The Walsh-Healey Act, 49 Stat. 2036 (1936), as amended in 1979 by Pub. L. 90–351, § 827(b) and codified at 41 U.S.C. 35, also controls the production of prison-made goods. This statute prohibits the use of prison labor to fulfill general government contracts which exceed $10,000. BJA certification pursuant to § 1761(c) excepts prison-made goods produced by PIECP work pilot projects from the Walsh-Healey Act contracting restrictions, as well as the Ashurst-Sumners Act interstate transportation restrictions.

2. Prisoner Idleness and Prisoners' Need for Job Skills Training

The PIECP exception to the Ashurst-Sumners and the Walsh-Healey Act restrictions was introduced in the Senate in 1979 after the 1978 Pontiac, Illinois prison riot. In the wake of that uprising, Senator Charles Percy (R–IL) stated:

> [L]ast summer in Pontiac, Illinois, our worst fears about the conditions in the Nation's prisons erupted into a nightmarish reality. The Pontiac prison riot of 1978 ended with three guards dead, three others seriously wounded, and $4 million in property damage * * *
>
> The shopping list of problems and deficiencies in our prison system is long and well known. Overcrowding, old and obsolete facilities, lack of training or educational programs, crime within prison walls, frustration on the part of guards and inmates are all a part of the dreary picture * * *. Recidivism is now a substantial element in our overall crime rate, and prisons are often accurately characterized as a ''school for crime,'' rather than a deterrent to crime * * *. 125 Cong. Rec. S11834 (1979).

These concerns caused Congress to take measures to encourage prison industries, provided that they not engage in unfair competition with private sector businesses and labor. Senator Percy's bill, now referred to as the Prison Industries Enhancement Act, Section 827 of the Justice System Improvement Act of 1979, Pub. L. 96–157, § 827(a), 93 Stat. 1215, was enacted on December 27, 1979. As amended, it now offers 50 Federally certified projects an opportunity to participate in the interstate market, provided certain safeguards to free-world labor and industry, and to prisoner-workers themselves, are met. *See* The Crime Control Act of 1990, Pub. L. 101–647, § 2906, 104 Stat. at 4914.

In describing the purpose of his introduced legislation, Senator Percy explained (125 *Cong. Rec.* S11834 (1979)):

> My amendment would do two basic things: First, it would authorize the [BJA] to encourage development of pilot demonstration projects for prison industry at the State level, involving private sector industry * * *. Under this approach, prison programs benefit from the private business, develop access to new markets, and attract needed capital. The goal of these pilot projects would be to create as realistic a working environment as possible within the prison walls, while enabling an inmate to become more self-sufficient to the benefit of himself, the prison system, and the taxpayer.
>
> Secondly, my amendment creates a partial exemption to two Federal laws which severely restrict the ability of State prison industries to market their goods * * *. When these laws were enacted decades ago, they represented significant reforms against exploitation of prison labor. Over the years, however, they have developed into heavy-handed roadblocks to growth among * * * prison industry programs * * *.
>
> My amendment would provide limited exemptions to these restrictions where inmates have been paid a wage comparable to that paid for similar work in the private sector in the locality * * *.

The statutory exception that was enacted to establish PIECP is codified at 18 U.S.C. Section 1761(c):

> * * * [the Federal marketability prohibitions] shall also not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who—
>
> (1) Are participating in one of not more than 50 non-Federal prison work pilot projects designated by the Director of the Bureau of Justice Assistance; * * *

To become eligible for Bureau of Justice Assistance (BJA) certification, an applicant state or local department of corrections must comply with specified statutory requirements. It must pay participating prisoners ''wages not less than that paid for work of a similar nature in the locality in which the work was performed'' and cannot take more than 80 percent in deductions from gross wages for specified purposes including taxes, reasonable charges for room and board, family support and victims' compensation. 18 U.S.C. 1761(c)(2).

Certain other conditions of employment must also be met. An eligible applicant cannot deprive participating offenders, solely because of their status as offenders, of the right to participate in benefits made available by the Federal or state government to other individuals on the basis of their employment, such as workmen's compensation. Title 18 U.S.C. 1761(c)(3). PIECP inmates must also participate on a voluntary basis and must have agreed to the specific deductions made from gross wages pursuant to 18 U.S.C. 1761(c)(2), and all other financial arrangements resulting from participation in such employment. Title 18 U.S.C. 1761(c)(4).

The note following 18 U.S.C. 1761, although not codified, is public law and adds two additional requirements on certified prison industries. The note requires participating prison industries to consult with local union organizations prior to initiating any project qualifying for a § 1761(c) exemption. Also, the qualifying applicant must ensure that paid inmate employment under the program will not result in the ''displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services.'' The Justice System Improvement Act of 1979 added these provisions, which became § 827(c) of the Omnibus Crime Control and Safe Streets Act of 1968. *See* Pub. L. 96–157, 93 Stat. 1215, reprinted in 1979 U.S.C.C.A.N. 2471. In 1984, § 827(c) was redesignated § 819 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. *See* Pub. L. 98–473, 98 Stat. 2093.

If all eligibility requirements are met and an applicant agency acquires BJA certification, that agency is thereafter authorized to operate irrespective of Federal prohibitions on the marketing of state prison-made goods. Conversely, non-compliance with these statutory eligibility requirements could expose an industry to criminal prosecution under the Ashurst-Sumners Act. Title 18 U.S.C. 1761(a).

b. The PIECP Program

1. Current State of the Program

Currently, 38 departments of correction or umbrella authorities are PIECP Certificate Holders. Under the Justice System Improvement Act of 1979, Arizona, California, Idaho, Kansas, Minnesota, Nevada and Utah were certified. In 1984, under the Justice Assistance Act of 1984, 13 prison work pilot projects were certified in: Alaska, Belnap County (NH), Connecticut, Iowa, Maine, Missouri, Nebraska, New Mexico, Oklahoma, Oregon, South Carolina, Strafford County (NH) and Washington State. Under the Crime Control Act of 1990, the following additional state and local departments of corrections have been certified:

Colorado, Delaware, Florida, Hawaii, Indiana, Louisiana, Maryland, Montana, North Carolina, Ohio, Red River County (TX), South Dakota, Tennessee, Texas, the Texas Youth Commission, Vermont, Virginia and Wisconsin.

Over 125 private sector businesses now work in partnership with these PIECP certified correctional agencies to employ a total of about 2,500 inmates. Either the correctional agency or the private sector enterprise retains project authority to direct and control inmate labor, depending on the management model used. Project implementation has resulted in the production of myriad products, including such items as furniture, sheet metal, video equipment, clothing, food products, office products, mattresses, drapery, crutches, and road signs. In addition, although service industries were not a threat to the private sector in 1935 and, thus, were not included within the scope of the Ashurst-Sumners prohibition, a number of service industries have elected to comply with the PIECP requirements.

Between January 1979 and December 1996, PIECP projects generated approximately $75 million in gross wages for inmates. Nearly half of this amount was diverted to non-inmate recipients: $5.5 million was deducted for victims of crime, $16 million was deducted for room and board payments, $4.4 million was deducted for family support and about $8.9 million was withheld in local, State and Federal taxes.

BJA monitors the performance of PIECP work pilot projects to ensure that they operate in full compliance with all legislative and administrative program requirements. Under a grant to the Correctional Industries Association (CIA), prison industry professionals conduct regular, on-site reviews of all PIECP projects. BJA responds to matters involving possible non-compliance by taking appropriate remedial action such as providing technical assistance or proposing a corrective action plan.

2. Future Challenges

PIECP is utilized nationwide as a cost-efficient way to provide inmates with work experience and training in marketable job skills, as well as to reduce idleness among growing prison populations.

Over time, the limit on the authorized number of pilot projects has been raised to meet the demands of interested applicants. When Congress last increased the project ceiling to 50, the House took into consideration a waiting list of states and counties that had wanted to participate and noted that ''the demand for certification by state and local governments indicates a need for this amendment which will enable the program to expand and other jurisdictions to apply.'' H.R. 681(I), 101st Cong. 202 (1990).

BJA administers PIECP with the objective of making participation available to as many qualified applicants as possible, within the limit imposed by statutory ceiling. This Guideline provides applicants with clarity as to Federal participation requirements, as well as programmatic flexibility to allow for PIECP Project growth in ways that are responsive to local needs. The Federal requirements are intended to ensure that the interests of the private sector and organized labor are protected. In this way, BJA's administrative practices are intended to address the concerns reflected in the legislative history antecedent to the enactment of earlier Federal regulation of prison-made goods, the Hawes-Cooper Act.

Finally, this revised Guideline addresses novel issues presented by new PIECP participants, the private sector prisons. These entities are unique in that they render an essential service traditionally undertaken by public agencies and they do so for a profit. Thus, BJA has altered some PIECP program requirements to insure program implementation remains consistent with Congressional intent. Congress enacted PIECP to introduce public departments of correction to private sector profit-making enterprises. Therefore, private prison industries are invited to participate in PIECP only as Cost Accounting Centers designated under the authority of certified public departments of correction.

c. Request for Comments

Comments on revisions described in this Proposed Guideline must be submitted to BJA no later than 60 days following the date of publication and will be considered in the drafting of the Final Guideline. Existing Certificate Holders and designated Cost Accounting Centers will be provided with a time period of one year, after the publication date of the Final Guideline, to make whatever program adjustments are necessary to come into full compliance.

III. Program Guidance

a. PIECP Purposes

- To provide a cost-efficient means to address inmate idleness and to provide inmates with work experience and training in marketable job skills. BJA encourages private sector PIECP partners to consider post-incarceration employment to PIECP inmate workers.
- Through inmate wage deductions, to increase advantages to the public by providing departments of correction with a means for collecting taxes and partially recovering for inmate room and board costs, by providing crime victims with a greater opportunity to obtain compensation, as well as by promoting inmate family support.
- Through PIECP participation conditions, to prevent unfair competition between prison-made goods and private sector goods.
- To prevent the exploitation of prison labor.

b. Definitions

Benefits refers to inmate benefit coverage required by 18 U.S.C. 1761(c)(3). PIECP projects must provide inmate workers appropriate benefits comparable to those made available by the Federal or state government to private sector employees. The scope of appropriate benefits coverage is impacted by whether management of the Cost Accounting Center is structured as an employer or customer model and whether the inmate labor work force is controlled by a public agency or the private sector.

BJA refers to the Bureau of Justice Assistance within the Office of Justice Programs, U.S. Department of Justice.

Certificate Holder refers to a public department of corrections, or an alternate umbrella authority, which is approved by BJA for PIECP Project certification. Certificate Holders assume monitoring and designation responsibilities with respect to their designated Cost Accounting Centers. All PIECP prison-made goods are produced within Cost Accounting Centers that a Certificate Holder designates within itself, its private prison agents or, in the case or an umbrella authority, within its membership agencies.

Certification refers to an exercise of BJA's discretionary authority to designate a Prison Work Pilot Project pursuant to Title 18 U.S.C. 1761(c). BJA may issue either standard or a provisional certifications to applicant projects. BJA certified projects are excepted from certain Federal marketability restraints on the transport of prison-made goods in interstate commerce, including 18 U.S.C. 1761(a), and sales to the Federal government in excess of $10,000, 41 U.S.C. 35.

Cost Accounting Center (CAC) refers to a distinct PIECP goods production unit of the industries system that is managed as a separate accounting entity under the authority of a Certificate Holder. All PIECP production activities

are conducted within the context of a designated CAC which, generally, is structured either as a Customer or Employer Model. All designated CACs must operate in compliance with the provisions set forth in 18 U.S.C. 1761(c) and this Guideline.

Customer Model is a form of a PIECP Cost Accounting Center management structure. In this model, the private sector is engaged in a CAC enterprise only to the extent that it purchases all or a significant portion of the output of a prison-based business owned and operated by the CAC agency. A customer model private sector partner assumes no major role in industry operations, does not direct production and has no control over inmate labor. These functions are performed, rather, by a department of corrections.

Deductions. CACs may elect to take deductions from a PIECP inmate worker's wages for certain authorized items. Deductions from PIECP inmate gross wages, if taken, may be made only for those items specified in 18 U.S.C. 1761(c)(2), including: Payment of taxes, reasonable charges for room and board, allocations for family support and contributions to any funds established by law to compensate victims of crime (no less than 5 percent and no more than 20 percent). In no event may a PIECP inmate worker's total deductions exceed 80 percent of gross wages and each and every PIECP inmate worker must agree, in advance, to all deductions from gross wages.

Designation is an exercise of a Certificate Holder's discretionary authority to bring a CAC within its certified PIECP Project. This exercise of authority results in an extension of PIECP exception status and an imposition of compliance requirements on an identified CAC operating within the certified PIECP Project.

Employer Model is a form of a PIECP management structure. In this model, the private sector owns and operates the CAC by controlling the hiring, firing, training, supervision, and payment of the inmate work force. The department of corrections assumes no major role in industry operations, does not direct production, and exercises minimum control over inmate labor performance. These functions are performed, rather, by the private sector.

Goods include tangible items, wares, and merchandise.

Locality means the geographic area impacted by the presence of a PIECP CAC operation. For PIECP CACs, it is relevant with regard to: determining prevailing wage, providing consultation to appropriate labor and private sector organizations, and determining whether a PIECP CAC operation will displace the private sector labor force. All locality determinations must be documented as part of a Notice of Designation. As used in the calculation of CAC wage rates, *locality* is usually a matter for definition by the appropriate state agency which normally determines wage rates (i.e., the State Department of Economic Security).

Minimum wage means the Federal minimum wage which is the lowest possible wage that can be paid to private sector employees under the Fair Labor Standards Act, 29 U.S.C. 206. Any special wage program, excepted by law from the minimum wage requirement in the private sector, may be utilized by a PIECP CAC as long as the CAC meets the same program participation conditions as private sector participants.

Monitoring refers to the process of examining Prison Work Pilot Project activities to ensure continuing compliance with 18 U.S.C. 1761(c) and this Guideline. It includes, at a minimum, BJA's receipt and analysis of performance reports and on-site CAC monitoring visits by BJA, BJA contractors and Certificate Holders.

NEPA means the National Environmental Policy Act, Pub. L. 91–190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. 4321–4347; implemented under 40 C.F.R. pt. 1500).

Participation means engaging in the activities and operations of an 18 U.S.C. 1761(c) excepted PIECP Project.

PIECP means the Prison Industry Enhancement Certification Program as authorized by 18 U.S.C. 1761(c).

PIECP Exception Status. Any PIECP Project which produces prison-made goods pursuant to and under the conditions set forth in 18 U.S.C. 1761(c) is excepted from certain Federal restraints imposed on the marketability of prison-made goods, including 18 U.S.C. 1761(a) and 41 U.S.C. 35.

PIECP Inmate Worker is a convict or prisoner who provides labor for a Prison Work Pilot Project certified under 18 U.S.C. 1761(c); the prisoner benefits from PIECP by receiving training and work experience.

Prevailing wage is a wage rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed, 18 U.S.C. 1761(c)(2).

Prison-made goods include all goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal or reformatory institution.

Prison Industry means an organized utilization of inmate labor to produce goods or render services.

Prison Work Pilot Project (PIECP Project) refers to one of 50 possible projects which may be designated by the Director of BJA under 18 U.S.C. 1761(c). This term encompasses the operations of the Certificate Holder's designated Cost Accounting Centers (CACs). Any Prison Work Pilot Project may consist of one or more CACs.

Prisoner includes prison and jail inmates, convicts and incarcerated juvenile offenders, and does not include prisoners on parole, probation, or supervised release. Title 18 U.S.C. 1761(a) does not regulate the transport of goods produced by prisoners on parole, supervised release, or probation.

Production is the forming anew or transforming of marketable goods. The term includes mining and manufacture and excludes services.

Provisional Certification is issued by BJA in instances where an applicant has not yet come into full compliance with all PIECP requirements, but such compliance appears imminent. It entitles the holder to PIECP exception status for an identified period of time, may be made contingent upon the occurrence of identified conditions, and may or may not be renewed by BJA.

Statutory Exception Status refers to a prison industry which meets the statutory requirements set forth in 18 U.S.C. 1761(b), and is thereby entitled to an exception from the prohibition set forth in 18 U.S.C. 1761(a).

Supervised Release. 18 U.S.C. 1761(a) states that the Ashurst-Sumners Act prohibition does not apply to ''convicts on parole, supervised release, or probation.'' The reference to ''supervised release'' was added to § 1761(a) in 1984, Pub. L. 98–473, § 223, and is responsive to changes made at that same time in state and Federal Sentencing Guidelines. Policy statements issued by the U.S. Sentencing Commission explain that supervised release is a ''new form of post-imprisonment supervision created by the Sentencing Reform Act.'' *See* Federal Sentencing Guidelines, 18 U.S.C.A. ch. 7, pt. A (1997).

Umbrella Authority refers to a type of Certificate Holder which is authorized by law to administer a PIECP Project and which consists of state and/or local correctional agencies located within the same state. A certified umbrella authority may designate CACs within its membership agencies, as well as within members' private prisons, and assumes responsibility for monitoring compliance with respect to those same centers.

c. BJA's Initial Considerations for Determining Propriety of Work Pilot Project Certification

1. BJA's Exercise of Discretionary Authority To Define and Certify 50 Prison Work Pilot Projects

(A) BJA may exercise discretionary authority to designate up to 50 PIECP Pilot Projects, 18 U.S.C. 1761(c).

(B) BJA may define PIECP eligibility qualifications and, in accordance with its own definitions, may exercise agency discretion to extend or withdraw certification privileges, as it deems appropriate.

2. Threshold Inquiry for Determining Applicability of PIECP Exception Status

Appropriate PIECP participants include prison industries whose activities would likely violate the 18 U.S.C. 1761(a) prohibition and would likely not fit within an 18 U.S.C. 1761(b) exception. BJA has devised an administrative approach for identifying such industries. This approach incorporates relevant § 1761 (a) and (b) considerations, including whether a given prison-made item qualifies as an excepted agricultural product, whether a given prison industry activity qualifies as an unregulated service, and whether a product distribution activity qualifies as an intrastate distribution of goods. These considerations are reflected in the following threshold inquiry, which BJA will use to determine whether a prison industry should be encouraged to apply for PIECP exception status:

(A) Is a statutory exception applicable under 18 U.S.C. 1761(b)? The following prison-made items are excepted from the prohibition set forth in § 1761(a):

- Parts for the repair of farm machinery; or
- Commodities manufactured in a Federal, District of Columbia, or state institution for use by the Federal Government, or by the District of Columbia or by any state or political subdivision of a state or not-for-profit organizations. This exception is intended to inure to the benefit of the Federal Government, the District of Columbia, the states (or political subdivisions thereof) and not-for-profit organizations and is not intended to benefit private prisons; or
- Agricultural commodities grown or cultivated on a farm which retain continuing substantial identity through processing stages, if any. In making the determination as to whether a processing stage changes a product from an agricultural commodity to a manufactured commodity, a relevant consideration is whether the processing is incidental or ancillary to agricultural commodity growth and or cultivation. If the processing is incidental or ancillary in nature and is commonly undertaken by agricultural enterprises, then it would likely fall within the scope of the statutory exception.

(B) Could the contemplated activity trigger 18 U.S.C. § 1761(a) by resulting in a production of goods by inmates in any penal or reformatory institution? The production of goods, which is regulated by 18 U.S.C. 1761(a), must be distinguished from inmate services which are not regulated by the criminal prohibition. The following factors are relevant in determining whether a given activity results in the production of prison-made goods:

- Has a tangible item been produced, manufactured or mined?
- Has a tangible item been formed or transformed?
- Has the activity resulted the creation of property or in a new, marketable item?

(C) Could the contemplated activity trigger 18 U.S.C. 1761(a) by resulting in a post-production, interstate transportation of prison-made goods?

- Will there be transportation of prison-made goods into the flow of interstate commerce, i.e., across state lines or from a foreign country into the United States?
- Is there a commercial economic enterprise present?

BJA will use this preliminary threshold inquiry to instill greater consistency in PIECP eligibility decision-making. If a prison industry activity falls within the scope of the § 1761(b) statutory exception, the involved industry need not seek § 1761(c) exception status to avoid § 1761(a) criminal sanctions. Additionally, if a prison industry activity would not result in the production of goods, interstate transport of prison-made goods, or would not in any other way trigger § 1761(a), the involved industry need not seek compliance with the requirements set forth in § 1761(c) or this Guideline.

This threshold inquiry was devised only for 18 U.S.C. 1761(c) programmatic purposes and does not reflect the Department of Justice's 18 U.S.C. 1761(a) prosecution guidelines. Thus, reliance on this Guideline, or any BJA determination based thereon, is not a complete defense to any civil or criminal action, but would depend on other factors as well.

d. Mandatory Program Criteria for PIECP Participation

1. *Eligibility.* All public departments of correction and juvenile justice agencies authorized by law to administer prison industry programs are eligible to apply for PIECP certification; such public agencies are also eligible members of umbrella authorities, authorized by law to administer prison industry programs, that are seeking certification. PIECP Certificate Holders may designate CACs within themselves, as well as within private prisons with which they contract for incarceration services and which are located in the same state. Private prison industries may participate in PIECP only as designated CACs and as part of certified PIECP Projects located within their respective states. Non-compliance by any one designated CAC may result in PIECP exception status suspension and/or termination as to that CAC, and if warranted, its respective Certificate Holder. Also, within a reasonable period of time after certification, each Certificate Holder must have at least one CAC producing goods and operating pursuant to its authority or risk losing certification.

2. *Prevailing Wage.* PIECP inmate workers must receive wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed. This requirement benefits society by allowing for the development of prison industries while protecting private businesses from unfair competition that would otherwise stem from the flow of low-cost, prison-made goods into the marketplace. PIECP participants must, therefore, implement the prevailing wage requirements under like conditions experienced by private sector competition. In this regard, the following requirements are applicable:

(A) Section 1761(c) requires that the PIECP wage amount be set exclusively in relation to the amount of pay received by similarly situated non-inmate workers. The statute does not allow other cost variables to be taken into consideration, such as unique expenses incurred as a result of undertaking production within the prison environment.

(B) Prevailing wage verification must be obtained by the appropriate state agency which determines wage rates (usually the Department of Economic Security).

(C) When making PIECP prevailing wage verifications and re-verifications, the responsible state agency should recommend the utilization of a non-inmate wage scale which will not result in the displacement of non-inmate workers performing similar work in the relevant locality.

(D) The PIECP prevailing wage must be received by those inmate workers performing notable tasks necessary to produce and / or transport goods in

interstate commerce. If a similarly situated, private sector company is paying wages to obtain services that are necessary to production, e.g. refuse pickup, then the PIECP CAC must also pay such wages to the inmate provider of like services. In determining which tasks are covered, the following considerations are relevant: the amount of inmate time involved, effort and skill necessary to accomplish the task, the regularity of task performance, and whether the task would have been performed by the inmate absent PIECP production.

(E) The prevailing wage must be verified prior to the initiation of PIECP participation. Annually, thereafter, the PIECP participant must re-verify the adopted wage to ensure that it continues to be comparable to wages paid for work of a similar nature in the locality in which the project is located.

(F) If no such verification can be obtained from the State Department of Economic Security, or other similar department, the PIECP participant is responsible for establishing a reasonable prevailing wage. In such instances, the participant should retain on file, for BJA's review:

(1) relevant wage data from a sufficient number of competitors in the locality;

(2) data analyses for determining a reasonable prevailing wage result; and

(3) if possible, a written assessment of the reasonableness of the resulting prevailing wage determination by an appropriate state agency which normally determines wage rates.

(G) The PIECP prevailing wage can not be set below the Federal minimum wage, as defined in the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* Payment of the Federal minimum wage, however, does not automatically achieve compliance with the prevailing wage requirement unless the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage.

(H) Overtime, at one and a half times the rate of regular or prevailing wage, must be paid for prisoner hours worked in excess of 40 hours per week. *See* 29 U.S.C. 207(a) (a payment standard imposed on private sector competition).

(I) If a CAC pays a wage based on piece work, the project must apply a calculation to convert regular wages paid into a comparable hourly wage. The calculation should be used as a routine check to ensure that inmate workers, paid according to piece rate work, do not receive less than the Federal minimum wage. In instances where the CAC is paying Federal minimum wage and such a wage is less than the industry standard for the prevailing wage, the CAC must be able to identify inmate worker performance variances as justification for the wage rate.

(J) BJA strongly encourages the use of wage plans that take into consideration a PIECP worker's experience, seniority, and performance.

3. Non-Inmate Worker Displacement. PIECP CAC operations must not result in displacement of employed workers; be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or significantly impair existing contracts. The term ''displacement,'' as used in this provision, includes all such prohibited activities, as well as the transfer of private sector jobs to PIECP inmates. This prohibition is intended to protect the private sector partner's non-inmate employees, as well as all other non-inmate workers who perform work of a similar nature in the same locality in which the CAC is located.

(A) Regarding the possibility of displacement among non-inmate employees of private sector partners in the same locality as the CAC:

(1) BJA will presume non-compliance where there is a non-inmate worker's job replacement by a PIECP inmate worker or where a non-inmate worker's job function is eliminated or adversely impacted, to a significant degree, and there is a concomitant assumption of a similar job function by a PIECP inmate worker. When evaluating such circumstances, BJA will not consider the private sector partner's intent or economic viability.

(2) Prior to CAC initiation, the CAC applicant must provide BJA with written documentation reflecting the private sector partner's agreement not to displace its non-inmate employees with PIECP inmate labor in violation of the 18 U.S.C. 1761(c) statutory note.

(B) Prior to project initiation, all CAC applicants must show through written verification by the State Department of Economic Security (or other appropriate state agency) that the PIECP project will not result in displacement of non-inmate workers performing the same work, regardless of wage rate. In cases where an appropriate state agency cannot provide this service, the applicant CAC should propose to and confer with BJA as to alternative measures to address this requirement.

(C) In instances where BJA finds that CAC implementation results in private sector worker displacement, the CAC must either cease its operations or comply with a BJA-approved corrective action plan, if BJA proposes such a plan under Section IV. f. of this Guideline, *infra.*

(D) BJA strongly recommends that CAC job development be oriented toward the creation of new jobs within the locality.

4. *Benefits.* PIECP projects must provide inmate workers appropriate benefits comparable to those made available by the Federal or State Government to private sector employees, including workers' compensation and, under certain circumstances, Social Security.

(A) By statute, in some states, inmates are not eligible to participate in workers' compensation programs. Provision of comparable workers' compensation benefits is acceptable as long as the CAC can demonstrate comparability of such benefits with those secured by the Federal or state Government for private sector employees.

(B) The PIECP CAC management model impacts whether the CAC must provide Social Security benefits to PIECP inmate workers. Where the employer model is utilized and the private sector directs and controls the PIECP inmate worker, the PIECP participant must provide PIECP inmate workers with Social Security benefits. Where a customer model is utilized and the state directs or controls the PIECP inmate worker, BJA recognizes the applicability of other provisions of Federal law which may operate to preclude the provision of PIECP inmates with certain benefits, including Social Security.

5. *Deductions.* Participating CAC's are not required to take deductions from PIECP inmate wages. However, if a CAC exercises its discretion to take deductions from a PIECP inmates' gross wages, such deductions can be taken only under the following conditions:

(A) Deductions from gross wages, if made, may be withheld only for the following authorized purposes:

(1) taxes (Federal, state, local);

(2) in the case of a state prisoner, reasonable charges for room and board as determined by regulations issued by the Chief State Correctional Officer;

(3) allocations for support of family pursuant to state statute, court order, or agreement by the offender; and

(4) contributions of not more than 20 percent, but not less than 5 percent of gross wages to any fund established by law to compensate the victims of crime.

Such deductions, in aggregate, cannot exceed 80 percent of gross wages.

(B) PIECP inmate workers must be paid, credited with, or otherwise benefit legally from, the 20 percent gross remainder. In this regard, the CAC may direct the 20 percent gross remainder to

a PIECP inmate worker's expense accounts, savings accounts, or toward the settling of the worker's legal obligations, including the payment of fines and restitution.

(C) Each Certificate Holder, through its respective Chief State Correctional Officer, retains flexibility with respect to determining appropriate room and board charges that may be deducted from PIECP inmate workers' gross wages.

(1) Consistent with 18 U.S.C. § 1761(c)(2)(B), BJA requires only that such charges be reasonable as determined by regulations issued by the Chief State Correctional Officer, in the case of state prisoners. In the case of non-state prisoners, this determination shall be made in accordance with regulations issued by the Chief Correctional Officer of the state in which the PIECP inmate is incarcerated.

(2) The legislative history of 18 U.S.C. § 1761(c) reflects a congressional intent to permit the use of the room and board deduction to lower costs otherwise incurred by the public for inmate incarceration. Thus, prior to making room and board deductions, private prison CACs must obtain written approval of such a proposed deduction from the Chief State Correctional Officers for the states in which the PIECP inmate workers were convicted.

(D) A PIECP inmate's gross wages may be subjected to a deduction for the purpose compensating crime victims if the deducted amount is deposited into a fund established by law for the purpose of providing crime victim compensation. State crime victim compensation funds typically qualify as authorized recipients of such deducted amounts. Amounts deducted by private prison CACs should be deposited in the crime victim compensation funds established in those states in which the PIECP inmates were convicted.

6. Voluntary PIECP Inmate Worker Participation. The Inmate Worker must indicate, in writing, that he or she:

(A) agrees voluntarily to participate in the PIECP project, and

(B) agrees voluntarily, and in advance, to specific deductions made from gross wages, as well as all other financial arrangements made as to earned PIECP wages.

7. Consultation with Organized Labor. PIECP CACs must:

(A) consult with representatives of local union central bodies or similar labor union organizations prior to the initiation of any certified or designated CAC project. CACs should consult with as many of such organizations as have members which may be affected by the types of work to be performed by the PIECP inmates. If there are no local union bodies or labor organizations, consultation must be made with state union bodies or similar state-wide labor organizations.

(B) provide adequate information about the contemplated PIECP participation such as, at a minimum, an identification of the scope of the intended CAC and projected initiation date, as well as an explanation of the fact that statutory consultation is required and comments are invited. CACs should retain documentation reflecting provision of adequate consultation.

8. Consultation with Local Private Industry. PIECP CACs must:

(A) consult with representatives of local businesses that may be economically impacted by CAC production prior to beginning operations, and

(B) provide adequate information about the contemplated PIECP participation such as, at a minimum, an identification of the scope of the intended CAC and projected initiation date as well as an explanation of the fact that statutory consultation is required and comments are invited. CACs should retain documentation reflecting provision of adequate consultation.

9. Compliance with the National Environmental Policy Act (NEPA). The review and approval of PIECP certification applications as well as the designation of PIECP CACs must comply with NEPA and other related Federal environmental review requirements. *See* NEPA, 42 U.S.C. 4321–4347 and 40 C.F.R. pt. 1500. *See also* 28 C.F.R. pt. 61 (Department of Justice procedures for implementing NEPA); 28 C.F.R. pt. 61 app. D (procedures specific to Federal actions undertaken by the Office of Justice Programs).

(A) A BJA PIECP certification, or a CAC designation under an issued certification, constitutes a ''Federal action,'' as defined by 40 C.F.R. § 1508.18 of the Council on Environmental Quality's (CEQ) regulations for implementing NEPA. Consistent with the CEQ regulations, PIECP applicants and CACs are required to submit for BJA review environmental data and information regarding their proposed activities and, if necessary, environmental assessments. Applicants and CACs must also assist BJA in the preparation of any required environmental impact statements.

(B) Title 28 C.F.R. Part 61 App. D provides NEPA compliance guidance to PIECP applicants and CACs, including the following:

(1) Actions entailing minor renovation projects or remodeling do not normally require an environment impact statement or an environmental assessment, unless, for example the actions would be located in or potentially affect a floodplain; a wetland; a listed species or critical habitat for an endangered species; or a property that is listed on or may be eligible for listing on the National Register of Historic Places.

(2) Actions that normally require an environmental assessment, but not necessarily an environmental impact statement include: renovations and expansions that change the basic prior use of a facility or substantially change its size; change in use of an existing facility that results in the increased production of liquid, gaseous, or solid wastes; new construction; research and technology whose anticipated and future application could be expected to have an effect on the environment; and new operations involving the use of hazardous, toxic, radioactive, or odorous materials. Assessments of such activities which result in BJA ''findings of significant impact'' will necessitate the preparation of environmental impact statements in compliance with NEPA and its implementing regulations.

(3) Additionally, no certification will be approved nor can any designation be provided or maintained if the application or designation includes a facility in non-compliance with any Federal, state, or local environmental law or regulation.

IV. PIECP Administration

a. Certificate Holders. BJA may exercise its discretionary authority to certify up to 50 PIECP Projects. Eligible applicants may seek certification by submitting an application to BJA in accordance with the requirements set forth in BJA's PIECP Certification Application, which will be provided upon request, and subpart IV.a.2, *infra*. BJA's review of submitted applications will be conducted as outlined in subparts IV.a.3 and a.4, *infra*. Once a certificate is issued, the holder assumes the authority and responsibilities set forth in subparts IV.a.5 and a.6, *infra*.

1. Project Structure. All public departments of correction, authorized by law to administer prison industry programs, are eligible to apply for BJA certification. Certified applicants may designate one or a number of Cost Accounting Centers (CACs) under their authority. Certificate Holders may also designate CACs within private prisons with which they contract for incarceration services and which are located in their respective states. BJA

will consider alternative program structures suggested by certification applicants, including, but not limited to, applicant umbrella authorities, as described in subpart III. D. 1, supra.

2. Application Content. All applications for PIECP Project Certification shall include the following:

(A) Assurances of Authority. The Certificate Holder must provide written assurance to BJA that it has in place appropriate statutory and administrative authority to meet all mandatory program criteria and, in particular, to monitor CAC compliance throughout the proposed PIECP Project.

(B) Documentation to Show Compliance with Mandatory Program Criteria. The applicant must submit all documentation necessary to show CAC compliance with the nine mandatory program criteria outlined in Section III. d., *supra.*

(C) Project Description. The applicant must describe key project elements, including the process to be used to designate and monitor compliance of CACs with 18 U.S.C. § 1761(c) and this Guideline.

3. BJA Review. PIECP applications will be reviewed by BJA on a first-come, first-served basis. Awards of certification are discretionary exercises of authority by BJA under 18 U.S.C. 1761(c). No certification will be awarded, however, unless there is a determination that the applicant has met the mandatory participation criteria outlined in this Guideline. Applicants will be notified in writing of BJA's award or denial of certification. The hearing and appeal procedures set forth in 28 C.F.R. Part 18 do not apply to denied PIECP applicants. Certified applicants will be informed of the effective date of BJA's certification.

4. Standard or Provisional Certification. A standard certification may be issued by BJA to an approved Certificate Holder applicant when all mandatory program criteria have been met. When one or more mandatory program criteria have not been met, but when steps have been taken to ensure that those criteria will be met within a reasonable period of time, then a provisional certification may be issued by BJA in instances where the withholding of certification would significantly impair the applicant's ability to further develop its project. The terms of the provisional certification will be made specific to the nature of the unmet mandatory criteria and may be made contingent upon the occurrence of identified conditions. Provisional certifications may be issued for no longer than one year from the date of issuance and may be subject to renewal, at BJA's discretion.

5. Certificate Holder Designation Authority:

(A) The Certificate Holder may exercise CAC designation authority with respect to CACs operating under its authority, including in private prisons with which it contracts for incarceration services and which are located in its respective state. To exercise this authority, a Certificate Holder must first determine that a proposed CAC has complied with the requirements set forth in this Guideline and in 18 U.S.C. 1761(c). Whenever the Certificate Holder elects to exercise this authority after certification application approval, it must submit a Notice of Designation Form to BJA that provides the following information and documentation:

(1) Cost Accounting Center Name and Location;

(2) Proposed number of workers;

(3) Item(s) to be produced;

(4) Proposed consumer market (including anticipated geographic distribution);

(5) Description of private sector involvement, including models that will be used in working with private enterprise;

(6) Locality determination, and supporting justification;

(7) Description of inmate compensation plans;

(8) Documentation of prevailing verification;

(9) Identification of deductions to be taken and percentage of each from PIECP inmate's gross wages;

(10) Documentation of private sector partner's agreement not to displace its non-inmate employees with PIECP inmate labor determination;

(11) Documentation of non-displacement verification;

(12) As to any CACs within private prisons, written state approval of a proposed room and board deduction, in compliance with Section III.d.5.(D) of this Guideline, supra; and

(13) Documentation of the environmental impacts of the CAC's existing and proposed activities.

(B) The Certificate Holder may, in its own discretion, undesignate any previously designated CAC. In such instances, the Certificate Holder must submit to BJA an Undesignation Form providing the following information:

(1) Cost Accounting Center Name and Location;

(2) Reasons for Undesignation; and

(3) Effective Date of Undesignation.

(C) BJA may, at any time deemed necessary to resolve compliance concerns and upon the issuance of written notice, suspend a Certificate Holder's authority to designate additional Cost Accounting Centers.

6. Certificate Holder Monitoring Responsibilities: As to all designated CACs, the Certificate Holder must assume the following monitoring responsibilities:

(A) Undertake all reporting and evaluation activities deemed necessary to ensure continuing designated CAC compliance; and

(B) Respond to all BJA requests for information and cooperation aimed at ensuring Project compliance.

b. Cost Accounting Centers' PIECP Exception Status. A CAC is entitled to operate under PIECP exception status.

1. To retain this status, the CAC must comply with all PIECP participation obligations to its Certificate Holder and to BJA, including:

(A) Maintaining continuous compliance with the requirements set forth in 18 U.S.C. 1761(c) and in III.d), *supra,* of this Guideline; and

(B) Responding to all monitoring requests for information and cooperation aimed at maintaining continued compliance with this Guideline.

2. The CAC must promptly report to the Certificate Holder any contemplated change in operations which may affect its ability to maintain statutory and regulatory compliance.

c. Compliance Reviews:

1. Performance Reports. Within 30 days following the close of each calendar quarter, each CAC must submit a quarterly performance report to its Certificate Holder in a form prescribed by BJA. The performance report describes activities undertaken during the prescribed period. A consolidated report of all CAC activity must be submitted to BJA by the Certificate Holder within 45 days following the close of each calendar quarter.

2. Monitoring Reviews. BJA and BJA technical assistance contractors are authorized to perform desk and on-site reviews of all PIECP participants, including all CACs, as deemed necessary. On-site reviewers may request access to any and all documentation necessary to assist in determining compliance with the requirements of this guideline and 18 U.S.C. 1761. Monitored participants will be advised in writing of the results of any such reviews. Immediate corrective action must be taken to address determinations of non-compliance and/or to respond to issues that raise compliance related concerns for BJA.

d. BJA's PIECP Administration. BJA's PIECP responsibilities include the following:

1. Review and approval of Certificate Holder PIECP applications;
2. Monitoring to determine compliance status of operations within all CACs;
3. PIECP exception status termination or suspension for cause related to substantial non-compliance;
4. Liaison with other Federal agencies that may affect PIECP operations;
5. Provision of compliance-related technical assistance; and
6. Any and all other functions necessary to administer the program in compliance with 18 U.S.C. 1761(c).

e. PIECP Exception Status Suspension/Termination

1. Notice of Possible Compliance Violation. Alleged facts indicative of non-compliance shall be communicated in writing by BJA to the involved Certificate Holder and the involved designated CAC. These parties must respond to the allegations, in writing, within 15 days after receipt of the notice of non-compliance determination. Immediate corrective action must be taken to address determinations of non-compliance.

2. Voluntary Compliance Agreements. If BJA determines that noncompliant practices persist, BJA may, in its discretion, propose a voluntary compliance agreement to the involved Certificate Holder.

3. Failure to Achieve Compliance and Effect of Non-Compliance. If a voluntary compliance agreement is not presented by BJA or is not accepted or adequately implemented by the Certificate Holder within 30 days after receipt of such an agreement, BJA may suspend the Certificate Holder's certification and/or CAC exception status.

4. PIECP Exception Status Suspension and Termination. A certification may be terminated by BJA if it has been inactive (no production within a designated CAC) or suspended for six consecutive months. A certification and/or designation may be suspended, and six months thereafter, terminated upon: (1) Issuance of a notice of a determination that the Certificate Holder and/or designated CAC is not acting in compliance with the requirements of 18 U.S.C. 1761, this Guideline or the conditions set forth in its certificate; or (2) in the discretion of the Director of BJA and upon a re-definition of a PIECP Project authorized under 18 U.S.C. 1761(c). Termination or suspension of the exception status of one designated CAC will not automatically impact the PIECP exception status of other CACs under the same certification unless the PIECP Project certification is suspended or terminated. The hearing and appeal procedures set forth in 28 C.F.R. Part 18 do not apply to PIECP applicants or participants who have had PIECP exception status suspended or terminated under this provision.

Dated: June 26, 1998.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 98–17757 Filed 7–6–98; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–087]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, July 29, 1998, 8:30 a.m. to 5:30 p.m.; Thursday, July 30, 1998, 8:00 a.m. to 6:00 p.m.; Friday, July 31, 1998, 8:30 a.m. to 12:30 p.m.

ADDRESSES: MIC 6, NASA Headquarters, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—OSS Program and Budget Status
—Science Metrics/FY 2000 Performance Plan
—Final Report of the R&A and MO&DA Task Force
—Theme Status Reports/Reports from Subcommittees
—Research Program Update
—Technology Program Status and Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 24, 1998.

Matthew Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–17953 Filed 7–6–98; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; (Zion Nuclear Power Station, Units 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize operation of the Zion Nuclear Power Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

In its letter dated March 12, 1998, ComEd requested an exemption from the Commission's regulations. Pursuant to 10 CFR 50.34(b), each application for a license to operate a facility shall include a Final Safety Analysis Report (FSAR). This report shall include information that describes the facility, presents the design bases and the limits on its operation and presents a safety analysis of the structure, systems and components of the facility.

Title 10 of the *Code of Federal Regulations*, Part 50, Section 71 (10 CFR 50.71), ''Maintenance of records, making of reports,'' states that all light-water nuclear power reactors shall update their FSAR periodically. Pursuant to 10 CFR 50.71(e)(4), the time interval for the subsequent FSAR updates must not exceed 24 months. The last full update of the Zion FSAR was submitted to the NRC on July 5, 1996. Consequently, the next update would be required to be submitted no later than July 1998. However, ComEd is requesting an exemption from this requirement to allow them to update the FSAR to reflect the present condition of the units.

By letters dated February 13, 1998, and March 9, 1998, ComEd informed the NRC that Zion Nuclear Power Station, Units 1 and 2, have permanently ceased operations and both units are completely defueled and all fuel has been placed in the spent fuel pool for long-term storage. By letter dated May 4, 1998, the NRC acknowledged Zion's permanent cessation of power operation and permanent removal of fuel from the reactor vessels.

Many of the systems and components previously required for safety are no longer needed because the Zion units are permanently shut down. Therefore, updating the current FSAR will provide

a description of components and systems that are no longer relevant to safety. Instead ComEd has proposed and committed to prepare and submit an update to the FSAR reflecting the permanently defueled condition of Zion, Units 1 and 2, by December 31, 1998. This update will become Zion's Defueled Safety Analysis Report (DSAR).

Because ComEd's board decision on January 14, 1998, to shut down Zion was unexpected, ComEd staff did not have adequate time to develop the DSAR. Therefore, ComEd is requesting an extension of the update interval to allow sufficient time to develop and submit the DSAR. In their letter dated March 12, 1998, ComEd stated that many of the technical, administrative, and management resources needed to develop a DSAR are the same as those that would be involved in updating the FSAR. Consequently, updating the current FSAR by July 1998, would result either in a delay in developing a DSAR or in the expenditure of significant additional resources to develop a DSAR while preparing an FSAR update submittal in parallel.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 (1) when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *''

The underlying purpose of 10 CFR 50.71 is to provide updated information and descriptions which are needed to permit understanding of the system designs and their relationships to safety evaluations. The last update to the Zion FSAR was submitted on July 5, 1996. Therefore, the next update is due no later than July 1998. However, because ComEd has permanently ceased operation of the Zion Nuclear Power Station, Units 1 and 2, many of the systems and components that were previously required for the safe operation of the plants are no longer needed. Therefore, by updating the current FSAR, ComEd would be providing information on equipment and systems that are no longer relevant to the safety of the plant. ComEd has committed to providing Zion's DSAR by December 1998. This DSAR update will meet the underlying purpose of the rule in which the status of equipment and systems relevant to a non-operating plant will be provided to NRC and docketed. Furthermore, this exemption will have no impact on the ability of structures, systems, and components to perform the safety functions required with the plant permanently shut down and defueled.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate date for submittal of the DSAR will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that the DSAR will provide the required information relevant to the current status of the plant.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or the common defense and security and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.71(e)(4) in that ComEd may extend its Updated Final Safety Analysis Report submittal date from July 1998 to December 31, 1998.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant effect on the quality of the human environment (63 FR 35294).

This exemption is effective upon issuance.

Dated at Rockville, MD, this 30th day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17921 Filed 7–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board Panel

[Docket No. 55–22234–SP; ASLBP No. 98–745–01–SP]

Randall L. Herring, Operator License for Catawba Nuclear Station; Notice of Hearing

June 30, 1998.

Notice is hereby given that, by Memorandum and Order dated June 30, 1998, the Presiding Officer has granted the request of Mr. Randall L. Herring for a hearing on the NRC Staff's denial of his application for an operator license for the Catawba Nuclear Station. The hearing is to be conducted under the Commission's informal hearing procedures set forth in 10 CFR Part 2, Subpart L. Administrative Judge Charles Bechhoefer has been designated Presiding Officer to conduct this hearing, and the Presiding Officer has appointed Administrative Judge Richard F. Cole to serve as his Special Assistant in developing a suitable record. 63 FR 34197 (June 23, 1998). The parties to this proceeding are limited to Mr. Herring and the NRC Staff.

Further details are provided in the Presiding Officer's Memorandum and Order (Hearing File and Specification of Claims), dated June 30, 1998. As there set forth, this informal adjudication may be decided entirely on the basis of the parties' written filings, together with relevant documents. In addition, the Presiding Officer has discretion to entertain oral presentations from the parties, as authorized by 10 CFR 2.1235, should he determine that such course of action would be necessary or useful in creating an adequate record for decision.

Materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L. St. N.W., Washington D.C. 20555.

Rockville, Maryland, June 30, 1998.

Presiding Officer.

Charles Bechhoefer,

Administrative Judge.

[FR Doc. 98–17918 Filed 7–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station; Exemption

I

Maine Yankee Atomic Power Company (MYAPCo or the licensee) is the holder of Facility Operating License No. DPR–36, which authorizes operation of Maine Yankee Atomic Power Station (Maine Yankee). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility is a pressurized-water reactor located on the licensee's site in Lincoln County, Maine. On August 7, 1997, the licensee informed the Commission that it had decided to permanently cease operations at Maine Yankee and that all fuel had been permanently removed from the reactor. In accordance with 10 CFR 50.82(a)(2), the certifications in the letter modified the facility operating license to permanently withdraw MYAPCo's authority to operate the reactor and to load fuel in the reactor vessel.

II

It is stated in 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

By letter dated November 25, 1997, the licensee requested 11 exemptions from certain requirements of 10 CFR 73.55. Eight exemptions are being granted at this time as follows: (1) 10 CFR 73.55(a)—an exemption from the requirement that a licensed senior operator suspend safeguards measures and assigning that authority to a certified fuel handler; (2) 10 CFR 73.55(e)(1)—an exemption from the requirement that the secondary power supply be located in a security area; (3)—10 CFR 73.55(d)(1) ''an exemption from the requirement that a last access control point at the entrance to the protected area be bullet resistant; (4) 10 CFR 73.55(h)(3)'an exemption reducing the required number of guards and armed trained personnel; (5) 10 CFR 73.55(e)(1)—an exemption from the requirement for a secondary alarm station, (6) 10 CFR 73.55(f)(4)—exemption from the requirement that non-portable communication equipment located in the central alarm station remain operable from independent power sources if normal power is lost, (7) 10 CFR 73.55(e)(1)—exemption from the requirement that an alarm station be located outside the protected area, and (8) 10 CFR 73.55(e)(1) and (c)(6)—exemption from the requirement that the alarm station and new control room be bullet resistant. The proposed exemption is a preliminary step toward enabling MYAPCo to revise the Maine Yankee Security Plan under 10 CFR 50.54(p) to implement a defueled security plan that was developed to protect against radiological sabotage at a permanently shutdown reactor facility with all fuel stored in the spent fuel storage pool.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. The *Code of Federal Regulations* at 10 CFR 73.55 allows the Commission to authorize a licensee to provide alternative measures for protection against radiological sabotage, provided the licensee demonstrates that the proposed measures meet the general performance requirements of the regulation and that the overall level of system performance provides protection against radiological sabotage equivalent to that provided by the regulation.

The underlying purpose of 10 CFR 73.55 is to provide reasonable assurance that adequate security measures can be taken in the event of an act of radiological sabotage. Because of its permanently shutdown and defueled condition, the radiological risk from Maine Yankee is less than the risk from an operating unit. With more than 16 months of radiological and heat decay since the plant was shut down on December 6, 1996, the potential source term associated with the remaining design-basis accidents and radiological sabotage has decreased significantly.

IV

For the foregoing reasons, the Commission has determined that the proposed alternative measures for protection against radiological sabotage meet the same assurance objective and the general performance requirements of 10 CFR 73.55 associated with the reduced risk of radiological sabotage for a permanently shutdown reactor site that has all of the fuel in the spent fuel pool. In addition, the staff has determined that the overall level of the proposed system's performance, as limited by this exemption, would not result in a reduction in the physical protection capabilities for the protection of special nuclear material or of Maine Yankee. Specifically, a limited exemption is being granted for eight (8) specific areas in which the licensee is authorized to modify the existing security plan commitments commensurate with the security threats associated with a permanently shutdown and defueled site, as follows: (1) 10 CFR 73.55(a)—an exemption from the requirement that a licensed senior operator suspend safeguards measures and assigning that authority to a certified fuel handler; (2) 10 CFR 73.55(e)(1)—an exemption from the requirement that the secondary power supply be located in a security area; (3) 10 CFR 73.55(d)(1)—an exemption from the requirement that a last access control point at the entrance to the protected area be bullet resistant; (4) 10 CFR 73.55(h)(3)—an exemption reducing the required number of guards and armed trained personnel; (5) 10 CFR 73.55(e)(1)—an exemption from the requirement a secondary alarm station; (6) 10 CFR 73.55(f)(4)—exemption from the requirement that non-portable communication equipment located in the central alarm station; remain operable from independent power sources if normal power is lost; (7) 10 CFR 73.55(e)(1)—exemption from the requirement that an alarm station be located outside the protected area; and (8) 10 CFR 73.55(e)(1) and (c)(6)—exemption from the requirement that the alarm station and new control room be bullet resistant.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants MYAPCo a limited exemption as described above from those requirements of 10 CFR 73.55 at Maine Yankee in its permanently defueled condition.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human

environment (63 FR 35295, dated June 29, 1998).

This exemption is effective upon issuance.

Dated at Rockville, MD, this 29th day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17920 Filed 7–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38, issued to Entergy Operations, Inc., (the licensee), for operation of the Waterford Steam Electric Station, Unit 3 (Waterford 3), located in St. Charles Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the Waterford 3 Technical Specifications to allow an increase in the Waterford 3 Spent Fuel Pool (SFP) storage capacity from 1088 to 2398 fuel assemblies, and to allow an increase in the maximum fuel enrichment from 4.9 w/o (weight percent) to 5.0 w/o U–235. The increase in spent fuel storage capacity is achieved by replacing the existing spent fuel storage racks by the higher density racks, a process referred to herein as ''reracking.'' The proposed action is in accordance with the licensee's application for license amendment dated March 27, 1997, as supplemented by letters dated April 3, July 21, October 23, November 13, and December 12, 1997, January 21, January 29, March 23, May 1, May 19, May 21, May 28, and June 12, 1998.

The Need for the Proposed Action

The Waterford 3 SFP currently contains 1088 storage cells in 16 spent fuel racks and full core off-load capability would be lost in the year 2000. Under the proposed reracking, the 16 existing racks, which contain Boraflex as the neutron absorber, would be removed and replaced by new high density modules. There are no commercial independent spent fuel storage facilities operating in the U.S., nor are there any domestic reprocessing facilities; therefore, the projected loss of storage capacity in the Waterford 3 SFP would affect the licensee's ability to operate Waterford 3. The proposed amendment will provide a full core off-load capability through the end of Cycle 19 (Year 2018).

Environmental Impacts of the Proposed Action

Radiological Impacts

The Waterford 3 uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems are evaluated in the Final Environmental Statement (FES) dated March 1973. The proposed rerack will not involve any change in the waste treatment systems described in the FES.

Radioactive Material Released to the Atmosphere

During reactor operation, a small percentage of the fuel assemblies in the core are expected to develop leaks, resulting in a release of fission products to the reactor coolant. The storage of additional spent fuel assemblies in the SFP will not significantly affect the release of radioactive gases from the SFP since fission products generally do not escape from the SFP.

The higher fuel burnup used in the new rack analysis will result in a higher concentration of Krypton-85 (Kr-85) in the reactor coolant, some of which will be introduced into the SFP water during refuelings. Accounting for this increased Kr-85 concentration in the SFP water, the licensee calculated that the Kr-85 concentration in the air in the fuel handling building would be two orders of magnitude lower than the permissible effluent concentration for the general public (Appendix B of 10 CFR Part 20).

Iodine-131 released from spent fuel assemblies to the SFP water will not be significantly increased due to the expansion of the fuel storage capacity since the Iodine-131 inventory in the fuel will decay to negligible levels between refuelings.

Most of the tritium in the SFP water results from activation of boron and lithium in the primary coolant. A relatively small amount of tritium is produced during reactor operation by the fission process within the reactor fuel. The subsequent diffusion of the tritium through the fuel and cladding represents a small contribution to the total amount of tritium in the SFP water. Tritium releases from the fuel assemblies to the reactor coolant occur mainly during reactor operation and, to a limited extent, shortly after shutdown. Since a small portion of the tritium is due to fission in the fuel, the increased fuel burnup will result in an increase in the amount of tritium in the reactor coolant.

Most airborne releases of tritium from nuclear power plants result during refuelings from evaporation of reactor coolant, which contains tritium in higher concentrations than in the SFP. The storage of additional spent fuel assemblies in the SFP is not expected to increase the SFP bulk water temperature significantly above the 155° used in the design analysis and, therefore, evaporation rates from the SFP are not expected to increase. The higher tritium concentrations in the SFP water are expected to result in higher airborne tritium levels in the fuel handling building. However, the licensee has calculated these tritium levels to be lower than the permissible effluent concentrations for the general public contained in Appendix B of 10 CFR Part 20.

Solid Radioactive Wastes

Spent resins are generated by the processing of SFP water through the SFP purification system. These spent resins are replaced about two to four times a year and are disposed of as solid radioactive waste. The licensee will use a vacuum system with an underwater filtration unit to clean the floor of the Cask Storage Pit prior to reracking and the floor of the SFP following removal of the old SFP rack modules. Vacuuming of the SFP and Cask Storage Pit will remove any extraneous debris, reduce general contamination levels prior to diving operations, and ensure visual clarity in the SFP to facilitate diving operations and SFP rack changeout. The licensee also plans on hydrolazing the old fuel rack modules with demineralized water before removal from the SFP to remove any loose crud from the modules. If necessary, the licensee may also use a wire brush or equivalent abrasive tool to assist in the removal of hot particles. The licensee does not expect that the additional fuel storage made possible by the increased storage capacity will result in a significant change in the generation of solid radwaste (in the form of spent resins).

Once the old SFP rack modules have been hydrolazed, they will be placed into anti-contamination bags and loaded into shipping containers for shipment offsite for decontamination and disposal. The licensee has stated that the shipping containers and procedures will conform to all applicable U.S.

Department of Transportation (DOT) and/or U.S. NRC regulations.

Liquid Radioactive Wastes

There should not be a significant increase in the liquid release of radionuclides from the plant as a result of the modifications. The SFP cooling and purification system operates as a closed system. The SFP ion exchanger resins remove soluble radioactive materials from the SFP water and the frequency of resin changeout may increase during the installation of the new racks due to the more frequent fuel shuffling and underwater hydrolazing of the old racks during removal. When the resins are changed out, a small amount of resin sluice water is released. However, the amount of liquid radioactive released to the environment as a result of the proposed reracking is expected to be negligible.

Occupational Doses

Radiation Protection personnel will constantly monitor the doses to the workers during the reracking operation. Divers used to perform work in the SFP will be equipped with five remote readout radiation detectors, which will be continuously monitored by Radiation Protection personnel. The total occupational dose to plant workers as a result of the reracking operation is estimated to be between 6 and 12 person-rem. This dose estimate is comparable to doses for similar SFP modifications performed at other plants. The upcoming reracking operation will follow detailed procedures prepared with full consideration of ALARA principles. On the basis of our review of the Waterford 3 proposal, the staff concludes that the Waterford 3 SFP rack modification can be performed in a manner that will ensure that doses to workers will be maintained as low as is reasonably achievable (ALARA). The estimated dose of 6 to 12 person-rem to perform the proposed SFP rerack is a small fraction of the annual collective dose accrued at Waterford 3.

Uranium Fuel Cycle and Transportation

The environmental impacts of transportation resulting from the use of higher enrichment fuel are discussed in the staff assessment entitled ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988. This was published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with an Environmental Assessment and Finding of No Significant Impact related to the Sheron Harris Nuclear Power Plant, Unit 1. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 gigawatt days per metric ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed amendment for Waterford 3. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

Accident Considerations

In its application, the licensee evaluated the possible consequences of a fuel handling accident to determine the thyroid and whole-body doses at the Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and Control Room. The proposed reracking of the Waterford 3 SFP will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and therefore will not result in an increase in the doses from a postulated fuel handling accident.

Nonradiological Impact

The proposed amendment does not modify land use at the site; no new facilities or laydown areas are needed to support the rerack or operation after rerack; therefore, the proposed amendment does not affect land use or land with historical or archeological sites. The proposed action does not result in any significant changes to the types and amounts of effluents that may be released offsite. Therefore, no changes or different types of nonradiological environmental impacts are expected as a result of the amendment.

Summary

The Commission has completed its evaluation of the proposed action. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation 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 not affect nonradiological plant effluents. Accordingly, 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 there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would not result in any significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Waterford 3.

Agencies and Persons Consulted

In accordance with its stated policy, on June 17, 1998, the staff consulted with the Louisiana State official, Dr. Stan Shaw of the Louisiana Radiation Protection Division, 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 March 27, 1997, as supplemented by letters dated April 3, July 21, October 23, November 13, and December 12, 1997, January 21, January 29, March 23, May 1, May 19, May 21, May 28, and June 12, 1998, which are 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 New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 30th day of June 1998.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–17919 Filed 7–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 6, 13, 20, and 27, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 6

Thursday, July 9

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of July 13—Tentative

Friday, July 17

9:30 a.m.—Public Meeting on Stakeholders' Concerns (Public Meeting) (Contact: Annette Vietti-Cook, 301–415–1969).

11:30 a.m.—Affirmation Session (Public meeting) (if needed).

Week of July 20—Tentative

Tuesday, July 21

1:30 p.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

3:00 p.m.—Affirmation Session (Public Meeting) (If needed).

Week of July 27—Tentative

Wednesday, July 29

2:00 p.m.—Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: Glenn Tracy, 301–415–1725).

4:00 p.m.—Affirmation Session (Public Meeting) (If needed).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 2, 1998.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–18123 Filed 7–2–98; 3:10 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: RI 25–37

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an information collection. Form RI 25–37, Evidence to Prove Dependency of a Child, is designed to collect sufficient information for the OPM to be able to determine whether the surviving child of a deceased Federal employee is eligible to receive benefits as a dependent child.

Approximately 250 forms are completed annually. We estimate it takes approximately 60 minutes to assemble the needed documentation. The annual burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before August 6, 1998.

ADDRESSES: Send or deliver comments to: Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415 and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Dory Zamani, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–17840 Filed 7–6–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request; OPM Form 1203

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), the Office of Personnel Management (OPM) is submitting a request to the Office of Management and Budget (OMB) for approval of a form which collects information from the public. OPM Form 1203, Occupational Supplement Series—Form C, is an optical scan form designed to collect applicant information and qualifications in a format suitable for automated processing and to create basic applicant records for an automated examining system. OPM uses the form to carry out their responsibility for open competitive examining for admission to the competitive service in accordance with section 3304, 5 U.S.C.

Approximately 500,000 forms are completed each year with an average completion time of 27 minutes. For copies of this proposal, call Mary Beth Smith-Toomey on (202) 606–8358 or email to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before August 6, 1998.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, NW., Washington, DC 20503, and Mrs. Crystal A. Wilson, U.S. Office of Personnel Management, Nationwide Examining Policy Office, 1900 E Street, NW, Room 2458, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Crystal A. Wilson, (202) 606–1010.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–17842 Filed 7–6–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of Expiring Information Collection; Form RI 25–14

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of an information collection. RI 25–14, Self-Certification of Full-Time School Attendance, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirement of Section 8341(a) (C), and Section 8441, title 5, U.S. Code, to receive benefits as a student.

Approximately 14,000 Self-Certification and Full-Time School Attendance forms are completed annually; each requires approximately 12 minutes to complete, for a total public burden of 2,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before August 6, 1998.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415, and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Dory Zamani, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–17843 Filed 7–6–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Striker Industries, Inc., Common Stock, $.50 Par Value) File No. 1–13118

June 30, 1998.

Striker Industries, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company is not at present in compliance with the minimum shareholders' equity maintenance requirement mandated by the Rules of the Exchange for continued listing of the Company's Security on the Exchange.

The Company discussed the shareholders' equity maintenance requirement with the Listing Manager at the BSE and received an extension of time within which to attempt to comply with the requirement, but was unable to do so within the time frame of the extension. The Company subsequently filed with the Exchange for voluntary withdrawal and delisting, requesting a no objection letter from the Exchange. Consequently, so far as is known to the Company, it has complied with the Rules of the Exchange governing the delisting of securities.

The Company notified the Exchange on June 15, 1998, that it was requesting the withdrawal and delisting of its Security from the Exchange, and, in a letter dated June 16, 1998, the Exchange raised no objection to such withdrawal and delisting.

The Company's Security also trades on the NASDAQ SmallCap Market.

Any interested person may, on or before July 22, 1998, submit by letter to the Security of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–17928 Filed 7–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40138; File No. SR–NYSE–98–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. to Include Rules 392, 460.30, 80A(b), 79A.15 and 105 in its Minor Disciplinary Fine System under Exchange Rule 476A

June 26, 1998.

I. Introduction

On January 20, 1998, the New York Stock Exchange, Incorporated (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] a proposed rule change amending its ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A'' and its reporting plan for 476A violations to include the items proposed for addition to the list of rules subject to Rule 476A. The proposed rule change was published for comment in Securities Exchange Act Release No. 39980 (May 8, 1998), 63 FR 27339 (May 18, 1998). No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

On March 11, 1985, the Commission approved a NYSE plan for the abbreviated reporting of minor rule violations. The NYSE Minor Rule Violation Plan (''MRVP''), as embodied in NYSE Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed $5000, on any member or member organization for a violation of the delineated rules by issuing a citation with a specific penalty.[2] The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] The list of delineated rules is contained in Supplementary Material to NYSE Rule 476A. Only

Continued

also retains the option of bringing violations of rules subject to NYSE Rule 476A to full disciplinary proceedings. The Exchange proposed that the failure to comply with the provisions of (1) Rule 392 and Rule 460.30 which require notification to the Exchange by member organizations when they are participating in or engaging in certain activities related to an offering of securities listed on the Exchange; (2) Rule 80A(b) which prohibits entry of stop orders for the remainder of any trading day on which ''sidecar'' procedures have been invoked; (3) Rule 79A.15 which requires specialists to publish bids and offers upon receipt of limit orders; and (4) Rule 105 and its Guidelines regarding specialists' speciality stock options transactions and the reporting of such transactions be included in the rule. The Exchange proposed the additions to broaden the regulatory responses available to the Exchange in effectively inducing compliance with all aspects of the rules.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[3]

The Exchange's proposal is also consistent with the requirements in Sections 6(b)(1)[4] and 6(b)(6)[5] requiring that the rules of an exchange enforce compliance and provide appropriate discipline for violations of Commission and Exchange rules. Moreover, because NYSE Rule 476A provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7)[6] and 6(d)(1)[7] of the Act.

The Commission believes that the Exchange's proposal, adding five additional rules to those subject to the imposition of fines under Rule 476A reinforces the obligations of exchange specialists. Most notably, by adding NYSE Rule 79A.15 to the MRVP, the Commission believes that the Exchange is emphasizing the importance of the obligation of an exchange specialist to immediately display certain customer limit orders in accordance with the Commission's Limit Order Display Rule[8] and NYSE Rule 79A.15. The Commission believes that displaying customer limit orders benefits investors by providing enhanced execution opportunities and improved transparency.[9]

The Commission expects that the Exchange has the appropriate surveillance procedures to easily identify a specialist who fails to display a customer limit order immediately or is relying on an automated system that does not display limit orders immediately.[10] The Commission, therefore, believes that because certain violations of the Limit Order Rule are amenable to efficient and equitable enforcement they are appropriate for inclusion in NYSE Rule 476A. The Commission expects, however, because a violation of NYSE Rule 79A.15 amounts to a violation of a federal securities law, that the Exchange will err on the side of caution in disposing of such violations under the Plan.[11] The Commission expects the Exchange to continue to resolve more serious violations of rules through the use of formal disciplinary procedures, as in the case of an egregious violation or habitual offender.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(1), 6(b)(5), 6(b)(6), 6(b)(7), 6(d)(1) and 19(d) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[12] and Rule 19d–1(c)(2) thereunder,[13] that the proposed rule change (SR–NYSE–98–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17834 Filed 7–6–98; 8:45 am]

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those fines that are not in excess of $2,500 are subject to the periodic reporting requirements of SEC Rule 19d–1(c).

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78f(b)(1).

[5] 15 U.S.C. 78f(b)(6).

[6] 15 U.S.C. 78f(b)(7).

[7] 15 U.S.C. 78f(d)(1).

[8] 17 CFR 240.11Ac1–4.

[9] *See* Securities Exchange Act Release 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996)(''Adopting Release'').

[10] A specialist is not displaying customer limit orders *immediately* if the specialist regularly executes customer limit orders at, for example, the 27th second after receipt. As stated in the Adopting Release, the requirement that a limit order be displayed ''immediately'' means that the limit order must be displayed as soon as practicable, but *no later* than 30 seconds after receipt under normal market conditions. This 30 seconds is an outer limit under normal market conditions and is not to be interpreted as a 30-second safe harbor.

[11] For example, the Commission expects that the Exchange would not issue several cautionary letters before instituting the fines under the Plan or aggregate multiple violations of the rules before instituting abbreviated disciplinary procedures under the Plan or, if necessary, full disciplinary procedures.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 240.19d–1(c)(2).

[14] 17 CFR 200.30–3(a)(2).

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 87–2(11)

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security acquiescence Ruling 87–2(11)—*Butterworth* v. *Bowen,* 796 F.2d 1379 (11th Cir. 1986).

SUMMARY: In accordance with 20 CFR 404.985(e), 416.1485(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 87–2(11).

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security boulevard, Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On May 1, 1987, we issued Acquiescence Ruling 87–2(11) to reflect the holding in *Butterworth* v. *Bowen,* 796 F.2d 1379 (11th Cir. 1986), that the Social Security Administration's Appeals Council[1] is authorized to

[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103–296, effective March 31, 1995, SSA became an

initiate reopening of Administrative Law Judge (ALJ) decisions only when the decision ''is properly before it.'' The court explained several methods by which an ALJ decision may be properly before the Appeals Council including when the Council timely takes own motion review of a decision. Furthermore, the court's holding limited the reopening jurisdiction of the Appeals Council by specifically requiring timely own motion review to begin within the 60-day time period provided in 20 CFR 404.969.

Concurrent with the rescission of this Ruling, we are publishing our final rules amending sections 404.969 and 416.1469 of Social Security Regulations Nos. 4 and 16 (20 CFR 404.969 and 416.1469), to clarify when the Appeals Council has own motion review authority to reopen and revise ALJ decisions in accordance with the provisions of 20 CFR 404.987, 404.988, 416.1487 and 416.1488. The final rules provide in paragraphs 404.969(d) and 416.1469(d) that if the Appeals Council is unable to decide within the applicable 60-day period whether to review a decision or dismissal, it may consider at a later time whether the decision or dismissal should be reopened and revised under 20 CFR 404.987, 404.988, 416.1487 and 416.1488. Under the final rules, the Appeals Council's authority to reopen and revise ALJ decisions is not limited by the 60-day period provided in paragraphs 404.969(a) and 416.1469(a).

Because the final rules address the *Butterworth* court's concerns and explain that the Appeals Council's authority to reopen and revise ALJ decisions is not subject to the 60-day period provided in paragraphs 404.969(a) and 416.1469(a), we are rescinding Acquiescence Ruling 87–2(11). The final rules and this rescission restore uniformity to our nationwide system of rules in accordance with our commitment to the goal of administering our programs through uniform national standards as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Special Benefits for Persons Aged 72 and Over; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income)

Dated: May 27, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 98–17839 Filed 7–6–98; 8:45 am]

BILLING CODE 4190–29–M

independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to march 31, 1995, the Secretary of Health and Human Services had such responsibility.

DEPARTMENT OF STATE

Intelligence and Research Bureau; Announcement of FY 1998 Grants Under the Research and Training Program on Eastern Europe and the Independent States of the Former Soviet Union (Title VIII)

[Public Notice 2846]

On May 5, 1998, Deputy Secretary of State Strobe Talbott approved the recommendations of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. The Title VIII program, administered by the Department of State, seeks to build expertise among Americans on Russia, Eurasia, and Eastern Europe through support for advanced research, language training, and other activities both in the US and in the region. FY 1998 grant recipients are listed below.

1. American Council of Learned Societies

Grant: $250,000 (EE/Baltic States).

Purpose: To support competitions for dissertation and postdoctoral research fellowships and the Junior Scholars Training Program.

Contact: Jason Parker, Executive Associate, American Council of Learned Societies, 228 East 45th Street, New York, NY 10017–3398, (212) 697–1505 (ext. 134/135), Fax (212) 949–8058, www.ACLS.org, e-mail: Jason@ACLS.org.

2. American Council of Teachers of Russian

Grant: $371,830 (300,000–NIS, $71,830–EE).

Purpose: To support 64 graduate students, postdoctoral scholars, and young faculty in Russian, Eurasian, or Central European studies for advanced on-site language training or research.

Contact: Margaret Stephenson, ACTR, 1776 Massachusetts Avenue, N.W., Suite 700, Washington, D.C. 20036, (202) 833–7522, Fax (202) 833–7523, www.ACTR.org, e-mail: Stephens@ACTR.org.

3. University of Illinois at Urbana-Champaign

Grant: $126,519 ($95,000–NIS; $31,519–EE).

Purpose: To provide support for the Summer Research Laboratory and the Slavic Reference Service.

Contact: Dianne Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820, (217) 333–1244, Fax (217) 333–1582, www.UIUC.edu, e-mail: DianneM@UIUC.EDU

4. Institute of International Education

Grant: $120,000 ($60,000–NIS, $60,000–EE).

Purpose: To support 15 Professional Development Fellowships for young professionals in fields related to public service and civil policy in the NIS and Eastern Europe.

Contact: Andrew Small, Institute Of International Education, US Student Program Division, 809 United Nations Plaza, New York, NY 10017–3580, (212) 883–8200, Fax (212) 984–5325, www.IIE.org, e-mail: ASmall@IIE.org.

5. International Research and Exchanges Board

Grant: $925,000 ($600,000–NIS; $325,000–EE).

Purpose: To support its programs for Individual Advanced Research Opportunities; Short-term Travel Grants; Special Projects in Library and Information Service Grants; and Policy Forums.

Contact: Paul Ashin, IREX, 1616 H Street, N.W., Washington, D.C. 20006, (202) 628–8188, www.IREX.org, e-mail: Pashin@IREX.Org.

6. National Academy of Sciences

Grant: $195,000 ($98,000–NIS, $97,000–EE).

Purpose: To support four Young Investigator Programs and 20 grants for a program on ''Governance in Post-Communist Societies,'' focusing on science and democratization and organized crime, terrorism, and Weapons of Mass Destruction.

Contact: Steven Deets, Office for Central Europe and Eurasia, National Academy of Sciences/National Research Council, 2102 Constitution Avenue, N.W., (FO 2014), Washington, D.C. 20418, (202) 334–2644, Fax (202) 334–2614, www.NAS.edu, e-mail: SDeets@NAS.EDU.

7. National Council for Eurasian and East European Research

Grant: $1,273,800 ($900,000–NIS; $373,800,000–EE).

Purpose: To support the Research Contract and Fellowship Grant Programs and for the Policy Research Fellowships for junior postdoctoral scholars in the NIS.

Contact: Robert Huber, President, NCEEER, 1755 Massachusetts Avenue, N.W., Suite 304, Washington, D.C. 20036, (202) 387–0168, Fax (202) 387–1608, www.NCEEER.com, e-mail: NCEEER@IX.Netcom.com.

8. Social Science Research Council

Grant: $770,000 ($750,000–NIS, $20,000–EE).

Purpose: To support a national fellowship program for dissertation completion and for postdoctoral research and a competition for grants to American institutions for language training.

Contact: Judith Sedaitis, Staff Associate, Social Science Research Council, 810 7th Avenue, New York, NY 10019, (212) 377–2700, Fax (212) 377–2727, www.SSRC.org, e-mail: Sedaites@SSRC.org.

9. The Woodrow Wilson Center for International Scholars

Grant: $742,851 ($480,000–NIS; $262,851–EE).

Purpose: To support research scholarships, short-term grants, research fellowships and internships; meetings; and outreach publication.

Contact: Nancy Popson, Program Associate, Kennan Institute, (202) 287–3400, Fax (202) 287–3772, wwics.si.edu, e-mail: Popsonna@WWIC.SI.Edu. Or, Kristin Hunter Program Associate, East European Studies, East and West European, Program, The Wilson Center, 370 L'Enfant Promenade, Suite 704, Washington, D.C. 20024–2518, (202) 287–3000, Fax (202) 287–3772, wwics.si.edu, e-mail: EES-WWC@erols.com.

Dated: June 22, 1998.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 98–17845 Filed 7–6–98; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on July 22, 1998, at 9:00 a.m.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW, Suite 801, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Terry Stubblefield, Transportation Industry Analyst, Office of Rulemaking (ARM–208), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–7624; FAX: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues. This meeting will be held on July 22, 1998, at 9:00 a.m. at the General Aviation Manufacturers Association, 1400 K Street, NW, Suite 801, Washington, DC.

The agenda for this meeting will include:.

(1) A status report from the International Certification Procedures Harmonization Working Group on disposition of comments received in response to the ''Type Certification Procedures for Changed Products'' Notice of Proposed Rulemaking (NPRM). This working group's activities are nearing completion, and it is expected that this will be the last report. The next action anticipated by the working group will be a ballot vote;

(2) A status report on the Delegation System Working Group's ''Establishment of Organization Designation Authorization Procedures'' NPRM, advisory circular and FAA order;.

(3) A status report from the Parts Working Group and Production Certification Working Group on the parts 21 and 45 ''Production Certification and Parts Manufacturing'' NPRM.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under ''For Further Information Contact.''

Issued in Washington, DC, on June 29, 1998.

Brian Yanez,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–17855 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 1998, there were eight applications approved. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Springfield Airport Board, Springfield, Missouri.

Application Number: 97–03–C–00–SGF.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $6,370.614.

Earliest Charge Effective Date: July 1, 1998.

Estimated Charge Expiration Date: July 1, 2005.

Class of Air Carriers Not Required To Collect PFC's:

Non-scheduled Part 135 air taxi commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Springfield/Branson Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal area master plan.

Flight information display system.

Airport snow removal equipment (SRE).

Commuter walkways.

PFC administrative costs.

Brief Description of Project Partially Approved for Collection and Use: Leasehold acquisition, roadway improvements, baggage claim, and ground transportation expansion.

Determination: Partially approved. (1) The tenant relocation is not eligible in accordance with paragraph 595(a). (2) The leasehold acquisition is disapproved. (3) The facility areas dedicated to ground commerce, which are determined to be the loading area occupied by the tour buses, limousines, taxis, private shuttles, and any dedicated roadway specifically for such ground commerce vehicles, are ineligible. (4) The number of charter aircraft presently utilizing the airport and forecasted for the next five years do not justify the addition of two gates. Therefore, this element would not preserve or enhance capacity, and thus is not approved for use of PFC funding.

Brief Description of Withdrawn Project: Airport runway extension, parallel taxiway, and secondary instrument landing system.

Determination: This project was withdrawn by the public agency in its letter dated December 12, 1997. Therefore, the FAA will not rule on this project in this decision.

Decision Date: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

Public Agency: County of Delta, Escanaba, Michigan.

Application Number: 98–05–C–00–ESC.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $196,095.

Earliest Charge Effective Date: August 1, 1998.

Estimated Charge Expiration Date: October 1, 2000.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi and charter carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Delta County Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire land and remove obstructions.

Remove obstructions from runway 36 approach.

Acquire land.

Acquire land and remove obstructions.

Acquire passenger lift.

New terminal building (design only).

Construct air carrier apron.

Construct connecting taxiway.

Construct airport entrance road.

Construct vehicular parking lot (non-revenue).

Decision Date: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Jon Gilbert, Detroit Airports District Office, (734) 487–7281.

Public Agency: City of Burlington, Vermont.

Application Number: 98–02–C–00–BTV. .

Application Type: Impose and use a PFC.

PFC Level: $3.00 .

Total PFC Revenue Approved in this Decision: $40,000.

Earliest Charge Effective Date: February 1, 2006.

Estimated Charge Expiration Date: March 1, 2006.

Class of Air Carriers not Required to Collect PFC's: On demand air taxi commercial operators that (1) do not enplane or deplane passengers at the airport's main passenger terminal building and (2) enplane less than 200 passengers per year at the airport.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Burlington International Airport.

Brief Description of Project Approved for Collection and Use:

Expand terminal/landside.

South commuter ramp expansion.

Brief Description of Project Approved for Collection and Use: PFC application costs.

Decision Date: May 15, 1998.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: City of Waco, Texas.

Application Number: 98–02–C–00–ACT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $2,081,400.

Earliest Permissible Charge Effective Date: October 1, 1999.

Estimated Charge Expiration Date: June 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Terminal renovation and expansion.

PFC administrative costs.

Decision Date: May 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: MBS International Airport Commission, Saginaw, Michigan.

Application Number: 98–02–C–00–MBS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $812,050.

Earliest Charge Effective Date: December 1, 1998.

Estimated Charge Expiration Date: January 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at MBS International Airport.

Brief Description of Projects Approved for Collection and Use:

Expand and rehabilitate SRE building.

Expand general aviation apron.

Rehabilitate perimeter road.

Rehabilitate SRE building apron.

Rehabilitate service road.

Acquire SRE (spreader).

Acquire SRE (snow plow).

Construct water main.

Construct aircraft rescue and firefighting (ARFF) building (design only).

Construct new ARFF building.

Acquire SRE (sweeper).

Airport storm drainage study.

Design of runway 5/23 and taxiway system rehabilitation.

Decision Date: May 22, 1998.

FOR FURTHER INFORMATION CONTACT: Jon Gilbert, Detroit Airports District Office, (734) 487–7281.

Public Agency: St. Louis Airport Authority, St. Louis, Missouri.

Application Number: 98–04–I–00–STL.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $135,000,000.

Earliest Permissible Charge Effective Date: June 1, 1998.

Estimated Charge Expiration Date: September 1, 2001.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class

accounts for less than 1 percent of the total annual enplanements at Lambert-St. Louis International Airport.

Brief Description of Projects Approved for Collection Only:

Property and business acquisition for natural Bridge Road relocation (phase I).

Land acquisition for Natural Bridge Road relocation (phase II).

Land acquisition for new runway 12R/30L site preparation work.

Early road work.

Design fees for roads and runway (including program management consultant/airport development program consultant fees.

Decision Date: May 22, 1998.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

Public Agency: Columbus Municipal Airport Authority, Columbus, Ohio.

Application Number: 97–06–C–00–CMH.

Application Type: Impose and use a PFC.

PFC level: $3.00.

Total PFC Revenue Approved in This Decision: $40,005,400.

Earliest Charge Effective Date: January 1, 2002.

Estimated Charge Expiration Date: January 1, 2004.

Class of Air Carriers not Required to Collection PFC's; Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Port Columbus International Airport (CMH).

Brief Description of Projects Approved for Collection at CMH and Use at CMH:

Skycap baggage improvements.

Structure removal from runway 28L building restriction line.

Digital image acquisition and identification card production system.

Runway 10R/28L centerline improvements.

Development and enhancement study.

Tree removal.

Terminal exit doors modifications.

Multi-user flight information display system.

ARFF rapid intervention vehicle.

Terminal modernization program.

Taxiway E lighting.

International Gateway/Stelzer Road interchange justification study.

Terminal ramp aircraft parking pads.

Lane apron and connector/taxiway C–1 overlay.

Terminal apron rehabilitation (design).

International Gateway (road) improvements.

Residential soundproofing phases II–IV.

Ticket counter/baggage claim expansion study.

Addendum to 1993 Part 150 noise exposure maps and noise compatibility plan.

Landside building program: scope definition and design standards.

Reconfigure post office on the air operations area (access control improvements).

Terminal entrance improvements.

Public address system.

Terminal directional signage.

Runway distance measuring equipment.

Airport economic impact analysis.

Wetland delineation study.

Signage and graphics consulting services.

Airfield lighting electrical vault.

Safety and security equipment.

Relocation of taxiway G lighting.

Brief Description of Projects Approved for Collection at CMH and use at Bolton Field:

Automated weather observation system.

Drainage improvements.

Terminal restrooms/Americans with Disabilities Act requirements.

Engineering and consulting services.

Runway 4 end centerline rehabilitation.

Tree removal.

Brief Description of Projects Approved in Part for Collection At CMH and Use At CMH: North airfield improvements: extension of Bridgeway Avenue, land acquisition, construction of apron, construction of taxiway, sanitary sewer relocation, environmental mitigation/site work.

Determination: Partially approved. The water service upgrade portion of the project was determined to be ineligible under paragraph 568 of FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook. The public agency did not establish in its application that the proposed water line, or a portion thereof, would serve eligible airport development.

Chiller replacement/purge equipment.

Determination: Partially approved. Utility projects are eligible to the extent they are needed to serve eligible airport development. The allowable cost of any installation serving both eligible and ineligible areas or facilities must be prorated. The FAA has determined that approximately 72 percent of the total project costs are eligible.

Terminal gate alterations/consolidation.

Determination: Partially approved. Terminal building projects involve work in both eligible and ineligible areas. PFC eligibility is limited to public-use areas that are directly related to the movement of passengers and baggage in air carrier and commuter service terminal facilities within the boundaries of the airport. The FAA has determined that approximately 72 percent of the total project costs are eligible.

West sanitary pumping station and 8-inch force main.

Determination: Partially approved. The public agency requested 100 percent PFC funding for this project. However, utility projects are only eligible to the extent they are needed to serve eligible airport development. The allowable cost of any installation serving both eligible and ineligible areas or facilities will be a prorated share of the total cost. The FAA has determined that approximately 72 percent of the total project costs are eligible.

Runway 10L/28R navigational aids.

Determination: Partially approved. The approved amount was reduced from the amount requested to account for the issuance of two AIP grants.

North airfield T-hangar apron (taxilanes only).

Determination: Partially approved. PFC eligibility is limited to the public use apron, access drive, and perimeter fencing. In addition, the site work is eligible on a prorated basis for that portion of the project determined to be eligible.

Concourse B renovations.

Determination: Partially approved. Certain elements of this project, such as carpet replacement, are not eligible in accordance with Appendix 2 of FAA Order 5100.38A, AIP Handbook.

Landside building program—design and construction: terminal expansion and entrance improvements (terminal modernization, phase IV) and signage and graphic improvements; expansion of the terminal curbfront and International Gateway from Sawyer Road to the terminal.

Determination: Partially approved. Certain items mentioned in the project description, such as the parking structure site preparation and portions of the airport roadways exlusively serving parking facilities, rental car facilities, and other non-aeronautical facilities, are not eligible.

East sanitary lift station replacement.

Determination: Partially approved. Utility projects are eligible to the extent they are needed to serve eligible airport development. The allowable cost of any installation serving both eligible and ineligible areas or facilities will be a prorated share of the total project cost. The FAA has determined that approximately 72 percent of the total project costs are eligible.

PFC application formulation expense: environmental overview; application legal services; other application costs.

Determination: Partially approved. The environmental review is not considered a PFC application formulation expense; however, this is considered to be an eligible element of a planning study under AIP criteria, paragraph 406(r) of FAA Order 5100.38A, AIP Handbook. The approved amount was reduced from the amount requested based on actual costs as shown in the public agency's letter dated December 19, 1997.

Backflow prevention valves.

Determination: Partially approved. Utility projects are eligible to the extent they are needed to serve eligible airport development. The allowable cost of any installation serving both eligible and ineligible areas or facilities will be a prorated share of the total project cost. The FAA has determined that approximately 72 percent of the total project costs are eligible.

Terminal heating piping replacement.

Determination: Partially approved. Terminal building projects involve work in both eligible and ineligible areas. PFC funding is limited to non revenue producing public-use areas that are directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. The FAA has determined that approximately 72 percent of the total project costs are eligible.

Brief Description of Projects Disapproved for Collection at CMH and Use at CMH: Satellite landing system.

Determination: Disapproved. This project has been determined to not be justified under PFC criteria. The requested global positioning system differential ground station equipment is not required for precision approaches at CMH. In addition, this equipment is not yet approved by the FAA for installation.

Signage standards manual.

Determination: Disapproved. This project does not meet the objectives test for FPC eligibility in § 158.15(a).

South ramp settlement study.

Determination: Disapproved. Paragraph 300(b) of FAA Order 5100.38A (October 24, 1989) indicates that the separate funding of projects for the preparation of plans and specifications is allowable if the airport development has every expectation of beginning within 2 years. Inasmuch as this project was completed in 1993 and a project to correct the settlement problem has not been started and is not in this application, the FAA has no expectation that this project will be started within 2 years, as required by § 158.33(a)(1). In addition, the FAA has determined that this project does not confirm to the eligible master planning elements in paragraph 406 of FAA Order 5100.38A, and is not, therefore, considered to be eligible planning work. Therefore, this study/preliminary engineering project is being disapproved at this time.

Bolton Field—airport layout plan and Exhibit A.

Determination: Disapproved. This project does not meet the objective test for PFC eligibility in § 158.15(a), namely it does not preserve or enhance safety, security, or capacity; reduce noise or mitigate noise impacts; not does it furnish opportunities for enhanced competition.

Decision Date: May 29, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Jagiello, Detroit Airports District Office, (313) 487–7296.

Public Agency: Ports of Chelan and Douglas, Wenatchee Washington.

Application Number: 98–02–00–EAT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $307,000.

Earliest Charge Effective Date: June 1, 1998.

Estimated Charge Expiration Date: October 1, 2000.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Reconstruct runway 12/30.

Property acquisition on approach runway 30.

Properry acquisition on approach runway 12.

Taxiway G lighting and signage.

Access road improvements.

Acquire passenger access lift.

Equipment storage building for SRE.

Acquire SRE.

Decision Date: May 29, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–02–C–02–MEI, Meridian, MS	03/26/98	$155.223	$154,390	12/01/00	12/01/00
97–04–C–01–MEI, Meridian, MS	04/24/98	32,500	45,000	12/01/00	03/01/01
93–01–C–01–MRY, Monterey, CA	04/30/98	3,960,855	5,455,672	06/01/00	12/01/01
97–02–C–01–DSM, Des Moines, IA	05/08/98	3,574,928	9,713,654	07/01/99	12/01/01
95–03–C–02–GPT, Gulfport, MS	05/19/98	3,464,600	4,608,400	12/01/01	02/01/02
95–01–C–01–CMI, Champaign, IL	05/21/98	1,154,307	1,327,400	11/01/98	05/01/99
94–01–C–01–LBE, Latrobe, PA	05/29/98	187,266	1,397,687	10/01/98	05/01/13

Issued in Washington, DC on June 26, 1998.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 98–17854 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment, TCAS II

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) pertaining to traffic alert and collision avoidance system (TCAS) airborne equipment, TCAS II. The proposed TSO prescribes the minimum operational performance standards that TCAS II equipment must meet to be identified with the marking ''TSO–C119b.''

DATES: Comments must identify the TSO file number and be received on or before August 17, 1998.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, FAX No. (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This TSO is proposed to provide for performance enhancement to Traffic Alert and Collision Avoidance System II (TCAS II) Airborne Equipment. There have been a significant number of changes to the TCAS II software. Version 7.0 of the TCAS II will also be utilized by ICAO member states with the mandates for equipage of Airborne Collision Avoidance System (ACAS II). Areas of improvement include TCAS–TCAS reversal, horizontal miss distance filtering, surveillance improvements to extend effective range and reduce interference in high density traffic areas, reduction of nuisance Traffic Advisories operating in Reduced Vertical Separation Minimum (RVSM) airspace, etc. Also, display and aural changes were made to improve flight crew recognition and understanding issues.

Marking is addition to those required by 14 CFR 21.607 would be required for TSO–C119b articles.

The proposed TSO would require the TSOA holder to provide the article purchaser with certain data described in Paragraph 5 of proposed TSO–C119b. Data that would be furnished with each manufactured article includes operating instructions and equipment limitations, installation procedures, limitations, and related information, equipment specifications and designations, maintenance instructions, and environmental qualification forms. Additional information would be required for articles that accomplish additional functions; that information would need to be sent to the purchaser once, even if several identical articles are purchased.

How to Obtain Copies

A copy of the proposed TSO–C119b may be obtained via Internet (http:/www.faa.gov/avr/air/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.** Copies of RTCA, Inc. Document No. DO–185A, ''Minimum Operational Performance Standards for An Active Traffic Alert and Collision Avoidance System II (TCAS II) Airborne Equipment,'' dated December 16, 1997. RTCA Document No. 160D, ''Environmental Conditions and Test Procedures for Airborne Equipment,'' dated July 29, 1997; and RTCA Document No. DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification,'' dated 1, 1992, may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Issued in Washington, DC, on June 30, 1998.

Abbas A. Rizvi,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 98–17943 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with title 49 CFR 211.9 and 211.41, notice is hereby given that the following railroads have petitioned the Federal Railroad Administration (FRA) for exemption from or waiver of compliance with a requirement of its safety standards. Their petitions are described below, including the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis of their request.

All communications concerning these proceedings should identify the appropriate waiver petition docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Mail Stop 10, Washington, DC 20590.

Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 7051, 1120 Vermont Street, NW., Washington, DC. The individual petitions are as follows:

National Railroad Passenger Corporation (Amtrak)

FRA Waiver Petition Docket No. HS–98–01

Amtrak requests a waiver to maintain train and engine employee's hours of duty records in an electronic program in lieu of manually signed paper records.

Florida East Coast Railway Company (FEC)

FRA Waiver Petition Docket No. HS–98–02

FEC requests a waiver to utilize their ''Paperless Time Ticket Program'' to produce an electronic record of train and engine employee hours of duty in lieu of manually signed paper records.

Both Amtrak and the FEC request a waiver of compliance with certain provisions of FRA Safety Regulations (Hours of Service of Railroad Employees). The waivers requested seek relief from Title 49 Code of Federal Regulations (CFR) Part 228.9(a)(1) for each railroad to utilize a computerized system of recording hours of duty data. Part 228.9(a)(1) requires that records maintained under Part 228 be signed by the employee whose time is being recorded, or in the case of train and engine crews, signed by the ranking crew member. Amtrak and the FEC seek

to utilize a secure computerized program of recording hours of duty information which would not comply with the above requirements for a ''signature'' of the employee or ranking crew member. Amtrak and the FEC propose that each railroad's train and engine employee will have his or her own unique identification number and personal identification number (PIN). The PIN will remain confidential to the employee. When accessing the computer for input of the hours of service record, required by § 228.11, the (PIN) will not appear on the computer screen when the employee enters his or her number. All data entered under access gained through use of the confidential PIN will be electronically stamped with the entering employee's name. The program will display the electronic signature on the employee's hours of duty record. Amtrak and the FEC requests a waiver to use the electronic stamp to satisfy the signature requirements of the ''Hours of Service of Railroad Employees.'' The railroads maintain that the change is in the best interests of all parties, in that, it will reduce unnecessary paperwork and the costs associated therewith while providing the railroads, its employees and the FRA with a superior level of information on a more timely basis than is currently available.

Issued in Washington, DC on June 29, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–17827 Filed 7–6–98; 8:45 am]

BILLING CODE 4910–6–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on June 24, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	NEW EXEMPTION APPLICATIONS		
11540–N	Convenience Products, Fenton, MO	1	7/31/1998
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	7/31/1998
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	7/31/1998
11687–N	Tri Tank Corp., Syracuse, NY	4	7/31/1998
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	7/31/1998
11735–N	R.D. Offutt Co., Park Rapids, MN	4	7/31/1998
11751–N	Delta Resigns & Refractories, Detroit, MI	4	7/31/1998
11761–N	Vulcan Chemicals, Birmingham, AL	4	7/31/1998
11765–N	Laidlaw Environmental Services, Inc., Columbia, SC	4	7/31/1998
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	7/31/1998
	NEW EXEMPTION APPLICATIONS		
11774–N	Safety Disposal System, Inc., Opa Locka, FL	1	7/31/98
11783–N	Peoples Natural Gas, Rosemount, MN	4	7/31/98
11815–N	Union Pacific Railroad Co. et al, Omaha, NE	4	7/31/98
11817–N	FIBA Technologies, Inc., Westboro, MA	4	7/31/98
11821–N	Wyoming Department of Transportation, Cheyenne, WY	4	7/31/98
11862–N	The BOC Group, Murray Hill, NJ	4	7/31/98
11882–N	FMC Corporation, Philadelphia, PA	4	7/31/98
11883–N	Brownie Tank Mfg., Co., Minneapolis, MN	4	7/31/98
11884–N	Degussa Corporation, Ridgefield Park, NJ	4	7/31/98
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	7/31/98
	NEW EXEMPTION APPLICATIONS		
11911–N	Transfer Flow, Inc., Chico, CA	4	07/31/1998
11915–N	Lockheed Martin Aeronautical Systems, Marietta, GA	4	07/31/1998
11916–N	CP Industries, Inc., McKeesport, PA	4	07/31/1998
11927–N	Alaska Marine Lines, Seattle, WA	4	07/31/1998
11934–N	UtiliCorp United, Inc., Omaha, NE	4	07/31/1998
11938–N	Steel Shipping Container Institute, Washington, DC	4	07/31/1998
11947–N	Patts Fabrication & Services, Odessa, TX	4	08/31/1998
11954–N	Republic Environmental Systems (PA), Inc., Hatfield, PA	4	08/31/1998
11970–N	Exxon Chemical, Inc., Baytown, TX	4	08/31/1998

Application No.	Applicant	Reason for delay	Estimated date of completion
11971–N	Regional Airline Association, Washington, DC	4	08/31/1998
	NEW EXEMPTION APPLICATIONS		
11982–N	Webasto Thermosystems, Inc., Madison Heights, MI	4	09/30/1998
11983–N	Degussa Corporation, Ridgefield Park, NJ	4	09/30/1998
12001–N	Albermarle Corporation, Baton Rouge, LA	4	09/30/1998
12003–N	Degussa Corporation Ridgefield Park, NJ	4	09/30/1998
12004–N	Alfa SA, Portugal	4	09/30/1998
12020–N	Rhone-Poulenc, Inc., Shelton, CT	4	09/30/1998
	MODIFICATIONS TO EXEMPTIONS		
3216–M	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	09/30/1998
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	07/29/1998
4661–M	Cyprus Foote Mineral Co., Kings Mountain, NC	4	07/29/1998
6610–M	ARCO Chemical Co., Newtown Square, PA	4	07/29/1998
6971–M	Chem Service, West Chester, PA	4	06/30/1998
	NEW EXEMPTION APPLICATIONS		
7879–M	Halliburton Energy Services, Inc., Duncan, OK	4	07/29/1998
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	07/29/1998
0649–M	Propack, Inc., Essington, PA	4	07/29/1998
2669–M	ERMEWA, Inc., Houston, TX	4	07/29/1998
8199–M	Halliburton Energy Services, Inc., Duncan, OK	4	07/30/1998
01381–M	Betz Dearborn, Inc., Trevose, PA	4	07/30/1998
03651–M	U.S. Enrichment Corporation, Bethesda, MD	4	07/30/1998
04291–M	Baker Performance Chemicals, Inc., Houston, TX	4	07/30/1998
06771–M	Primus AB, S–171 26 Solna, SW	4	07/30/1998
09961–M	Kosdon Enterprises, Ventura, CA	4	07/30/1998
	NEW EXEMPTION APPLICATIONS		
11058–M	Spex Certiprep Inc., Metuchen, NJ	4	07/30/1998
11167–M	ECO–Pak Specialty Packaging, Elizabethton, TN	4	07/30/1998
11254–M	Schlumberger Oilfield Services, Sugar Land, TX	4	07/31/1998
11375–M	Oceaneering Space Systems, Houston, TX	4	08/31/1998
11378–M	Astrotech Space Operations, Inc., Titusville, FL	4	07/30/1998
11458–M	Reckitt & Colman, Inc., Montvale, NJ	4	07/30/1998
11516–M	Falcon Safety Products, Inc., Somerville, NJ	4	07/30/1998
	PARTIES TO EXEMPTION APPLICATIONS WITH MODIFICATION		
11352–PM	PepsiCo, Inc., Arlington, TX	4	07/30/1998

[FR Doc. 98–17941 Filed 7–6–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 25, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before August 6, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0685.

Form Number: IRS Form 1363.

Type of Review: Extension.

Title: Export Exemption Certificate.

Description: This form is used by air carriers of property by air to justify the tax-free transport of property. It is used by IRS as proof of tax exempt status of each shipment.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 3 hr., 50 min.

Learning about the law or the form: 18 min.

Preparing, copying, assembling, and sending the form to the IRS: 22 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 450,000 hours.

OMB Number: 1545–0798.

Form Number: None.

Type of Review: Extension.

Title: 26 CFR 31.6001–1: Records in General; 26 CFR 31.6001–2: Additional Records Under FICA; 26 CFR 31.6001–3: Additional Records Under Railroad Retirement Tax Act; 26 CFR 31.6001–5: Additional Records in Connection with Collection of Income Tax at Source on Wages; and 26 CFR 31.6001–6: Notice by District Director Requiring Returns, Statements, or the Keeping of Records.

Description: Internal Revenue Code (IRC) section 6001 requires, in part, that every person liable for tax, or for the collection of that tax keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. 26 CFR 31.6001 has special application to employment taxes. These records are needed to ensure compliance with the Code.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 5,676,263.

Estimated Burden Hours Per Recordkeeper: 5 hours, 20 minutes.

Estimated Total Recordkeeping Burden: 30,273,950 hours.

OMB Number: 1545–0834.

Form Number: None.

Type of Review: Revision.

Title: Regulations Under Tax Conventions—Ireland.

Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5 hours.

OMB Number: 1545–1212.

Form Number: IRS Form 706–QDT.

Type of Review: Revision.

Title: U.S. Estate Tax Return for Qualified Domestic Trusts.

Description: Form 706–QDT is used by the trustee or the designated filer to compute and report the Federal estate tax imposed on qualified domestic trusts by Internal Revenue.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 80.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 1 hr., 12 min.

Learning about the law or the form: 43 min.

Preparing the form: 1 hr., 30 min.

Copying, assembling, and sending the form to the IRS: 1 hr., 3 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 357 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17867 Filed 7–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 25, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 6, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1021.

Form Number: IRS Form 8594.

Type of Review: Extension.

Title: Asset Acquisition Statement.

Description: Form 8594 is used by the buyer and seller of assets to which goodwill or going concern value can attach to report the allocation of the purchase price among the transferred assets.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 8 hr., 51 min.

Learning about the law or the form: 1 hr., 35 min.

Preparing, copying, assembling, and sending the form to the IRS: 1 hr., 49 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 245,000 hours.

OMB Number: 1545–1600.

Notice Number: Notice 98–25.

Type of Review: Extension.

Title: Election to Continue to Treat Trust as a United States Person.

Description: The notice provides the procedures and requirements for making the election to remain a domestic trust.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 500,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Estimated Total Recordkeeping Burden: 250,000 hours.

OMB Number: 1545–1602.

Notice Number: Notice 98–23.

Type of Review: Extension.

Title: Taxation of Social Security Benefits Under U.S.-Canada Income Tax Treaty.

Description: The notice provides guidance regarding recent changes to the taxation of social security benefits under the U.S.-Canada income tax treaty and the availability of refunds in some cases for taxes paid on benefits received in 1996 and 1997.

Respondents: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (one time).

Estimated Total Reporting Burden: 25,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17868 Filed 7–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 25, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before August 6, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0884.
Form Number: IRS Form 8279.
Type of Review: Extension.
Title: Election to be Treated as a FSC or as a Small FSC.
Description: A foreign corporation and its shareholders must elect to be a Foreign Sales Corporation (FSC) or Small FSC. Form 8279 is used to make the election. Form 8279 provide IRS with the necessary information to determine that the foreign corporation qualifies to be a FSC, number and types of shareholders, and tax year of the FSC and its principal shareholder.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 5,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 4 hr., 32 min.
Learning about the law or the form: 1 hr., 47 min.
Preparing and sending the form to the IRS: 1 hr., 56 min.
Frequency of Response: Other (one-time election).
Estimated Total Reporting/ Recordkeeping Burden: 41,350 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17869 Filed 7–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 29, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 22, 1998 to be assured of consideration.

SPECIAL REQUEST: In order to conduct the focus group interviews described below within the next 150 days, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by July 15, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 98–015–G.
Type of Review: Revision.
Title: Focus Group Sessions and Cognitive (In-Depth) Interviews for the Analysis and Redesign of Publication 594.
Description: In order to improve tax compliance, the Service needs to evaluate the understandability and usability of Publication 594 by meeting with taxpayers whose past tax history indicates that they received this publication as part of their tax process with the IRS.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 28.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: Other (one-time only).
Estimated Total Reporting Burden: 282 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17871 Filed 7–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Rreview; Comment Request

June 29, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 22, 1998 to be assured of consideration.

SPECIAL REQUEST: In order to conduct the focus group interviews described below on July 13, 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by July 6, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 98–017–G.
Type of Review: Revision.
Title: Child Tax Credit Focus Groups.
Description: The Tax Forms and Publications Division must design forms and other materials that accurately reflect the law as passed by Congress (Child Tax Credit enacted by Congress as part of the Taxpayer Relief Act of 1997). Faced with the challenge of keeping the reporting requirements imposed by the law upon taxpayers as simple as possible, the division wishes to gain taxpayer reaction to the materials it is developing. The division believes focus groups will provide valuable information from taxpayers that can be used as part of the development process.

The focus groups will be held in Washington, DC (July 13); Boston, Massachusetts (July 15); Los Angeles, California (July 16); Chicago, Illinois (July 20); and Richmond, Virginia (July 21).

Respondents: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 3 hours, 30 minutes.
Frequency of Response: Other (one-time only).
Estimated Total Reporting Burden: 282 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management

and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17872 Filed 7–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 29, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 22, 1998 to be assured of consideration.

SPECIAL REQUEST: In order to conduct the focus group interviews described below as soon as possible, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by July 10, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 98–018–G.

Type of Review: Revision.

Title: Schedule D Focus Groups.

Description: A significant number of taxpayers who should have attached Schedule D (Form 1040) to their tax return did not do so, resulting in the necessity of corresponding with the taxpayer to request the missing schedule, inconveniencing the taxpayer and increasing processing costs. The Tax Forms and Publications Division would like to meet with some of the taxpayers, to find out what differences in the forms or instructions might have led them to attach the schedule. This will be useful in creating forms and instructions for next year, both in relating to the Schedule D issue, and in communicating any future tax law changes.

Respondents: Individuals or households.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 2 hours, 34 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 70 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–17873 Filed 7–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R and SE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE.

DATES: Written comments should be received on or before July 8, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Number: 1040 and Schedules A, B, C, C–EZ, D, D–1, E, IC, F, H, J, R, and SE.

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Current Actions: The major changes are as follows: Form 1040.

(1) Line 6c, column (4), was revised to allow taxpayers to indicate which dependents qualify for the child tax credit (one of the requirements is that the child must be a dependent). The information previously in column (4) regarding the number of months the dependent lived in the taxpayer's home is removed.

(2) New line 24 was added for the student loan interest deduction to reflect new Internal Revenue Code section 221. The deduction will be computed on a new worksheet in the instructions.

(3) New line 43 was added for the child tax credit to reflect new Code section 24. The credit will be computed on a new worksheet in the instructions. Also, line 60 was added for the additional (refundable) amount of the child tax credit. The additional credit is allowed by Code section 32(n), and it will be computed on Form 8812.

(4) New line 44 was added for the education credits (the Hope and lifetime learning credits) allowed by Code section 25A, which will be computed on Form 8863.

Schedule B

Lines 7 through 10 were removed. The amount of ordinary dividends from box 1 of Form 1099–DIV will be entered on line 5 of Schedule B instead of the amount of gross dividends. It will no longer be necessary to enter the amount of capital gain distributions and nontaxable distributions and subtract the total of those amounts from the total gross dividends. Capital gain distributions will be reported only on Schedule D. Nontaxable distributions will not be reported at all, as they are not needed to compute the tax.

Schedule J

New Schedule J, Farm Income Averaging, was created to implement Code section 1301, which was added by the Taxpayer Relief Act of 1997.

Schedule R

The physician's statement was deleted from the form and moved to the

instructions because there is no need for it to be filed with the tax return.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 69,384,249.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 1,143,129,008.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information 5 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–17824 Filed 7–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040A and Schedules 1, 2, 3, and EIC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040A, U.S. Individual Income Tax Return, and Schedules 1, 2, 3, and EIC.

DATES: Written comments should be received on or before September 8, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0085.

Form Number: 1040A and Schedules 1, 2, 3, and EIC.

Abstract: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data are used to verify that the income reported on the form is correct and are also for statistics use.

Current Actions: The major changes are as follows: Form 1040A.

(1) Line 6c, column (4), was revised to allow taxpayers to indicate which dependents qualify for the child tax credit (one of the requirements is that the child must be a dependent). The information previously in column (4) regarding the number of months the dependent lived in the taxpayer's home is removed.

(2) New line 16 was added for the student loan interest deduction to reflect new Internal Revenue Code section 221. The deduction will be computed on a new worksheet in the instructions. Line 17 was added to total the adjustments, which will be subtracted from total income (line 14) to arrive at adjusted gross income (line 18).

(3) New line 28 was added for the child tax credit to reflect new Code section 24. The credit will be computed on a new worksheet in the instructions. Also, line 38 was added for the additional (refundable) amount of the child tax credit. The additional credit is allowed by Code section 32(n), and it will be computed on Form 8812.

(4) New line 29 was added for the education credits (the Hope and lifetime learning credits) allowed by Code section 25A, which will be computed on Form 8863.

(5) Line 27, household employment taxes, has been removed from Form 1040A to gain room for the new lines needed as a result of new law. The few taxpayers who have household employment taxes and had been filing Form 1040A will now need to file Form 1040.

Schedule 3

The physician's statement was deleted from the form and moved to the instructions because there is no need for it to be filed with the tax return.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 26,051,305.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 200,524,903.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–17826 Filed 7–6–98; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday
July 7, 1998

Part II

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards Regulation; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–0W–6118–9]

RIN–2040–AC56

Water Quality Standards Regulation

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA is today publishing this advance notice of proposed rule making (ANPRM) seeking comments from interested parties on possible revisions to the Water Quality Standards Regulation at 40 CFR Part 131. This ANPRM is intended to initiate discussions on what if any changes are needed in the national water quality standards program to improve the effectiveness of water quality standards in restoring and maintaining the quality of the Nation's waters. EPA will consider all comments before deciding whether to propose revisions to the regulation. EPA is particularly interested in comments on certain key portions of the current Water Quality Standards Regulation (the regulation) contained in 40 CFR Part 131, which establishes requirements for adoption of water quality standards pursuant to section 303 of the Clean Water Act (CWA or the Act). This ANPRM identifies specific issues on which EPA solicits comment. In addition to the specific issues on which EPA solicits comments, EPA is interested in comments on any other aspects of the program. EPA requests comments with the objectives of: supporting watershed or place-based environmental water quality management, ensuring that current water quality criteria and water quality assessment science can be easily incorporated into State and Tribal water quality programs, and enhancing effective implementation of the Act.

DATES: Written comments must be submitted by midnight January 4, 1999.

ADDRESSES: Send written comments to W–98–01, WQS-ANPRM Comment Clerk, Water Docket, MC 4101, US EPA, 401 M Street, S.W., Washington, D.C. 20460. Comments may also be submitted electronically to OW-Docket@epamail.epa.gov. The record is available for inspection from 9:00 to 4:00 p.m., Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, USEPA, 401 M St., S.W., Washington, D.C. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Rob Wood at U.S. EPA Standards and Applied Science Division (4305), 401 M Street SW, Washington, DC 20460 (e-mail: WOOD.ROBERT@EPA.GOV) (telephone: 202–260–9536).

SUPPLEMENTARY INFORMATION: EPA will hold a series of full-day public meetings for the purpose of discussion and debate on the issues presented in this notice. EPA plans to hold the public meetings during the 180-day public comment period on this notice. Dates, times and locations of public meetings will be announced to the public.

A. Potentially Affected Entities

This ANPRM by itself will have no regulatory impact or effect. The ANPRM does contain EPA interpretations of core areas of the regulation as well as EPA thinking about how the regulation may need to be changed. As discussed in more detail below, this ANPRM marks the beginning of a national dialogue on possible changes to the water quality standards regulation and program. If changes to the regulation are proposed and ultimately made final, to the extent such changes would require and/or authorize changes to State and Tribal water quality standards, States and authorized Tribes would be affected. If changes to State and Tribal water quality standards result from any final rule that EPA may promulgate in the future, entities subject to compliance with State or Tribal water quality standards would also potentially be affected. For example, States and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) Permit Program would need to ensure that permits they issue include any limitations on discharges necessary to comply with any water quality standards established as a result of any subsequent final rulemaking. Therefore, entities discharging pollutants to waters of the United States under NPDES could be affected by subsequent proposed and final rulemaking. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
State, Tribes and Jurisdictional Governments	States, Tribes authorized to administer water quality standards, and jurisdictional governments.
Industry	Industrial dischargers of pollutants to waters of the U.S.
Municipalities	Publicly-owned treatment works discharging pollutants to waters of the U.S.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could be affected by any subsequent final rulemaking. 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.

B. Water Docket Information

The record for this notice has been established under docket number W–98–01 and includes supporting documentation. When submitting written comments to the Water Docket, (see **ADDRESSES** section above) please reference docket number [W–98–01] and submit an original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite the specific question(s) in the notice to which each comment refers. The questions presented in this notice for public comment are organized by subsection and numbered. Each question has a unique number (for example III.B.3.a., question 1) for this purpose.

Comments must be received or postmarked by midnight January 4, 1999. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Electronic comments are encouraged and may be submitted to the Water Docket (see **ADDRESSES** section above). Electronic comments must be submitted as an ASCII file or a WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number, [W–98–01], and be received by midnight of January 4, 1999. Comments and data will also be accepted on disks in WP5.1 format or

ASCII file format. No confidential business information (CBI) should be sent via e-mail.

The remainder of this Supplementary Information section is organized as follows:

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B. Objectives
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4. 40 CFR 131.12 (a)(2) ''tier 2''
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B. The Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996
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I. Purpose and Objectives of This ANPRM

A. General Purpose and Vision

On February 14, 1998, the visionary ''Clean Water Action Plan'' was announced by the Administrator of EPA and the Secretary of Agriculture. The ''Clean Water Action Plan'' is a blueprint for restoring and protecting the Nation's precious water resources. A key element of the plan is advancement of the watershed approach to water quality protection. EPA's belief is that refining designated uses and implementing better more integrated water quality criteria to protect the refined uses, two important themes of this ANPRM, are essential steps in carrying out the blueprint presented. Revision of the water quality standards regulation can be an essential component in implementing the vision of the ''Clean Water Action Plan.''

States, Tribes and EPA have developed functional water quality standards programs under the current regulation and these programs have provided the basis for significant water quality improvement in the United States. Simply put, the current regulation is not broken. Rather, with the renewed interest in watershed management combined with improved methods for water quality assessment, a comprehensive evaluation for the purpose of strengthening the regulation is appropriate at this time. EPA and the public need to examine whether changes in the regulation could enhance water quality management on a watershed basis and focus resources on areas of greatest concern. A review of the regulation will also complement similar outreach discussions EPA is currently undertaking for the purposes of reviewing the water quality planning and management and total maximum daily load (TMDL) programs as well as aspects of the NPDES program. EPA is committed to ensuring that these programs, combined, form an even stronger integrated basis for water quality planning, priority setting and implementation on a watershed basis.

In recent years there has been a rising level of scrutiny placed on water quality standards and the State, Tribal and EPA decisions based on water quality standards. The increased scrutiny comes from virtually all parties affected by water quality-based decisions and is evidenced by the growing tide of challenges to State standards, EPA policies and guidance, and individual water quality-based decisions. Remaining water quality problems in the U.S. are often difficult to assess, define and solve. Once agreed upon, the solutions will be less conventional than we are used to and may result in different regulatory approaches. Examples of such problems include aquatic and riparian habitat destruction from municipal and agricultural run-off and fish tissue contamination from chemicals with many and diverse sources.

EPA believes that this scrutiny will continue and that an evaluation of the water quality standards program and its regulatory and policy underpinnings to identify where these program underpinnings may need to be strengthened, clarified or revised is imperative. Our task under the Clean Water Act is to ensure adequate water quality even where it is difficult to do so. To accomplish this task, EPA envisions a national water quality standards program in which: the best possible information on whether designated uses are being attained and how to attain and maintain them is available and used; water quality criteria are selected from a wide-ranging menu of scientifically sound criteria that can be tailored to each watershed; national norms of consistency and flexibility in State and Tribal water quality standards are clear; and innovative, cost-effective approaches are

encouraged. To realize this vision, EPA believes that a structured national debate is needed to identify a focused set of issues that may ultimately lead to changes to the water quality standards regulation and policy.

The ANPRM process allows EPA to begin this work by consulting with all interested parties to find out what changes, if any, are necessary and desirable, to make the water quality standards regulation more responsive to current needs and to identify opportunities for further clarifications of policy and guidance by EPA. In the fourteen years since EPA last revised the water quality standards regulation, interested parties have gained considerable experience in developing and implementing water quality standards. This experience will provide valuable information for review of these regulations.

The most significant shift in water quality management programs in recent years has been the increased emphasis on the use of watershed based programs. It is increasingly apparent that EPA, States, Tribes, municipalities and the public share a common view that water quality programs, including water quality standards, can be better tailored to the characteristics, problems, risks and implementation tools available in individual watersheds or basins with meaningful involvement of the local communities. The water quality standards regulation should ensure that States and Tribes have the flexibility to define the water quality standards and hence the environmental objectives of a water body according to the characteristics of the ecosystem and the needs of the water's users within the bounds established under the CWA. The regulation must allow the States and Tribes to tailor water body use designations and criteria to protect these uses within individual basins or watersheds based on the needs in the basin. The present use of broad, jurisdiction-wide use classifications and lists of associated chemical criteria may be at once too general and too narrow for some waters, lacking the refinement necessary to tailor water quality management actions to specific watersheds. This general approach reflects the historical lack of information on specific basins or water bodies and the need to ensure that all waters receive adequate protection. Additionally, it should be made clear how much flexibility States and Tribes have to adjust use designations as information improves about whether a designated use or a higher use can be attained and to reflect natural and human caused changes in water quality that may have occurred. The challenge for EPA, States and Tribes is to identify and use opportunities to refine use designations for waters where it makes sense and better match the water quality criteria to the refined use, thus making water quality standards more flexible. In addition, to more effectively implement the standards, the criteria that are used need to better integrate multiple stressors and their cumulative impacts in order to more effectively protect designated uses.

Significant scientific advancements in recent years have added to the ability to assess environmental impacts and risks related to changes in water quality. As they are further developed, new and emerging sophisticated and integrated analytical tools such as bioassessment, criteria for bioaccumulative chemicals, sediment quality criteria and toxicity assessments will increasingly allow States, Tribes, EPA and the public to characterize better the ecological condition of water resources. At present, this improving capability, used in a tailored watershed planning and management framework, can enhance the ability of States and Tribes to characterize and protect locally agreed upon goals for maintaining and protecting the chemical, physical and biological integrity of individual basins. In the long term, chemical, physical and biological assessment methods will continue to improve. As they do, the water quality standards program should be designed to accommodate effectively the new science. In the meantime, progress should not be stalled by incomplete knowledge.

With the new science and assessment methodologies, however, come new challenges for States and Tribes to identify the resources necessary to make use of these advances. One of the main themes of this ANPRM is the need for better data, and new types of data, in order to support a more refined approach to water quality protection. EPA recognizes, however, that efforts to obtain such data, and develop the analytical capacity to integrate it into existing regulatory programs, could encounter significant resource constraints in some States and Tribes. EPA is well aware that in order for a new, data-intensive, watershed-specific approach to succeed, it must be workable for the States and Tribes that will have to implement it. EPA welcomes comments regarding concerns over resource constraints and ideas for how to address them.

The water quality standards program must protect the nation's waters as envisioned in the CWA. It must establish requirements that are necessary to attain and maintain healthy, sustainable ecosystems. It must be flexible enough for States and Tribes to ensure that standards are protecting water quality in a way that makes sense. EPA seeks to avoid a program that results in costly requirements that have little or no environmental benefit. Thus EPA intends to use its experience and that of the States, Tribes, municipalities, the regulated community, environmental groups and the general public in implementing and utilizing water quality standards over the last fourteen years, to evaluate the regulation and determine if changes are needed to allow greater State, Tribal and local flexibility to develop innovative, cost-effective ways to protect water quality.

EPA may determine through the ANPRM process that the concepts described above can be better integrated into water quality management decision making through development of new or revised policies and guidance rather than revisions to the regulation. Because of this possibility, EPA is reserving its decision whether to propose and finalize revisions to the regulation. At minimum, EPA believes that any revisions to the water quality standards regulation should result in a regulation that can be used to render protective, tailored, site-specific water quality-based decisions that bear reasonable compliance costs for the regulated community, as well as reasonable implementation costs for States, Tribes and EPA. At the same time, the regulation should allow sufficient flexibility to States and Tribes, if they choose, to implement water quality standards programs in a manner that is no more burdensome than under the existing regulation.

B. Objectives

In publishing this ANPRM, EPA is beginning a review of the regulation in a public forum in an attempt to identify possible amendments to the regulation, and new guidance or policy that may be needed to address three distinct objectives. They are: (1) to eliminate any barriers and develop incentives to enhance State and Tribal implementation of watershed-based water quality planning and management; (2) to enhance State and Tribal capability to incorporate current criteria and water quality assessment science into their water quality standards programs, and; (3) to improve the regulation so that it may be implemented more efficiently and effectively (including cost-effectively). Meeting these three objectives, EPA believes, will facilitate further water

quality improvements locally and nationally. EPA urges commenters to keep all three main objectives in mind when reviewing, analyzing and commenting on this ANPRM.

II. Introduction to Water Quality Standards

A. Statutory History

The first comprehensive legislation for water pollution control was the Water Pollution Control Act of 1948 (Pub. L. 845, 80th Congress). This law adopted principles of State-Federal cooperative program development, limited federal enforcement authority, and limited federal financial assistance. These principles were continued in the Federal Water Pollution Control Act (Pub. L. 660, 84th Congress) in 1956 and in the Water Quality Act of 1965. Under the 1965 Act, States were directed to develop water quality standards establishing water quality goals for interstate waters. By the early 1970's, all the States had adopted such water quality standards. Since then, States have revised their standards to reflect new scientific information, the impact on water quality of economic development and the results of water quality controls.

Due to enforcement complexities and other problems, an approach based solely on water quality standards was deemed too weak to make a difference. The purely water quality-based approach prior to 1972 lacked enforceable Federal mandates and standards, and a strong impetus to implement plans for water quality improvement. The result was an incomplete program that in Congress' view needed strengthening. In the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500, Clean Water Act or CWA), Congress established the National Pollutant Discharge Elimination System (NPDES) whereby each point source discharger to waters of the U.S. is required to obtain a discharge permit. The 1972 Amendments required EPA to establish technology-based effluent limitations that are to be incorporated into NPDES permits. In addition, the amendments extended the water quality standards program to intrastate waters and required NPDES permits to be consistent with applicable State water quality standards. Thus, the CWA established complementary technology-based and water quality-based approaches to water pollution control. Now, after nearly 25 years of investment in technology-based controls and some $70 billion in sewage treatment plant construction, attention is turning back to water quality standards as a mechanism to make improvements in water quality beyond those that have been achieved through technology-based controls.

Water quality standards serve as the foundation for the water-quality based approach to pollution control and are a fundamental component of watershed management. Water quality standards are State or Tribal law or regulation that: define the water quality goals of a water body, or segment thereof, by designating the use or uses to be made of the water; set criteria necessary to protect the uses; and protect water quality through antidegradation provisions. Although the CWA gives EPA an important role in determining appropriate minimum levels of protection and providing national oversight, it also gives considerable flexibility and discretion to States and Tribes to design their own programs and establish levels of protection above the national minimum. States and Tribes adopt water quality standards to protect public health or welfare, enhance the quality of water, and serve the purposes of the Act. ''Serve the purposes of the Act'' (as defined in Sections 101(a), 101(a)(2), and 303(c) of the Act) means that water quality standards should: (1) include provisions for restoring and maintaining chemical, physical, and biological integrity of State and Tribal waters, (2) provide, wherever attainable, water quality for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water (''fishable/swimmable''), and (3) consider the use and value of State and Tribal waters for public water supplies, propagation of fish and wildlife, recreation, agricultural and industrial purposes, and navigation. See 40 CFR 131.2.

Section 303(c) of the CWA establishes the basis for the current water quality standards program. Section 303(c):

1. Defines water quality standards;
2. Identifies acceptable beneficial uses: public water supply, propagation of fish and wildlife, recreational purposes, agricultural and industrial water supplies and navigation;
3. Requires that State and Tribal standards protect public health or welfare, enhance the quality of water and serve the purposes of the Act;
4. Requires that States and Tribes review their standards every three years;
5. Establishes the process for EPA review of State and Tribal standards, including where necessary the promulgation of a superseding Federal rule in cases where a State's or Tribe's standards are not consistent with applicable requirements of the CWA or in situations where the Administrator determines that Federal standards are necessary to meet the requirements of the Act.

The decade of the 1970's saw State and EPA attention focus on creating the infrastructure necessary to support the NPDES permit program and development of technology-based effluent limitations. While the water quality standards program continued, it was a low priority in the overall CWA program. In the early 1980's, it began to be recognized that greater attention to the water quality-based approach to pollution control would be needed to effectively protect and enhance all of the nation's waters.

The first statutory evidence of this was the enactment of a CWA requirement that after December 29, 1984, no construction grant could be awarded for projects that discharged into stream segments which had not, at least once since December 1981, had their water quality standards reviewed and revised or new standards adopted as appropriate under Section 303(c). (Public Law 97–117, Section 24, ''Revised Water Quality Standards.'') The efforts by the States to comply with this one-time requirement essentially made the States' water quality standards current as of that date for segments with publicly-owned treatment works (POTWs) discharging into them.

Additional impetus to the water quality standards program occurred on February 4, 1987, when Congress enacted the Water Quality Act of 1987 (Pub. L. 100–4). Congressional impatience with the lack of progress in State adoption of standards for toxics (which had been a national program priority since the early 1980's) resulted in the 1987 adoption of new water quality standard provisions in the Water Quality Act amendments. These amendments reflected Congress' conclusion that toxic pollutants in water are one of the most pressing water pollution problems. One concern Congress had was that States were relying, for the most part, on narrative criteria to control toxics (e.g., ''no toxics in toxic amounts''), which made development of effluent limitations in permits difficult. To remedy this, Congress adopted section 303(c)(2)(B), which essentially required development of numeric criteria for those water body segments where toxic pollutants were likely to adversely affect designated uses.

The 1987 Amendments gave new teeth to the control of toxic pollutants. As Senator Mitchell put it, Section 303(c)(2)(B) requires ''States to identify waters that do not meet water quality

standards due to the discharge of toxic substances, to adopt numerical criteria for the pollutants in such waters, and to establish effluent limitations for individual discharges to such water bodies.'' (From Senator Mitchell, 133 Cong. Rec. S733.) To assist States in complying with Section 303(c)(2)(B), EPA issued program guidance in December 1988 and instituted an expanded program of training and technical assistance.

Section 518 was another major addition in the 1987 Amendments to the Act. This section extended participation in the water quality standards and 401 certification programs to certain Indian Tribes. The Act directed EPA to establish procedures by which a Tribe could ''qualify for treatment as a State,'' at its option, for purposes of administering the standards and 401 certification programs. The Act also required EPA to create a mechanism to resolve disputes that might develop when unreasonable consequences arise from a Tribe and a State or another Tribe adopting different water quality standards on common bodies of water.

Furthermore, with the 1987 Amendments, the Act explicitly recognized EPA's antidegradation policy for the first time. The intent of the antidegradation policy in EPA's regulation was and is to protect existing uses and the level of water quality necessary to protect existing uses and to provide a means for assessing activities that may impact high quality waters and ruling on whether such projects could proceed. Section 303(d)(4) of the Act requires that water quality standards in those waters that meet or exceed levels necessary to support designated uses ''may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.''

B. Regulatory History

In the late 1960's and early 1970's the water quality standards program was initiated and administered based on minimal guidance and Federal policies—many of which are still reflected in the water quality standards program today.

EPA first promulgated a water quality standards regulation in 1975 (40 CFR 130.17, 40 *FR* 55334, November 28, 1975) as part of EPA's water quality management regulations mandated under Section 303(e) of the Act. As discussed earlier, the standards program had a relatively low priority during this time. This was reflected in the minimal requirements of the first Water Quality Standards Regulation. Few requirements on designating water uses and procedures were included. The Regulation was general, requiring ''appropriate'' water quality criteria necessary to support designated uses and incorporating the antidegradation policy. Toxic pollutants or any other specific criteria were not mentioned.

Some States developed detailed water quality standards regulations while others adopted only general provisions which proved to be of limited use in the management of increasingly complex water quality problems and created disparities in requirements on regulated entities. The few water quality criteria that were adopted addressed a limited number of pollutants and primarily described fundamental water quality conditions (e.g., pH, temperature, dissolved oxygen and suspended solids) or dealt with conventional pollutants.

In the late 1970s, EPA determined that existing State water quality standards needed to be better developed. EPA moved to strengthen the water quality program to complement the technology based controls. EPA amended the Water Quality Standards Regulation to explicitly address toxic criteria requirements in State standards and other legal and programmatic issues. November 8, 1983 (54 *FR* 51400). This regulation is more comprehensive than its predecessor and includes more specific regulatory and procedural requirements. The 1983 regulation created the concept of use attainability analysis, added detail on the adoption of numeric criteria including authorization for site-specific criteria, and listed specific procedural requirements and definitions not included in the original 1975 regulation. The regulation specified the roles of the States and EPA and the administrative requirements for States in adopting and submitting their standards to EPA for review. It also delineated the EPA requirements for review of State standards and promulgation of federal standards.

The 1983 regulation provided States (and subsequently in 1991) Tribes with the option of refining their use designation process by allowing them to establish subcategories of uses, such as cold water and warm water aquatic life designations. The 1983 regulation also clarified that States (and subsequently Tribes) may adopt discretionary policies affecting the implementation of standards, such as mixing zones, low flows, and variances.

In support of the 1983 Regulation, EPA simultaneously issued program guidance entitled *Water Quality Standards Handbook* (December, 1983). The Handbook provided guidance on the interpretation and implementation of the Water Quality Standards Regulation. This document also contained information on scientific and technical analyses that are used in making decisions that would impact water quality standards. EPA also developed the *Technical Support Document for Water Quality-Based Toxics Control* (EPA 44/4–85–032, September, 1985) (TSD) which provided additional guidance for implementing State water quality standards. In 1991, EPA revised and expanded the TSD. (EPA 505/2–90–001, March 1991). In 1994, EPA issued the *Water Quality Standards Handbook: Second Edition* (EPA–823–B–94–006, August 1994).

To accelerate compliance with CWA section 303(c)(2)(B) (created by the 1987 Water Quality Act), EPA started action in 1990 to promulgate numeric water quality criteria for those States that had not adopted sufficient water quality standards for toxic pollutants. The intent of the rulemaking, known as the National Toxics Rule, was to strengthen State water quality management programs by increasing the level of protection afforded to aquatic life and human health through the adoption of all available criteria for toxic pollutants listed under 307(a) of the CWA (priority pollutants) present or likely to be present in State waters. This action culminated on December 22, 1992, with EPA promulgating Federal water quality criteria for priority toxic pollutants for 14 States and Territories (see 57 FR 60848).

Subsequent to the promulgation of criteria under the National Toxics Rule, EPA altered its national policy on the expression of aquatic life criteria for metals. On May 4, 1995 at 60 FR 22228, EPA issued a stay of several metals criteria (expressed as total recoverable metal) previously promulgated under the National Toxics Rule for the protection of aquatic life. EPA simultaneously issued an interim final rule that changed these metal criteria promulgated under the National Toxics Rule from the total recoverable form to the dissolved form.

The Water Quality Standards Regulation was amended in 1991 to implement Section 518 of the Act to expand the standards program to include Indian Tribes (56 FR 64893, December 12, 1991). EPA added 40 CFR 131.7 to describe the requirements of the issue dispute resolution mechanism (to resolve unreasonable consequences that may arise between a Tribe and a State or another Tribe when differing water quality standards have been adopted for a common body of water) and 40 CFR 131.8 to establish the

procedures by which a Tribe applies for authorization to assume the responsibilities of the water quality standards and section 401 certification programs.

Fourteen years since its last major revision, the water quality standards regulation is undergoing review and potential revision in light of experiences gained in its implementation by States, Tribes, EPA and the public. The review is intended to reflect the changing nature of the program and to identify specific changes that will strengthen water quality protection and restoration, facilitate watershed management initiatives, and incorporate evolving water quality criteria and assessment science into water quality standards programs. Based on the review and the comments expected on the ANPRM, EPA may decide to revise parts of the regulation and/or change some of its existing policies and guidance for the water quality standards program.

Water quality standards are essential to a wide range of surface water activities, including: (1) setting and revising water quality goals for watersheds and/or individual water bodies, (2) monitoring water quality to provide information upon which water quality-based decisions will be made, (3) calculating total maximum daily loads (TMDLs), waste load allocations (WLAs) for point sources of pollution, and load allocations (LAs) for natural background and nonpoint sources of pollution, (4) developing water quality management plans which prescribe the regulatory, construction, and management activities necessary to meet the water body goals, (5) calculating NPDES water quality-based effluent limitations for point sources, in the absence of TMDLs, WLAs, LAs, and/or water quality management plans, (6) preparing various reports and lists that document the condition of the State's or Tribe's water quality, and (7) developing, revising, and implementing an effective section 319 management program which outlines the State's or Tribe's control strategy for nonpoint sources of pollution.

Note: The term ''State'' as used in this Notice refers to the fifty States, all Territories of the United States, and the District of Columbia. The term ''Tribe'' or ''Tribal'' as used in this Notice generally refers to all Indian Tribes authorized to administer the water quality standards. On occasion, the term ''Tribe'' or ''Tribal'' refers to Indian Tribes that are eligible to seek authorization to administer the water quality standards, but have not yet secured such authorization. There are some parts of the law and regulation where ''State'' is now interpreted to mean ''State or Tribe.''

C. Water Quality Guidance for the Great Lakes System

On March 23, 1995, EPA published in the **Federal Register** its Water Quality Guidance for the Great Lakes System (60 FR 15366, March 23, 1995) (Great Lakes Guidance). The Guidance consists of water quality criteria for 29 pollutants to protect aquatic life, wildlife, and human health, and detailed methodologies to develop criteria for additional pollutants; implementation procedures to develop more consistent, enforceable water quality-based effluent limits in discharge permits, as well as TMDLs of pollutants that can be allowed to reach the Great Lakes and their tributaries from all sources; and antidegradation policies and procedures.

Section 118(c)(2) of the Clean Water Act (CWA) (Pub. L. 92–500 as amended by the Great Lakes Critical Programs Act of 1990 (CPA), Pub. L. 101–596, November 16, 1990) required EPA to publish proposed and final water quality guidance on minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System. EPA responded to these requirements by initiating a rulemaking, publishing the Proposed Water Quality Guidance for the Great Lakes System (proposed Guidance) in the **Federal Register** on April 16, 1993 (58 FR 20802). EPA also published four subsequent documents in the **Federal Register** identifying corrections and requesting comments on additional related materials. EPA received over 26,500 pages of comments, data, and information from over 6,000 commenters in response to these documents and from meetings with members of the public.

After reviewing and analyzing the information in the proposal and these comments, EPA developed and published the Great Lakes Guidance, codified at 40 CFR Part 132. Part 132 contains six appendixes of detailed methodologies, policies, and procedures. Detailed discussion of the final Guidance is provided in ''Final Water Quality Guidance for the Great Lakes System: Supplementary Information Document'' (SID), (EPA, 1995, 820–B–95–001) and in additional technical and supporting documents which are available in the docket for the rulemaking. Copies of the SID and other supporting documents are also available from EPA in electronic format, or in printed form for a fee upon request.

Developing the Great Lakes Guidance was an enormous effort based on extensive public comment and analysis on some of the same issues that are addressed in this ANPRM. One principal difference between the provisions in the Great Lakes Guidance and the regulation, policy and guidance that is the subject of this ANPRM is that where the Great Lakes Guidance addressed programs in the Great Lakes States only, this ANPRM addresses the national water quality standards regulation and program, and thus the programs of all States and Tribes with water quality standards authority. Where the Great Lakes Guidance addressed an issue or issue area that is also addressed in the ANPRM, that analysis and conclusion may or may not be relevant to the discussion of the national program. Where it is, today's ANPRM identifies the specific relevant Great Lakes Guidance provisions in the specific issue discussions. Many of the provisions in the Great Lakes Guidance were developed to address the unique problems in the Great Lakes Basin that stem from known contamination by bioaccumulative chemicals and the long retention time of water in the Lakes. Commenters should keep in mind that the Great Lakes provisions were derived for States that are in the Great Lakes Basin in whole or part and should consider the uniqueness of the Great Lakes Basin when evaluating Great Lakes Guidance provisions for application outside of the Great Lakes Basin.

III. Program Areas for Public Comment

A. Introduction

Entering its 33rd year, the water quality standards program has begun to evolve from one with a narrow focus on establishing water body uses and adopting chemical criteria for basic water quality characteristics addressing the most obvious sources of pollution to a more comprehensive program. In recent years the scientific community has developed greater knowledge of the full range of stressors adversely impacting surface waters. EPA believes the water quality standards program should evolve to keep pace with expanding science to address water quality problems in a more comprehensive way, accommodating more specific and sophisticated water use classifications, criteria for more pollutants, new forms of criteria and companion ecological and health indicators, and closer integration with other programs. At the same time, EPA realizes that such an evolution could require a significant increase in analytical resources from States, Tribes and the regulated community, and that changes to the existing program must be structured in a way that is workable.

This is an appropriate time to begin a structured national debate aimed at identifying the focused changes necessary to strengthen the underpinnings of water quality standards and implementation. In the fourteen years since the regulation was last revised, there have been numerous scientific developments, statutory changes, court decisions, and implementation issues affecting the water quality standards program. The shift in program focus beyond just chemical contamination to include ecosystem protection and watershed approaches necessitates reexamining basic program concepts. In addition, there is an opportunity to address possible barriers to effective water quality improvements where it is determined that regulatory changes are possible under existing law.

In recent years, EPA has heard from the States and Tribes as well as the environmental and regulated communities regarding the necessity and focus of a revision to the water quality standards regulation. As indicated by the wide range of issues and options presented in this advance notice, views of the different stakeholder groups often differ considerably. Many stakeholders believe that a revised regulation is needed for continued improvements in water quality protection. Others believe changes are needed to allow more flexible, cost-effective approaches by States and Tribes. Conversely, many stakeholders have said that the regulation is sufficient and does not need to be reviewed.

A key issue presented here relates to the degree of specificity necessary should EPA revise the regulation. There are many who support a more flexible regulation to allow States and Tribes to address new and changing circumstances. Under a more flexible regulation, States and Tribes could more easily tailor their programs to deal with pressing water quality restoration and protection needs that are not well addressed presently. Others support a regulation with more specific regulatory requirements. The latter would promote a more consistent minimal level of protection in State and Tribal water quality standards, provide more clarity on standards issues, and serve as a stronger tool in encouraging States and Tribes to take appropriate restoration and protection actions. EPA urges commenters to consider the appropriate balance between flexibility, national consistency, and consistency within States and Tribes when commenting on any of the ideas presented in this notice.

One of the outcomes of this ANPRM and follow-on actions can be establishment of a clearer set of national minimum policies and implementation procedures on which EPA will reliably and predictably base its approval and disapproval decisions on State and Tribal water quality standards submittals. EPA remains committed to making consistent decisions from State to State and Tribe to Tribe and State to Tribe to meet our obligation to ensure an appropriate level of protection nationally and that the goals of the Act are achieved. Clarifying these national norms will serve to better articulate the norms of protection from State to State and Tribe to Tribe and State to Tribe and also to clarify national norms of flexibility. Defining the appropriate level of consistency, in turn, defines the appropriate degree level of flexibility. In addition, establishing norms of consistency and flexibility should help to resolve State or Tribal differences with EPA on water quality standards early in the process, before the approval/disapproval stage.

While the following discussion describes specific areas and issues for public review, the public is welcome to comment on any aspect of the water quality standards program. EPA emphasizes, however, that publication of this Notice does not commit the Agency to proceeding with a regulatory change. EPA has not decided whether it will, in fact, propose regulatory amendments, and, if proposed, how extensive that effort might be. This decision will be made after considering the comments received and the need to address other priority activities as well as any Congressional and Executive Branch directives. A potential outcome of this public review may be additional guidance and/or policies rather than regulatory changes.

EPA has not determined the next steps it will take after evaluation of all the comments received on this ANPRM. It is likely that any follow-on proposed rule to amend 40 CFR 131 would focus on a relatively narrow set of issues and that many other issues could be resolved through policy and guidance. EPA requests that commenters identify the five to seven issues considered highest priority for possible regulatory amendments. The summary section at the end of this notice contains a brief summary of the potential changes to the water quality standards regulation that are discussed and considered in this ANPRM. The list of potential changes includes the full range of potential changes to the regulation on which EPA is specifically requesting comment. Each potential change to the regulation is discussed in detail in the corresponding section of the ANPRM.

B. Uses

1. Background

Section 131.10 of the current regulation describes States' and authorized Tribes' responsibilities for designating and protecting uses. The regulation requires that States and Tribes specify the water uses to be achieved and protected; requires protection of downstream uses; allows for sub-category and seasonal uses, for instance, to differentiate between cold water and warm water fisheries; sets out minimum attainability criteria; lists six factors of which at least one must be satisfied to justify removal of designated uses which are not existing uses; prohibits removal of existing uses; establishes a mandatory upgrading of uses which are existing but not designated; and establishes conditions and requirements for conducting use attainability analyses.

These provisions make a distinction between existing and designated uses and set out specific requirements to ensure protection of these two broad use categories. Designated uses are defined as those uses specified in water quality standards for each water body or segment whether or not they are being attained. EPA interprets existing uses as those uses actually attained in the water body on or after November 28, 1975 (the date of EPA's initial water quality standards regulation), whether or not they are included in water quality standards. 40 CFR 131.3(e). Designated uses focus on the attainable condition while existing uses focus on the past or present condition. Section 131.10 then links these two broad use categories in a manner which intends to ensure that States and Tribes designate appropriate water uses, reflecting both the existing and attainable uses of each water body. For this discussion it is important to consider both the distinction between and linkage of designated and existing uses.

It is in designating uses that States and Tribes establish the environmental goals for their water resources, and it is in designating uses that States and Tribes are allowed to evaluate the attainability of those goals. Because water quality standards perform the dual function of establishing water quality goals and ultimately serving as the regulatory basis for water quality-based treatment controls and strategies, typically, although not exclusively, via water quality criteria protecting those uses, a State or Tribe often weighs the environmental, social and economic

consequences of its decisions in designating uses. The regulation allows the State or Tribe some flexibility in weighing these considerations and adjusting these goals over time. Reaching a conclusion on the uses that appropriately reflect the potential for a water body, determining the attainability of those goals, and appropriately evaluating the consequences of a designation, however, can be a difficult and controversial task. Appropriate application of this process involves a balancing of environmental, scientific, technical, and economic and social considerations as well as public opinion and is therefore one of the most challenging areas of the current regulation.

To direct this decision making-process, the regulation establishes requirements that must be followed when designating uses or concluding that attaining a use is infeasible. When performing this attainability analysis, a State or Tribe considers physical, chemical, biological and economic factors that may limit the potential for achieving the goal use.

EPA's current water quality regulation effectively establishes a ''rebuttable presumption'' that ''fishable/swimmable'' uses are attainable and therefore should apply to a water body unless it is affirmatively demonstrated that such uses are not attainable. EPA believes that the rebuttable presumption policy reflected in these regulations is an essential foundation for effective implementation of the Clean Water Act as a whole. The ''use'' of a water body is the most fundamental articulation of its role in the aquatic and human environments, and all of the water quality protections established by the CWA follow from the water's designated use. This approach preserves States' and Tribes' paramount role in establishing water quality standards, in this instance, in weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict the discretion that States and Tribes have to determine that ''fishable/swimmable'' uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a credible, ''structured scientific assessment'' of use attainability.

Because there is a presumption that the uses specified in sections 101(a)(2) and 303(c) of the Clean Water Act are attainable (protection and propagation of fish, shellfish and wildlife and recreation in and on the water [101(a)(2)]; public water supplies, propagation of fish and wildlife, recreational purposes, agricultural purposes, and navigation [303(c)(2)(A)]), the criteria for overcoming that presumption are carefully circumscribed. The economic use removal test, for example, requires a showing that the cost of compliance with the use(s) would result in ''substantial and widespread economic and social impact.'' This is a high threshold to ensure that the interim goals of section 101(a)(2) and the section 303(c) uses are not abandoned without appropriate cause.

The general construction of the § 131.10 requirements for designating uses, supplemented with specific Agency guidance, has worked well in most situations over the last 14 years, and the use designation process is well established in State and Tribal water quality standards programs. There are, however, a number of new issues that have arisen since the 1983 regulation was promulgated. Often these new issues are associated with site-specific decision-making, and EPA expects the trend toward site-specific application of water quality standards will accelerate as States and Tribes begin implementing watershed protection programs, using field biological information to more precisely describe aquatic communities to be protected or restored, and applying new watershed or ecosystem-specific approaches to criteria development. As explained in the ''Objectives'' discussion in this document, one of the principal reasons for this notice is to determine whether or not the current regulation is sufficiently flexible to accommodate an expected shift in program emphasis beyond chemical contaminants to ecosystem protection and watershed approaches that will necessarily place greater emphasis on integrated assessments of both chemical and non-chemical stressors and watershed-specific decision-making.

While it is important to identify potential barriers to needed flexibility, commenters should identify, as well, any changes or clarification that may be needed to ensure that an appropriate level of national consistency is maintained across and within all jurisdictions. In this section of the notice, EPA seeks comment on the following issues: (1) refined designated uses with more focus on watersheds and ecosystems, (2) existing uses, (3) attainability and removal of designated uses, and (4) alternatives to removal of designated uses.

2. Refined Designated Uses

The current regulation at 40 CFR 131.10(a), based on section 303 of the CWA, requires that States and authorized Tribes specify appropriate water uses to be achieved and protected, taking into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. The regulation also allows, but does not require, States and Tribes to identify more specific sub-categories of these general use categories.

Over the years, States and Tribes have created many different use classification systems ranging from a straightforward replication of uses specifically listed in section 303 of the Act to more complex systems that express designated uses in very specific terms or establish sub-classifications which identify different levels of protection. For example, some States simply specify ''water supply'' as a use classification applicable throughout the State while others may identify several specific sub-categories related to the quality of the raw water supply and anticipated treatment requirements. Similarly, some States designate general ''aquatic life'' uses while others list a variety of sub-categories based on a range of aquatic community types which may include descriptions of core aquatic species representative of each sub-category. Although a variety of approaches have evolved and become established in State and Tribal programs, the current regulation is not specific about the level of precision States or Tribes must achieve in designating uses.

There are advantages and drawbacks for either the general or specific use classification systems and it is not clear that either is necessarily superior in ensuring full protection of State or Tribal water quality. There is, however, a need for the use designation process, whether implementing a general or specific classification system, to clearly articulate and differentiate intended levels of protection with enough specificity so that decision-makers can appropriately develop and implement the standards on a site-or watershed-specific basis and so that the public can understand, identify with, and influence the goals set for waters they care about.

Lack of precision in uses and criteria assigned to protect those uses can inadvertently result in either a lesser or greater level of protection than was actually intended when the water quality standards were adopted. Although the designated use specificity

issue may apply to any of the Section 303 general use categories, it may be most relevant for aquatic life uses. Aquatic communities can vary significantly from water body-to-water body. As noted above, however, State and Tribal use classifications generally do not reflect the variability among aquatic community types and may list, instead, very general descriptions such as ''aquatic life'' as the designated use. Where this is the case, it is possible that measurable changes in aquatic community composition or production could occur at a specific site and still satisfy the definition of ''aquatic life,'' *unless* somewhere in its process the State or Tribe has documented information about its specific intent in applying the ''aquatic life'' classification to each water body. For example, an activity that causes the discharge of sediment, altering the physical habitat in the receiving water body, could result in a measurable change in aquatic community structure and function (e.g., the types of aquatic species found in that segment). Yet, that activity may arguably satisfy a general ''aquatic life'' use protection requirement simply because of a lack of specificity in the regulatory description of that designated use. In this case, lack of precision in the designation or description of the use could result in under protection of the resource, unless somewhere in the State or Tribal process an intended level of protection is specified.

Alternatively, lack of precision in uses and assigned criteria could result in standards that are over protective, resulting in application of unnecessary control requirements. In assigning criteria to protect general use classifications, a State or Tribe must ensure that the criteria are sufficiently protective to safeguard the full range of waters in the State or Tribe (i.e., criteria would be based on the most sensitive use). While this approach will result in full protection of all State or Tribal waters, the approach has been challenged, especially for aquatic life uses, where evidence suggests that the general use and criteria will require controls more stringent than needed to protect either the existing or potential aquatic community for a specific water body. Although EPA supports broad application of statewide or tribe-wide criteria to ensure that sensitive uses are protected where site-specific information is lacking, the Agency's current thinking is that there is a growing need to more precisely tailor use descriptions and criteria to match site-specific conditions, ensuring that uses and criteria provide an appropriate level of protection which, to the extent possible, is neither over nor under protective. This concept was reflected in the Agency's 1994 Combined Sewer Overflow Policy (59 FR 18688).

The level of protection issue is one of both use and criteria. To have a meaningful effect, a more precise use description must be accompanied by more focused criteria, appropriately tailored to the refined use description. EPA recognizes that, at present, national or statewide or tribe-wide criteria generally are not sufficiently precise to distinguish among all of the various sub-categories of uses. As water quality standards issues become more watershed-specific or site-specific, however, the trend will very likely be toward more specific use descriptions and; because the essential purpose of the criteria is to describe, evaluate attainment of, and protect the designated use; more site-specific criteria development.

A potential constraint for refining the aquatic life uses would be the resource commitment often associated with developing a comprehensive biological database. Because of the resource constraints, it may be difficult for a State or Tribe to develop designated uses (or use descriptions) for each segment that include a detailed biological description of the aquatic community to be protected. Simply from a practical standpoint, it may be more workable to reserve such precise determinations for watershed-specific decision-making. Therefore, in highlighting the issue of greater specificity, EPA is suggesting that one, but perhaps not the only, way to resolve this issue is to mandate much greater specificity in a State or Tribal use classification structure.

Obviously, there is a need for designated use descriptions in State and Tribal regulation to be defined, at a minimum, with sufficient specificity to ensure existing and potential uses will be protected and/or attained. The difficulty is in striking a balance between specificity sufficient to ensure uses are appropriately protected and flexibility needed to allow efficient widespread application of a classification system to all State or Tribal waters. A question has been raised about, and EPA is considering, whether or not the current regulation and guidance provide the framework needed to strike the appropriate balance and the guidance on when and how to refine uses.

Aquatic Life

An issue related to the manner in which States and Tribes define designated aquatic life uses is the occasional confusion expressed between the actual intent of the CWA section 101(a)(2) interim goals and the ''fishable/swimmable'' short hand expression often used to describe those interim goals. EPA acknowledges that the phrase ''fishable/swimmable'' does not fully describe the intent and scope of the CWA section 101(a)(2) interim goals. The confusion over the expression ''fishable'' often surfaces where there is an action aimed at removing an aquatic life use from a particular water body where there are no sport or commercial fisheries. In these instances, an argument is often made that the water body does not meet the ''fishable'' intent of the section 101(a)(2) interim goals because the water body naturally supports only ''minnows'' and/or aquatic invertebrates. EPA believes this is an unacceptable argument for removing an aquatic life designated use or excluding an aquatic life designated use. As explained in EPA's Questions and Answers on Antidegradation (USEPA, 1985, p. 3), the Agency considers the protection afforded by standards to focus on an appropriately representative aquatic community whether or not that community includes sport or commercial fish:

> The fact that sport or commercial fish are not present does not mean that the water may not be supporting an aquatic life protection function. An existing aquatic community composed entirely of invertebrates and plants, such as may be found in a pristine tributary alpine stream, should be protected whether or not such a stream supports a fishery. Even though the shorthand expression ''fishable/swimmable'' is often used, the actual objective of the Act is to restore the chemical, physical and biological integrity of our Nation's waters (Section 101(a)). The term ''aquatic life'' would more accurately reflect the protection of the aquatic community that was intended in Section 101(a)(2) of the Act.

Thus, EPA's current interpretation of the regulation means that the Agency will not approve State or Tribal action to exclude aquatic life protection based on a conclusion that a water body does not support a ''fishery'', implying a sport or commercial fishery. EPA's current thinking is that it would improve the regulatory text to reflect this interpretation explicitly.

More specific to this discussion of refined designated uses is the question of whether or not the Agency should mandate that a minimum ''aquatic life'' use sub-category or sub-categories be included in all State or Tribal designated use classification systems to ensure appropriate protection of waters

which do not support commercial or sport fisheries (or any fish).

Refined Designated Uses and Use Attainability Requirements

There is one additional issue related to the refined designated use discussion that should be addressed. A question has been raised about the applicability of the use attainability requirements when establishing refined designated uses (with particular emphasis of aquatic life uses). The question raised is: since refined designated uses may be less inclusive than broad designations, will EPA consider development of a more refined use description to be a change in use subject to the use attainability requirements? Under current regulation, the combination of a new use sub-category and less stringent criteria triggers the use attainability requirements in § 131.10 of the Federal regulation (see § 131.10(j)(2)). However, it is possible that under certain circumstances, this requirement could be modified.

Such a modification would focus on the kind of information that should accompany any refined use classification based on a more precise biological description, whether or not formal use attainability assessment requirements apply. Essentially, there are two issues to be addressed: (1) does the refined description of the aquatic community reflect the reference condition (i.e., natural states) for the kinds of waters to which the new classification is to be applied? and (2) are any newly proposed criteria scientifically defensible? These are basic questions which would have to be addressed whether or not the use attainability requirements were invoked. As a result, a proposal to refine use categories will have to be accompanied by a rationale explaining how it was determined that the proposed biological description appropriately reflects the potential for waters to which the new sub-classification is to be applied. If warranted, this refined description can then serve as the basis for deriving defensible and appropriate criteria specific to the new sub-classification.

Request for Comment Refining Use Designations

EPA seeks comment on the following questions:

1. The current regulation is not specific about the level of precision States or Tribes must achieve in designating uses. The regulation allows for subcategories of uses, but does not mandate such an approach. Should the regulation be revised to promote or require greater specificity in designated uses, particularly for aquatic life uses, to support watershed-specific decision-making such as is anticipated in implementing watershed or place-based initiatives?

2. Where a State or Tribe utilizes broadly-defined designated uses, could the desired level of specificity be adequately addressed in State or Tribal standards that clearly articulate the intent of the designated uses as they would apply to specific waters of the State or Tribe?

3. If EPA were to specify a required level of precision in establishing use categories, what factors should be considered in prescribing a level of specificity? That is, what factors should be considered in striking a balance between specificity sufficient to ensure uses are afforded an appropriate level of protection and flexibility/efficiency needed to allow widespread application of the classification system?

4. At a minimum, should the regulation require that State and Tribal aquatic life use categories include a sub-category or sub-categories that may be assigned to protect aquatic communities that do not include a ''fishery''? Alternatively, should the regulation explicitly reflect EPA's current interpretation of the regulations to the effect that State and Tribal aquatic life classification systems protect a range of aquatic communities whether or not there are sport or commercial fish (or any fish) present?

5. Should the use attainability requirements in 131.10(j)(2) be modified to recognize situations where scientifically defensible less stringent criteria may be appropriate for refined uses which reflect the reference condition for particular waters?

3. Existing Uses

a. Protection of Existing Uses. The requirement to protect existing uses is addressed in two places in the current regulation—Section 131.10, designation of uses and Section 131.12, antidegradation. (see discussion of antidegradation, ''tier 1'', in section III.D of this document) As discussed in the background section above, the regulation defines ''existing uses'' as ''those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.'' (40 CFR 131.3(e)) As a result, the focus of existing uses, is on the past or present condition of the water body. Furthermore, by establishing requirements prohibiting the removal of existing uses and ensuring those uses will be appropriately recognized in State and Tribal water quality standards, the current regulation ensures that the better of the past or present condition, at a minimum, will be maintained and protected. Determining whether or not an existing use has occurred in the past or is currently in place is not always a straightforward task, however, and over the years, a number of questions have been raised about exactly what the ''existing use'' provisions in 131.10 require. These questions generally fall into two categories: (1) what is the link between existing uses and the State or Tribal use classification system? and (2) what is the relationship between existing uses, existing water quality and potential uses, i.e. uses that may be attainable in the water body whether or not those uses are presently designated for the water body or are presently being attained?

The first question addresses the relationship between the existing use protection provisions in Section 131.10 and State or Tribal use classification systems. There appears to be some confusion on this point. The confusion seems to center on what may appear to be conflicting mandates—protect what is there and allow no further erosion of water quality, and appropriately designate the existing use in regulation using the established classification system. The existing use definition and the requirement that existing uses be protected suggests to some that the description of existing uses is constrained by the way in which a State or Tribe has described its designated uses in its classification system. That is, they argue that an existing use, to be adequately protected, needs to fit into one of the categories or sub-categories established in State or Tribal regulation, and as a result, a decision about whether or not a use is ''existing'' is likewise constrained by the use descriptions and criteria established in that classification system.

For purposes of Section 131.10, this is generally the case. Again, this Section of the Federal regulation establishes two requirements with respect to existing use protection: (1) a prohibition against removal of a designated use where that use is determined to be an existing use, and (2) a requirement that existing uses be protected by State or Tribal regulation. To ensure a workable process, EPA interprets Section 131.10 as necessarily recognizing a linkage between the existing use protection provisions and the established State or Tribal use classification system. This interpretation of the regulatory framework, however, also presumes a responsibility on the part of a State or Tribe to establish a classification system that is sufficiently flexible and/or

encompassing to assure an appropriate level of protection for the anticipated range of existing uses (see discussion on refined designated uses in this chapter).

As explained earlier in the discussion on refined designated uses, a variety of use classification systems has evolved and become established in State and Tribal programs. Although there are likely some advantages to a more refined use classification system when it comes to protecting existing uses (more precise categories in which to fit the existing use), such a system may not be necessary as long as the State or Tribal standards clearly articulate the intended and appropriate level of protection for existing uses (again, see discussion of refined designated uses). The following example illustrates the point. An acid bog is a water body type which may be fairly widespread but which, as a classification type, may not appear in many State or Tribal standards. Where the aquatic characteristics of an acid bog are discovered to constitute an existing use, a State or Tribe could: (1) establish a classification type and criteria for acid bogs to ensure appropriate protection by way of a specific designation, or (2) classify the bog within the existing, general classification system, e.g., warm water aquatic life, and adopt any needed site-specific criteria to ensure the existing nature and quality of this specific water resource is protected. Either approach can result in an appropriate level of protection and there may not be a need for States or Tribes to include an ''acid bog'' water body type in their classification system. Under either approach the standards must articulate clearly the intended and appropriate level of protection, ensuring protection of the existing use.

It is also important to remember that the existing use provisions in both §§ 131.10 and 131.12 must be considered together. The classification requirements in § 131.10 ensure that all existing uses will be recognized and protected through appropriate classification of those water bodies in the standards (and/or application of appropriate site-specific criteria where the existing classification system is broadly constructed). The antidegradation-based existing use protection provision guarantees that individual activities on individual water bodies will be examined to ensure those activities will not eliminate existing uses, whether or not those uses are currently recognized in the State or Tribal standards. The antidegradation provisions, through the general requirement that existing uses be protected, ensure immediate protection from specific activities which may threaten the existing use, and the classification requirements ensure recognition and longer-term protection from any present or future stressors through specific designation in the standards. Both these provisions apply and should not be considered in isolation. Together they constitute the existing use protection requirements, ensuring the existing uses and water quality to support those uses are maintained and protected.

The second question addresses the relationship between existing uses, existing water quality and potential uses. The Agency's guidance, Questions and Answers on Antidegradation, August, 1985 (Notice of Availability, 50 *FR* 34546, August 26, 1985 [included as appendices to *Water Quality Standards Handbook,* cited above]) addresses this issue, in part. The answer to ''question 7'' states: ''an existing use can be established by demonstrating that fishing, swimming, or other uses have actually occurred since November 28, 1975, or that the water quality is suitable to allow such uses to occur (unless there are physical problems which prevent the use regardless of water quality).'' Using an example of a healthy shellfish community which is not currently being harvested, the answer goes on to explain that the existence of a use (past or present) is not dependent solely upon a demonstration that the use is being satisfied in a functional sense (i.e., in this case, the shellfish harvested). In this example, ''shellfish harvesting'' is considered an existing use, even though there is presently no harvesting underway, because the water quality and habitat support a healthy shellfish community suitable for harvesting. The answer further explains that to assume otherwise ''* * *would be to say that the only time an aquatic protection use 'exists' is if someone succeeds in catching fish.'' As illustrated in this example, the existing use question must address both the current or past functional use *and* the current or past (since November 28, 1975) water quality, and the intent of the regulation is to ensure the existing use and the water quality necessary to support that use are maintained and protected. Thus, in this example, the shellfish harvesting use is to be protected by designated uses in water quality standards.

The shellfish example is a good one in that it clearly illustrates EPA's position that an existing use finding can be made either where the use is or has been ''actually attained'' or where the water quality necessary to support the use is in place even if the use, itself, is not currently established, as long as other site-specific factors, for example physical problems like flow or substrate, would not, despite the suitable water quality, prevent attainment of the use. The ''other factors'' caution is important in understanding EPA's position on existing uses. In making an existing use determination, there is a link between the use and water quality. To be considered an existing use, the use must have been actually attained in the past, is now attained or water quality is sufficient to support the use. However, for some sites, water quality, alone, may be an insufficient basis for making an existing use finding if there are other factors that would prohibit the use from taking place regardless of the quality of the water at a site. In the shellfish example, the necessary water quality is present, and there are no obvious limiting factors which would prohibit present or future shellfish harvesting.

Although this example is useful in illustrating important principles in implementing existing use protection requirements, it is a rather straightforward example. An appropriate resolution of the existing/designated use issue may be somewhat less clear-cut where either the existing water quality or the existing use is marginal (i.e., it is difficult to determine whether or not the use is actually attained, or whether or not there are factors, other than water quality, that could prohibit the use). It is in addressing these situations that questions have been raised about what the current regulation requires. A principal difficulty in addressing these questions may lie in resolving the linkage between the present and past conditions protected by the ''existing uses'' provisions and the attainable or potential condition protected by ''designated uses'' provisions. It may be useful to evaluate this issue by considering the link between existing and designated uses established in the current regulation.

Obviously, any decision about whether or not a use is an ''existing use'' must be a water body-specific determination. The existing use determination is, therefore, site-specific, and decisions should consider water quality and other limiting factors such as the physical habitat specific to a particular water body. A few examples may help illustrate the issue. A somewhat common existing use question applies to primary contact recreation: if a few people on a few occasions ''swim'' in a water body that does not have the quality or physical characteristics to support swimming, is this an existing use, even if the water body is posted ''no swimming'' due to

bacterial contamination and lacks the physical features to actually support swimming? The straightforward answer to this question is that ''swimming'' is not an existing use because the present (or past) condition does not support that use. This conclusion is based on the very limited actual ''use'' and, more importantly, the lack of suitable water quality and physical characteristics that would support a recreational swimming use now or in the future (as determined by the water quality requirements and recreational swimming considerations, including safety considerations, in the State or Tribal classification system for primary contact recreation).

A question has been raised as to how to interpret the regulation in the context of this example. One could determine that because the water body is not suitable for swimming, and has not been since 1975, primary contact recreation is not an existing use. Alternatively, one could determine primary contact recreation to be an existing use because the water body was actually used for swimming, even though the use was occasional and water quality and physical characteristics were not acceptable to support such a use. EPA believes the first alternative is the better interpretation of Agency regulations and guidance in this example, because the use is not established and the water quality and other factors would appear to prohibit actually attaining a recreational swimming use.

Stating that this is an appropriate interpretation of the regulation means that EPA would not object if a State or Tribe reached a conclusion, in a similar case, that this was not an existing use. As noted above, however, existing use decisions are very site-specific, and it is possible that, on a specific water body under similar circumstances, a different conclusion could be reached by a State or Tribe based on public comment at a hearing and a decision to take a protective approach to the incidental use for that specific resource. The Federal requirements do not prohibit a State or Tribe from taking a more protective approach than would be required by the water quality standards regulation.

Although, in the above example, a State or Tribe could conclude that primary contact recreation is not an existing use, it may well be an attainable use that must be protected as a designated use by the State's or Tribe's water quality standards. This finding would depend on whether the physical condition of the water body is suitable for swimming and whether the water quality problems limiting the use are controllable. (See 40 CFR 131.10(j) and discussion on use attainability analysis below). The point is that, although the existing use provisions most directly address past or present conditions, decisions about existing uses generally are not made in isolation. With respect to uses contained in CWA Section 101(a)(2), the regulation links existing and designated uses, and it may be useful to view these provisions as a continuum in examining the broader question of use protection.

Some States and Tribes have recognized that continuum in developing use attainability guidance for recreational uses which includes questions about the actual use, existing water quality, water quality potential, recreational facilities, location, safety considerations, physical conditions of the water body, and access

Note: access here means restricted access, as in fenced property; access is not intended to suggest the ''remoteness'' of the water body; in EPA's view, remoteness is not a valid basis for an attainability decision on recreation.

When all of these factors are considered, the adopted water quality standards are consistent with both the existing and designated use provisions. For example, suppose a city has created a greenway along a stream that receives wastewater effluent upstream of the greenway and has posted ''no swimming'' signs. The greenway attracts children leading to the inevitable ''unauthorized'' swimming. If the physical condition of the stream is suitable for swimming, the swimming occurs on a frequent basis and the greenway provides recreational facilities and access, the only factor limiting the use may be a water quality problem that in the judgement of the State or Tribe can be controlled to achieve the primary contact use. The linkage between existing and designated uses encourages the evaluation of this full suite of factors in making a decision about whether or not primary contact recreation should be protected.

A similar existing use question is often raised for aquatic life uses where the existing aquatic community is impaired as a result of marginal water quality. A common example in the western part of the country is a mountain stream impaired by historic hard rock mining (with the impacts occurring well before November 28, 1975). Although the physical condition of the stream may represent ideal trout habitat, the trout population may be severely limited, in poor condition or absent as a result of the toxic effects of metals. In its classification system, however, a State or Tribe may describe and designate this type of stream as a ''salmonid spawning'' use based on its physical habitat and potential. For streams such as these, where a few adult trout are present but there is no evidence of younger age classes, the question is asked—is this an existing ''salmonid spawning'' use?

Again, the appropriate answer, based on EPA regulations and guidance, is that this is not an existing use (although it may nonetheless be an appropriate designated use if it has the potential to support salmonid spawning). The current use, matching the classification description, is absent, and the limiting water quality problems have been in existence prior to November 28, 1975. (This does not mean, necessarily, there is not some existing aquatic life use which would then serve as the regulatory ''floor'' for this water body; see the ''limited'' aquatic life use discussion in the use attainability analysis discussion in this section below and the ''tier 1'' discussion in the antidegradation section, III. D) As in the ''swimming'' example, however, there can be a gradation of conditions, and occasionally it may be difficult to draw a bright line and conclude, with confidence, that this is where the existing use begins.

In situations similar to this impaired stream example, where the existing water quality problems are considered controllable by the State or Tribe, arguments have been made on both sides of the existing use issue: the salmonid spawning use is not existing, *or* the salmonid spawning use is in place, albeit currently at an impaired level. Disputes about the correct interpretation of Agency guidance become even more difficult to resolve where the existing impacts to water quality are not as great as those in the above example. Often streams impacted by historical mining, such as the one described above, are headwater streams. As the water moves downstream, clean water tributaries reduce the effect of the metals contamination, and fish, in number, begin to move into these ''improved'' waters. Nevertheless, many such streams would be considered impaired when compared to unaffected, similar waters (reference streams). And, despite supporting ''fairly good numbers'' of trout, the existing water quality in such streams often exceeds the chronic and, occasionally, acute standards for metals. In situations such as these, States and Tribes have had difficulty in reaching conclusions about whether or not an existing use, matching the classification, is in place. Because States and Tribes may evaluate existing uses when they are designating uses, threshold existing use

determinations may lead to questions about the potential for the water body and the appropriate designated uses for it.

EPA's current interpretation is that the existing use should be identified either where the use has taken place or the water quality sufficient to support the use has existed since November 28, 1975, or both. That is to say, State and Tribal existing use decisions can be based on a finding that the use, as defined in the classification system, and/or the water quality needed to support the use is in place (and there are no other factors that would prohibit actually attaining the use). This interpretation does not fully address the issue of partially impaired uses. Thus, a fuller explanation may be needed in the regulation or policy of how that interpretation is applied where the use or the water quality may be somewhat impaired. EPA is considering whether changes to the regulation or additional guidance is needed to explain the Agency's position and to offer direction in making such determinations.

Request for Comment on Existing Uses

EPA seeks comment on the following questions:

1. Does EPA need to further clarify the existing use protection provisions in § 131.10, more clearly explaining that existing uses are defined by the uses made of water bodies and existing water quality, where that quality is or was sufficient to allow the use to occur (and there are no other limiting factors)? If so, will the clarification require a regulatory amendment or can the needed clarification be accomplished in Agency policy or guidance?

2. Does EPA need to expand its guidance to explain how the current regulation addresses existing use decisions where there is some semblance of a use even though the water quality is insufficient to support the use in, for example a safe or healthful manner? Should this additional guidance clarify the linkage between existing and designated uses?

3. Should the regulatory definition of ''existing use'' at 40 CFR 131.3(e) be modified? If so, how?

4. Use Attainability.

a. Attainability of Uses. States and Tribes may remove a designated use, that is not an existing use, if they can demonstrate that attaining the designated use is infeasible. (40 CFR 131.10(g)) The current regulation identifies the factors that must be considered in making such a demonstration. As explained in the regulation, existing uses, by definition, are attainable and must be protected by designated uses in water quality standards (40 CFR 131.10(h)(1), 131.10(i) and 131.12(a)(1)). Further, at a minimum, uses are considered attainable if they can be achieved by implementing effluent limits required under Sections 301(b) and 306 of the Clean Water Act (Act) and by implementing cost-effective and reasonable best management practices (BMPs) for nonpoint source control. (40 CFR 131.10(h)(2)).

These existing uses, technology and BMP provisions establish the basic regulatory threshold test for what the attainable use of a water body is and thus what the minimum use designation for the particular water body must be. Where either the use is existing or the use can be attained through implementation of Clean Water Act technology requirements and/or implementation of applicable State requirements regarding BMPs for nonpoint source control, 40 CFR 131.10(h) establishes that the use is attainable and must be designated. Once a use is designated, it is presumed to be attainable and may not be removed (downgraded) unless the State or Tribe can demonstrate that attaining the designated use is not feasible based on one of the six use removal criteria (40 CFR 131.10(g)). Therefore, uses are considered attainable if: (1) the use is existing; (2) the use can be attained through application of CWA technology requirements and/or State or Tribe required BMPs; or, (3) none of the use removal criteria is satisfied. EPA has in the past recommended that these use removal criteria referenced under number 3 above, serve as additional tests, over and above numbers 1 and 2 above, for determining when a use is attainable. Clearly these use removal criteria (131.10(g)) are designed to determine whether a use is attainable and therefore can serve that purpose equally effectively when considering whether to remove a designated use (the situation where they are clearly required to be used) and when considering whether a use is attainable and should be designated. The discussion below on use attainability analysis (UAA) and non section 101(a)(2) uses further discusses the relationship between designation of attainable uses, UAAs, and the analysis required to justify use removal. That discussion solicits comment on whether the use removal criteria at § 131.10(g), in addition to being the regulatory justifications for use removal, should, consistent with EPA's interpretation of the regulation, be included in the basic elements of a UAA.

Despite what EPA believes are fairly clear guidelines in the current regulation and guidance, questions have been raised about EPA's minimum attainability requirements. The Agency's current thinking is that basic attainability requirements, the methods for demonstrating attainability, the circumstances under which attainability analysis must be done, and what that analysis must consist of should be clarified in the regulation.

b. Removal of Designated Uses. The regulation (at 40 CFR 131.10(g)) specifies that States and Tribes may remove a designated use which is not an existing use if attainment of a use is not feasible due to the following:

(1) Naturally occurring pollutant concentrations prevent the attainment of a use; or,

(2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State or Tribal water conservation requirements to enable uses to be met; or,

(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or;

(4) Dams, diversions or other types of hydrological modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or operate such modification in a way that would result in the attainment of a use; or,

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or,

(6) Controls more stringent than those required by Sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

The use removal criteria were included in the regulation to address those circumstances where the attainability of certain uses would be precluded by conditions over which the water quality protection provisions in the regulation had little or no control. The uncontrollable conditions considered most likely to limit attainability were: natural water quality or habitat limitations, irretrievable human-caused contamination or conditions, or insupportable economic and social costs. These general

conditions, then, formed the basis for the six use removal criteria. Although EPA believes the use removal criteria have functioned reasonably well, the growing number and reoccurring nature of the questions raised about these criteria have convinced EPA of the need to review this central element of the program.

Some have argued that the six criteria and their interpretation are overly stringent, making any proposal to remove a designated use futile even where a use was ''mistakenly'' designated. Others argue that the use removal criteria and their interpretation are overly generous, granting the possibility of use removal where the principal stressor is a condition which should not be immune from the water quality protection provisions in the federal regulation (operation of dams is one example used in arguing this position). Others complain that there seems to be no national consistency in the way the use removal criteria are interpreted by EPA, the States or the Tribes. And, finally, questions also have been raised about whether or not the criteria adequately address or apply to all uses equally. The key to appropriate application of the use removal criteria is to focus on whether or not a condition, at a specific site, would preclude attaining a designated use. A decision on this question is not always straightforward however, and as a result, there are questions about the application of the use removal criteria. A few examples may help the discussion.

Criterion number 1 allows removal of a designated use where ''naturally occurring pollutant concentrations prevent attainment of the use.'' A reoccurring question about this provision is: under what circumstances should ''naturally occurring pollutant concentrations'' be the justification for use removal versus the basis for calculating site-specific criteria, acknowledging that the natural condition defines the existing use? Often, the numerical criteria assigned to the designated use are the initial benchmark for estimating whether or not a designated use will be attained. In this approach, a comparison of the natural condition with the numerical criteria is used in the evaluation of attainability. Where such an analysis demonstrates clearly that the naturally occurring pollutant concentrations would *preclude* the designated use, the use may be removed. There are, however, examples of situations where statewide or national criteria for one or more contaminants are exceeded, and yet the available information on the overall condition of the water indicate the use is supported. This situation is most common for aquatic life uses where local populations of aquatic organisms may have acclimated to natural conditions outside the estimated ''normal'' tolerance range, where species on the edge of their distribution are reproducing but are physiologically stressed or where broadly derived criteria may not be appropriate for the particular aquatic community at that site. In such a situation, the observed condition of the resource obviously will take precedence over the predicted condition, and the natural water quality will form the basis for site-specific criteria since the use is clearly not precluded. Again, the key to answering the use removal question is to determine whether or not ''natural conditions'' preclude attainment of the use, and because of the site-specific circumstances discussed above, answering this question involves more than a simple comparison of numeric criteria with the natural condition.

Criterion number 2 allows removal of a designated use where natural, ephemeral, intermittent, or low flow conditions would preclude the use unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State or Tribal water conservation requirements to enable uses to be met (emphasis added). Questions have been raised about exactly what the above italicized language means. EPA's interpretation of this phrase is that, where an effluent discharge creates an essentially perennial flow for what naturally would be ephemeral or intermittent waters, the resulting aquatic community is to be protected. EPA's current thinking is that in situations such as these, the second criterion for use removal means that a State or Tribe cannot remove a use of a water body where the augmented flow supports an aquatic life use.

Criterion number 4 allows removal of a use where dams, diversions or other types of hydrological modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or operate such modification in a way that would result in the attainment of a use. As indicated above, some have argued that operation of dams is an inappropriate basis for concluding that Section 101(a)(2) uses are not attainable, and they have suggested this criterion be removed from the regulation. In arguing this position, these commenters have pointed to the 1986 amendments to the Federal Power Act (Electric Consumer's Protection Act, or ECPA) and the legislative history of these amendments as an indication of Congress' intent to give equal priority to protecting and restoring fish and wildlife habitat even where dams exist. Specifically, the ECPA states:

> * * *In deciding whether to issue any license the {Federal Energy Regulatory Commission}, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality. (ECPA amending the Federal Power Act, Section 4(e), 16 U.S.C. Section 797(e))

The legislative history, these commenters believe, provides a particularly clear indication of congressional intent to protect and restore aquatic life uses. They specifically point to that part of the record which states that no one ''expect[s] 'business as usual,' '' but rather the expectation is that:

> [P]rojects licensed years earlier must undergo the scrutiny of today's values as provided in this law and other environmental laws applicable to such projects. If nonpower values cannot be adequately protected, FERC should exercise its authority to restrict or, particularly in the case of original licenses, even deny a license on a waterway. (H.R. Rep. No. 99–934, 99th Cong., 2d Sess. (1986) at 22)

Groups arguing for removal of criterion 4 use the amendments to the Federal Power Act as an example of the recognition being given today's environmental values and the importance of restoring and enhancing the aquatic habitats and recreational uses of water resources. They maintain that ''...the Water Quality Rule should be updated to recognize that aquatic and recreational uses can not be removed based simply on the existence of a dam.'' EPA's current thinking is that the above rationale and legislative history raise a serious question about whether the existence of a dam and the infeasibility of operating that dam in a way that will result in attaining the designated use, measured against today's values, is sufficient reason to remove a designated use. EPA is interested in commenters views on this issue.

Criterion number 5 allows removal of a designated use where physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of

aquatic life protection uses. Notwithstanding the reference to aquatic life uses in 131.10(g)(5), some have argued that recreational uses, especially swimming uses, might also be limited by physical factors (especially where safety is an issue), and they have asked whether or not the physical factors consideration could be applied to evaluations of recreational use attainability. As now written, the regulatory language would not allow consideration of physical factors, alone, as the basis for removing a designated recreational use. In the preamble to the 1983 regulation, EPA explained that, while the Agency recognized that physical factors also affect recreational uses, States, and now Tribes, would need to give consideration to incidental uses of the water body even though it may not make sense to encourage use of a stream for swimming because of the flow, depth or velocity of the water. Instead, the preamble discussion explained that based on prudent public health considerations, the use protection question was not to be judged wholly on an analysis of the water body's suitability for swimming but rather on whether or not swimming would actually occur. EPA's current thinking is that physical factors, alone, would not be sufficient justification for removing or failing to designate a primary contact recreation use.

EPA's suggested approach to the recreational use question has been for States and Tribes to look at a suite of factors such as, the actual use, existing water quality, water quality potential, access, recreational facilities, location, safety considerations, and physical conditions of the water body in making any use attainability decision. The guidance suggests that any one of these factors, alone, may not be sufficient to conclude that designation of the use is not warranted. Nevertheless, there clearly are situations such as high flows caused by storm events where the physical conditions of a water body would make swimming, if not impossible, extremely dangerous. It is in addressing situations such as these that questions have been raised about the applicability of physical factors to the recreational use issue. The question is sometimes posed in terms of whether or not a State or Tribe would incur some liability by designating or continuing to designate such waters as swimmable. They argue that a reasonable, common sense approach is to acknowledge that there are certain waters for which primary contact recreation is not an attainable use solely because of the physical condition of the water. EPA is, therefore, considering whether the regulation or Agency guidance should be amended to allow consideration of physical factors, alone, as the basis for removing or not designating primary contact recreational uses.

The above discussion is about EPA's interpretation of the conditions that would have to be satisfied to either remove or not designate recreational uses. As explained earlier in this section, satisfying those conditions gives a State or Tribe the option of either removing or not designating the use. It does not, however, create an obligation. A specific example may help. A western State was concerned, partly for liability reasons, about designating swimming uses for a number of waters where the physical conditions and other factors made swimming, if it did occur, unwise. Although available information indicated the actual swimming use was limited or nonexistent, the State also wanted to ensure protection of that use, based on public health considerations, should it occur. The issue for the State was striking the appropriate balance between the two concerns: the possibility of inadvertently encouraging swimming where it should not occur because of safety considerations and protecting that use if it did occur. To resolve this issue, the State designated these waters for secondary contact recreation but assigned primary contact recreation bacteriological criteria to provide an appropriate level of protection should swimming occur, however unlikely. In this way, the State felt it did not inappropriately encourage swimming in these waters, but if swimming did occur, the required water quality would provide an appropriate level of protection. This is an approach to the ''incidental use'' issue, discussed in the existing use section of this chapter, that, while acknowledging uncertainty, errs on the side of protectiveness.

Consistency

EPA has provided guidance on implementing the requirements in § 131.10(g). Although EPA believes the guidance has been fairly comprehensive and has functioned reasonably well, the growing number and recurring nature of the questions raised about implementation of the use removal criteria have convinced EPA to solicit comments on the need for additional guidance or regulatory changes to ensure appropriate and consistent application of the use removal criteria.

As indicated in the introduction to this discussion, one of the reoccurring concerns about implementation of §§ 131.10(j) and 131.10(g) with respect to designating or removing uses, is that to some, there are instances of inconsistency in the way the § 131.10(g)(1)–(6) criteria are interpreted by EPA, the States or the Tribes. One example that has been cited is that the application of the fish consumption use is dissimilar in different regions of the country. In one area of the country, some maintain, the fish consumption use is applied to all waters assigned any aquatic life use without regard to whether or not there is a credible exposure pathway to humans by way of contaminated fish. In other areas of the country, the application of the fish consumption use allows consideration of occurrence, size and species of fish present and evidence that fishing actually occurs as a basis for concluding that there is a potential exposure pathway and the use should be designated. An associated consistency issue has to do with the manner in which the terms in § 131.10(g) are interpreted. An example is the term ''feasible'' in criterion number 4. Feasibility could be based on technical considerations, such as the ability to operate an impoundment in an efficient manner that does not degrade water quality, as EPA intended when it originally wrote the regulation. Alternatively, some have suggested that feasibility could be based on economic considerations or a balanced consideration of cost and technology (EPA's current thinking is that the term ''feasible'' in use removal criterion number 4, regarding the operation of dams should continue to refer to technical feasibility and not to economic feasibility. Criterion number 6, not number 4, is the appropriate avenue to address economic feasibility of attaining the designated use because it establishes an appropriate test of economic infeasibleness.)

EPA's view is that the use removal criteria should be clear and consistently interpreted. Questions and/or positions such as those described above suggest there may be a need for additional guidance on or interpretation of § 131.10(g) to ensure the § 131.10(g) criteria are consistently interpreted and applied, and to address whether review under § 131.10(g) could be done for categories of sources.

c. Use Attainability Analysis. A use attainability analysis (UAA) is a structured scientific assessment of the factors affecting the attainment of uses specified in section 101(a)(2) of the Act (the ''fishable/swimmable'' uses). The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal

criteria described in the current regulation (40 CFR 131.10(g)(1)–(6)). The current regulation (40 CFR 131.10(j)) establishes the requirement that States and Tribes conduct a UAA when designating uses that do not include the section 101(a)(2) uses, removing section 101(a)(2) uses, or designating new subcategories of section 101(a)(2) uses that require less stringent criteria.

New Information for Waters Without Section 101(a)(2) Use Designations

The current regulation (§ 131.20(a)) specifically requires the re-examination of water bodies with less than Section 101(a)(2) use designations every three years to determine if new information has become available. If new information indicates that a use is attainable, the State or Tribe is to revise the use accordingly. EPA interprets the current regulation as requiring review of past UAA-based use designation decisions when there is new information that could have a bearing on that use designation decision.

The 1983 preamble to the regulation explained that a State or Tribe need only conduct a UAA once for a given water body. The preamble went on to explain, however, that where the UAA is used as justification for removing a section 101(a)(2) use or failing to designate a section 101(a)(2) use, the State is required to review the basis for that decision in subsequent triennial reviews to determine whether or not the circumstances have changed in a way that would alter the original decision. EPA recognizes that the requirement to review new information about past UAA-based use designation decisions, because it creates a demand for further analysis of the decision by the State or Tribe, can serve to discourage States and Tribes from generating new information. EPA's current thinking is that interested parties should be encouraged to generate and consider relevant information that could have a bearing on the use designation decision for a particular water and that the trigger for reviewing past use designation decisions should be clear. In addition, EPA is interested in comments on whether there should be some definable burden placed on the State or Tribe to actively seek information for such waters. The Agency may need to be more specific in requiring that States and Tribes specify the procedures they will use in identifying water bodies where ''new information'' has become available and ensuring new information is generated where appropriate.

UAAs and Non Section 101(a)(2) Uses

The current regulation indicates that the UAA requirements apply to uses specified in Section 101(a)(2) of the Act. The regulation at 40 CFR 131.10(j) specifically requires that a State or Tribe conduct a UAA where: ''(1) the State [or Tribe] designates or has designated uses that do not include the uses specified in Section 101(a)(2) of the Act, or (2) the State [or Tribe] wishes to remove a designated use that is specified in Section 101(a)(2) of the Act or to adopt subcategories of uses specified in Section 101(a)(2) of the Act which require less stringent criteria.'' Although the regulation at 40 CFR 131.10(g) has always provided that States and Tribes may not remove a designated use unless they can demonstrate that attaining the use is not feasible, the regulatory language does not expressly require the State or Tribe to conduct a UAA as defined in 40 CFR 131.10(j) before a use not referenced in section 101(a)(2) may be removed. As a result, some have questioned whether or not the UAA requirements actually apply to uses other than those referenced in Section 101(a)(2), such as water supply or agriculture. EPA's position on this issue is that, while the analysis to downgrade a use not included in CWA section 101(a)(2) is not expressly referenced in § 131.10(j), 40 CFR 131.10(g) of its own terms requires the State or Tribe to document whether any use being considered for removal is attainable under the six criteria outlined in that section. Where such a use is shown to be attainable, it may not be removed (downgraded). In practice, EPA believes there is no cognizable difference between these two analyses. EPA is thus considering whether it should combine these elements of 40 CFR 131.10(g) and 131.10(j) or otherwise clarify the relationship between these provisions in the regulation. Given EPA's position that the regulation requires the use attainability of a water body to be documented before any of its uses may be removed, EPA is interested in a discussion of specific attainability issues that might arise in applying the UAA requirements to non-Section 101(a)(2) uses such as water supply or agriculture.

Information in UAAs

The regulation is not specific about what a UAA should contain other than the general description contained in the definition of a UAA at 40 CFR 131.3(g). Instead, EPA has issued various national and regional guidance documents to assist with the completion of such analyses. Some have suggested, however, that the regulation be amended to provide more specificity on information needed in a UAA. Topics for consideration might include: what specific questions should a use attainability analysis address? what are the data requirements? and what are the requirements for reporting the results of the analysis? EPA seeks comment on this issue.

UAAs and Refinement of ''Fishable/Swimmable'' Use Designation

As long as a State or Tribe designates uses that fall within the broad range of uses consistent with the section 101(a)(2) goals, there is no requirement to conduct a UAA. In fact, 40 CFR 131.10(k) explicitly states that ''a State is not required to conduct a use attainability analysis . . . whenever designating uses which include those specified in section 101(a)(2) of the Act.'' As a result, there does not appear to be a mechanism that ensures State or Tribal waters are not under-classified (i.e., a use subcategory is designated for a water when a higher or more protective subcategory is actually attainable). Some have suggested that the regulation be amended or guidance clarified to require a UAA (i.e., a structured scientific assessment) whenever an aquatic life use is designated (or refined) to ensure the level of protection assigned matches the potential for the water body. EPA's current thinking is that there needs to be a solid underlying rationale for use designations. One of the emerging themes from EPA and the larger community of parties interested in further protecting water quality is that refining designated uses and tailoring suites of criteria to the refined uses in watersheds is an important future direction of this program. Clearly for this approach to succeed, a solid evaluation of attainability must be at the heart of any decision to characterize designated uses in greater detail than has been the norm. EPA is interested in comment on this view, in particular as it relates to the rebuttable presumption that the generic uses described as fishable/swimmable are attainable.

Thresholds for Aquatic Life Use Designation

In part 2 of this section, ''Refined Designated Uses'', there is a discussion explaining EPA's position that the definition of ''aquatic life'' is not limited to those waters that support ''fisheries.'' That discussion explains that a more biologically-grounded definition of aquatic life would be sufficiently expansive to include aquatic communities made up, for example,

entirely of invertebrate organisms. This broad definition of ''aquatic life uses'' has an impact on the manner in which UAAs are planned and evaluated. The current regulation allows States and Tribes to designate uses for certain waters that do not include the section 101(a)(2) uses, where such uses are not attainable. As a result, some States and Tribes have waters which have not been assigned an aquatic life designated use. However, if aquatic life uses are defined broadly, as EPA believes they should be, there would be very few, if any, waters that would not be considered as supporting some type of existing aquatic life use.

Aquatic communities form a continuum, making it difficult, if not impossible in the biological sense, to identify where the threshold for aquatic life use begins. As a result, some have suggested that a broad definition of aquatic life would appear to revoke the option of excluding aquatic life protection from a water body since essentially all waters support some level of aquatic life. They have suggested, therefore, that there is a need to identify a threshold, based on some physical rather than biological limitation, that could be used as an acceptable justification for concluding that an aquatic life use is not attainable. For example, some States and Tribes have urged the use of a flow-based threshold to justify a conclusion that an aquatic life use in not attainable. Generally, ephemeral waters (waters whose channel does not intersect the ground water table and which are dependent on precipitation events for their flow) are suggested as an appropriate threshold. In a biological sense, this may not be a satisfactory solution since there are ecologically important ephemeral waters which should receive aquatic life use protection regardless of the temporal nature of the flow. This is especially true for many ephemeral wetlands. EPA is considering whether changes are needed in the regulation or guidance to address whether, and under what circumstances, UAAs may be used to justify a non-aquatic life use classification, given the broad range of aquatic communities that may exist.

Request for Comments on Use Removal and Use Attainability

EPA seeks comment on the following questions:

1. Although EPA believes the use removal criteria in § 131.10(g) have functioned reasonably well, questions have been raised about the applicability of specific section 131.10(g) criteria and the manner in which EPA interprets those criteria. EPA seeks comment on the use removal criteria. Are the six criteria sufficiently comprehensive or should other factors be considered as a basis for removing designated uses? Are the criteria too comprehensive and are certain of the criteria inappropriate as a basis for designated use removal? Is there a need to modify the existing criteria to more clearly address the full range of use removal issues that have developed since the regulation was originally published?

2. Even with the statements in the current regulation, questions have been raised about the minimum requirements of a use attainability analysis. Is there need for further clarification in guidance, policy or in the regulatory text on this issue?

3. Triennial review of UAA-based use designations that do not include section 101(a)(2) uses, are currently triggered only when new information becomes available. Should EPA require that States and Tribes specify procedures they will use in identifying what constitutes new information and thus when the review of the UAA-based use designations is required?

4. Although 40 CFR 131.10(g) requires an assessment of attainability before removal of any designated use, the regulatory language does not expressly require an analysis called a UAA as specified in 40 CFR 131.10(j) any time a State or Tribe seeks to designate a non section 101(a)(2) use. EPA, however, believes that the analysis under either provision is equivalent. Should the current regulation be revised to clarify that the UAA requirements apply to any ''downgrade'' of a use and not just the CWA Section 101(a)(2) uses? Can any needed clarification be achieved through guidance or policy? EPA would be interested in comments on factors to be considered in evaluating the attainability of non Section 101(a)(2) uses, such as water supply or agricultural uses which generally take place after the water is diverted from the natural water body.

5. How should the water quality standards regulation, guidance or policy be modified to provide more specificity on appropriate factors to consider in developing a use attainability analysis?

6. In order to ensure the present aquatic life use designation (or use subcategory) matches the attainable level of aquatic life use in a water body, should the water quality standards regulation, policy or guidance be modified to clarify that a periodic review of designated uses is required where a State or Tribe has designated only marginal or limited aquatic life uses?

7. Are changes needed in the water quality standards regulation, policy or EPA guidance to address whether, and under what circumstances, use attainability analyses may be used to justify a non-aquatic life use classification, given the broad range of aquatic communities that may exist?

d. Alternatives to ''Downgrade'' of the Designated Use. As discussed above, where a State or Tribe believes that a particular designated use is not attainable, States and Tribes have the option of refining a water body's designated use, for example by creating subcategories of the use and describing the use in more detail. A subcategory can, and may need to be, water body-specific if the State's or Tribe's use classification system is not sufficiently precise to accommodate the subcategory of designated use for the water body in question. States and Tribes also have the option of removing the designated use and replacing the removed use with a new one that, under the regulation, reflects attainable conditions in the water body. Use removal and to a lesser extent refinement are also commonly referred to as use ''downgrade.'' Both of these options, refinement and removal of the designated use, are not time-limited. That is, the designated use that results from exercising either of these options becomes the new goal use of the water body. In the following discussion, three alternatives to use downgrade that have been used by States are presented. They are variances, temporary standards, and ambient-based criteria. These alternatives are less ''draconian'' than use downgrading in the sense that they can provide adjustments to particular aspects of the standards—*i.e.*, to the criteria for particular pollutants or the criteria as applied to certain dischargers—without changing the designated use and the full suite of criteria to protect the designated use. EPA's current thinking is that often the attainable condition of particular water bodies is not well understood due to uncertainty about expected results of water quality improvement actions. In such situations, EPA believes it may be appropriate to implement water quality protection actions, assess the results of those actions, and implement additional measures where necessary to continue to improve water quality. EPA believes that iterative assessment and implementation in these types of situations is probably the best way to gain an understanding of the ultimate attainable condition of the water body. The mechanisms described below may be well-suited to this situation because they leave the designated use of the

water body, the ultimate goal, in place while providing a defined period of time (in the case of variances and temporary standards) to document, through implementation and assessment, the water quality improvements that are possible through various measures and thus, the attainability of the goal.

i. Variances. One option authorized under the regulation that is used by some States or Tribes is the water quality standard variance. A variance is a short-term exemption from meeting certain otherwise applicable water quality standards. EPA authorizes States and Tribes to include variances in their water quality standards. (see 40 CFR 131.13). Agency guidance on variances identifies what the Agency believes to be the essential elements of a variance:

—a variance should be granted only where there is a demonstration that one of the use removal factors (40 CFR 131.10(g)) has been satisfied;
—a variance is granted to an individual discharger for a specific pollutant(s) and does not otherwise modify the standards;
—a variance identifies and justifies the numerical criteria that will apply during the existence of the variance;
—a variance is established as close to the underlying numerical criteria as is possible;
—a variance is reviewed every three years, at a minimum, and extended only where the conditions for granting the variance still apply;
—upon expiration, of the variance, the underlying numerical criteria have full regulatory effect;
—a variance does not exempt the discharger from compliance with applicable technology or other water quality-based limits; and
—a variance does not affect effluent limitations for other dischargers.

With these safeguards in place, the principal difference between a variance and a downgrade of a designated use is that a variance is temporary. That is, when the variance expires, an affirmative showing would be needed to continue it, or the underlying standards are applicable. Because a variance is temporary, it actively supports the improved water quality goal, and it can, under appropriate circumstances serve as an environmentally preferable alternative to what otherwise might become a permanent change in a designated use.

Historically, the intent of the variance provision has been to: provide a mechanism by which permits can be written to meet a modified standard where discharger compliance with the underlying water quality standard is demonstrated to be infeasible within the meaning of § 131.10(g) at the present time (e.g., meeting the standard would cause substantial and widespread social and economic impact); encourage maintenance of original standards as goals rather than removing uses that may be ultimately attainable; and ensure the highest level of water quality achievable during the term of the variance.

EPA has approved State and Tribal use of variances when the individual variance is included in State or Tribal water quality standards, each variance is subject to the same public review as other changes in water quality standards, the State or Tribe demonstrates that meeting the standard is unattainable based on one or more of the grounds listed in 40 CFR 131.10(g) for removing a designated use, existing uses are protected, the variance secures the highest level of water quality attainable short of achieving the standard and the State or Tribe demonstrates that advanced treatment and alternative effluent control strategies have been considered (See 48 FR 51400, 51403 (Nov. 8, 1983); Water Quality Standards (WQS) Handbook at 5–12; Memorandum from EPA's Office of Water, ''Variances in Water Quality Standards,'' March 15, 1985; and Decision of the General Counsel No. 58, In Re Bethlehem Steel Corporation, March 29, 1977).

The Preamble to the 1983 water quality standards regulation revision suggested that substantial and widespread social and economic impact, the sixth element for use removal under § 131.10(g), is an important and appropriate test that, if met, could be used as the basis for granting a variance (see 48 *FR* 51403). Subsequently, on March 15, 1985, EPA issued further guidance on the conditions under which a variance might be granted. The 1985 EPA Office of Water guidance explained that it would be appropriate to grant short-term variances to individual dischargers based on any of the six factors for removing a designated use as listed at § 131.10(g). As variances represent a temporary downgrade in the water quality standards, EPA reasoned that more stringent treatment of variances than permanent downgrades would not be appropriate. In practice, however, the only factor that is commonly used to grant a discharger-specific variance is the economic test. The Office of Water guidance continued to interpret variances as being limited to individual dischargers.

In ''Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B)'' (December 1988; Notice of Availability published at 54 FR 346, January 5, 1989), EPA recommends that States and Tribes adopt a variance provision whenever adopting statewide or tribe-wide criteria for a large number of toxic pollutants for human health or aquatic life protection. The rationale behind this recommendation was to avoid unreasonable consequences from adopting State- or Reservation-wide criteria which could underestimate or overestimate the toxic potential of some pollutants in a specific water body.

The Water Quality Guidance for the Great Lakes System (Great Lakes Guidance) published March 1995 by EPA (56 FR 15366, March 23, 1995; 40 CFR section 132) contains provisions allowing for variances from water quality standards. Variances granted under the Great Lakes Guidance are pollutant-specific and point source-specific and are limited to five years or the term of the NPDES permit implementing the variance, whichever is less. Variances may be granted for any of the reasons listed at 40 CFR 131.10(g) for which a use downgrade may be considered. Like all revisions to State or Tribal water quality standards, EPA review and approval is required of any variance granted by a State or Tribe and variances may be renewed following the same procedure originally used for applying for a variance. Variances are also subject to review as part of a State's or Tribes triennial review of water quality standards. Multiple discharger variances (a variance that applies to multiple point sources discharging to the same water body) are also allowed under the Great Lakes Guidance. Variances granted under the Great Lakes Guidance provisions may not jeopardize the continued existence of any Federally listed threatened or endangered species. Further, under the Guidance, variances are not available for new or recommencing discharges. A recommencing discharge is a source that recommences discharge after terminating operations. (40 CFR 122.2).

The Great Lakes Guidance was developed in concert with many other provisions addressing designated uses, criteria, antidegradation and various implementation policies for the Great Lakes States and Tribes. Any evaluation of the level of protection afforded water quality under the Great Lakes Guidance variance procedures should be made in the context of the Great Lakes Guidance as a whole. Similarly, the water quality standards regulation is more than simply the sum of its parts. Any

approach to the implementation of water quality standards variances must be evaluated in the context of the entire regulation.

EPA is considering whether implementation of the variance provision has been a useful component of the water quality standards program, and the overall program for protection of water quality standards. In 1990, EPA conducted a survey of State variances and variance provisions (National Assessment of State Variance Procedures, Report, November 1990, Office of Water Regulations and Standards). This study showed that variances had been granted on a very limited basis. In fact, only 16 out of 57 States and Territories had granted variances and some of those had done so infrequently. EPA lacks detailed information on why variances are not being significantly utilized in most States and Tribes. EPA is interested in information regarding alternative mechanisms that are being used by States or Tribes in lieu of variances to provide necessary short term and temporary relief from applicable criteria, and how any alternative approaches address the feasibility of ultimately attaining the criteria associated with the underlying designated use.

EPA is considering whether it would be useful to include in the regulation more explicit language reflecting current EPA thinking and practice regarding variances. As explained above, in order to issue variances, States or Tribes must include variances as part of the State's or Tribe's water quality standards. EPA believes, however, that in some instances States may be misusing variances. For example, over the years, there have been instances where a State has improperly granted a ''variance'' from compliance with NPDES permit limits, failing to include these variances within the water quality standards themselves. There has also been some confusion regarding the necessity of formal adoption of individual variances into State and Tribal water quality standards and whether the public participation process associated with NPDES permit issuance sufficiently addresses those same needs for variance adoption. EPA is also considering whether to specify the degree to which individual dischargers must document the continued need for a variance before the variance can be renewed at each triennial review. EPA is considering whether the water quality standards regulation should provide more specific guidelines on the use and content of variance policies. EPA's current thinking is that the regulation may need to articulate certain aspects of variances more explicitly, including:

—explicit reference to the criteria listed in 40 CFR 131.10(g) as the criteria for granting a variance;
—explicit statement that the granting of a variance may not result in any loss or impairment of an existing use;
—explicit statement that before a variance can be granted, the applicant must provide documentation that treatment more advanced than that required by sections 303(c)(2)(A) and (B) of the CWA has been carefully considered, and that alternative effluent control strategies have been evaluated and reasonable progress is being made toward meeting the underlying or original standards;
—explicit statement requiring the highest level of water quality achievable under the relaxed, interim standard during the period of the variance.
—explicit statment that a variance shall not be granted if standards will be attained by implementing cost-effective and reasonable best management practices for nonpoint source control.

EPA believes that such a clarification of its policy regarding variances could serve to encourage proper use of variances by States and Tribes while at the same time reducing the possibility of inappropriate use.

ii. Temporary Standards. As indicated in the discussion on variances above, the 1985 EPA Office of Water guidance explained that it would be appropriate to grant short-term variances to individual dischargers based on *any* of the six factors for removing a designated use as listed at § 131.10(g). Of the six use removal factors, the first five address water quality and habitat features of the water body as a whole. These same factors are not, however, ideally suited to making decisions about the capabilities of individual dischargers. For example, it is not immediately clear how use removal factor five, ''physical conditions related to natural features of a water body * * * preclude attainment of a use'', could be applied to a decision about an individual discharger. On the other hand, the sixth factor, the substantial and widespread economic and social impact factor, is well suited to decisions about individual dischargers which explains why the economic hardship test has been historically applied in evaluating variances.

Several States have applied factors similar to the first five use removal factors in establishing variances for entire water body segments or portions of water body segments. These States sometimes refer to these as ''temporary standards'' or ''temporary modifications''. This has been done where the problems in a water body are significant and widespread, involving point and nonpoint sources of pollution and their impacts on water quality and habitat, that is waters significantly impaired by multiple sources and not just one or a few point sources. For example, where historic mining practices have severely impaired both water quality and habitat throughout a headwater basin, temporary standards have been used. Rather than downgrading these waters, the States have applied temporary standards with specific expiration dates for certain pollutants affected by the historic mining practices. In this way, the States have maintained designated uses and underlying criteria for other pollutants, while recognizing that existing ambient conditions for certain pollutants are not correctable in the short-term. In such cases, the temporary standards provide a basis for permit limits in the shorter-term. The temporary standards approach is then used by these States as the basis for remediation of damaged water resources because the underlying designated use and criteria to protect that use actively drive water quality improvements in the longer-term. EPA Regional Offices have approved the use of such temporary standards.

Temporary standards have been implemented to date with little specific Agency guidance on a water body approach to variances. EPA is considering whether the water quality standards regulation or guidance should specifically address temporary standards. EPA's current thinking is that if the regulation or Agency guidance were to specifically address temporary standards, such regulation or guidance would need to address certain relevant issues including: application criteria to be used in deciding which waters might qualify for temporary standards; a way of identifying the existing, impaired water quality conditions; a mechanism for specifying the water quality needed to fully attain the anticipated uses; and a plan and driving mechanism aimed at achieving needed water quality and habitat improvements to fully support compliance with the designated uses.

Where EPA has provided guidance to individual States on use of State temporary standards provisions, EPA has advised that any temporary standard should:

—be granted only where there is a demonstration that one of the use removal factors (40 CFR 131.10(g)(1) through (6) has been satisfied;

—be granted for a specific water body or portion of a specific water body as defined in State standards;
—identify and justify the numerical criteria that will apply during the existence of the temporary standard and identify a ''remediation plan'' aimed at compliance with the underlying designated uses and criteria;
—be established as close to the underlying numerical criteria as is possible;
—be reviewed every three years, at a minimum, and extended only where the conditions for granting the temporary standard still apply;
—be in effect only for the specified term of the temporary standard (or extension thereof), and upon expiration of the temporary standard, the underlying numerical criteria have full regulatory effect;
—not exempt any discharge to the water body from compliance with applicable technology or water quality-based limits (based on the temporary standards) or best management practices;
—not apply to any new discharger to the water body; and
—protect existing uses.

EPA is considering whether the use of temporary standards represents a viable alternative to use refinement or removal. EPA is also considering whether the regulation or guidance should explicitly address use of temporary standards, including specific limitations on the use of temporary standards like those listed above.

iii. Ambient-based Criteria. On a limited basis, States have developed and EPA has approved ''ambient-based criteria.'' These ambient-based criteria have been developed for specific water bodies and pollutants where such criteria are shown to protect the designated use and the existing use. EPA believes that ambient-based criteria can be preferable to a ''downgrade'' of a use because the underlying designated use is retained and because they may be limited to only a small subset of pollutants.

EPA has issued a policy memorandum concerning one type of ambient-based criteria, site-specific criteria for aquatic life protection that are based on natural conditions. (See Memorandum from Tudor T. Davies, Director Office of Science and Technology, Subject: Establishing Site-Specific Aquatic Life Criteria Equal to Natural Background, November 5, 1997.) This policy states that States and Tribes may establish site-specific aquatic life criteria equal to natural background conditions, but such criteria must be scientifically defensible. Additionally, the State's or Tribe's water quality standards should contain or provide specific authority for site-specific criteria based on natural background. States and Tribes should also identify procedures for determining natural background. EPA's current policy also states that the State or Tribal procedure for determining natural background needs to be specific enough to establish natural background concentration accurately and reproducibly. States and Tribes should also provide for public notice and comment on the provision, the procedure and the site-specific application of the procedure. The States or Tribes will also need to document the resulting site-specific criteria in its water quality standards, including specifying the water body segment the site-specific criterion applies to. This can be accomplished through adopting the site-specific criteria into the State and Tribal water quality standards, or, alternatively by appending the site-specific criteria to the water quality standards.

In addition, a second approach that some States have used and EPA has approved is where the State or Tribe could have met the test for downgrading a use under 40 CFR 131.10(g)(3) *i.e.,* ''Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place'', but instead of downgrading the use, the State or Tribe established certain criteria based on ambient conditions where those ambient conditions were shown to be irreversible. In addition to assuring that the existing use is protected, EPA is interested in assuring that where the ambient concentration of a pollutant cannot be improved, *i.e.,* it is irreversible, that such condition be maintained and not made worse. When this occurs, EPA believes that for other pollutants in the same water body for which applicable criteria are being or can be met, those criteria should remain in place and not be made less protective via a use downgrade. EPA's current thinking is that the ambient-based criteria need to be the best attainable. In addition, EPA's current thinking is that in order to establish ambient-based criteria, the State or Tribe should conduct an analysis equivalent to a use attainability analysis for a downgrade that should include a thorough description of the biota that will be protected via applicable water quality criteria (both the unchanged pre-existing criteria and the ambient-based criteria).

EPA is interested in hearing comments regarding these ambient-based criteria mechanisms, and specifically whether the regulation should discuss these mechanisms more specifically, and whether the regulation should be more explicit about the biological evaluation necessary to describe the aquatic life use being protected. EPA is also interested in comments on whether the other relief mechanisms based on the § 131.10(g) reasons, such as variances and temporary standards, should also require criteria which reflect the best attainable conditions.

Request for Comments on Alternatives to Downgrading a Designated Use

EPA seeks comment on the following questions:

1. EPA requests comment on whether variances, temporary standards and/or ambient-based criteria can under certain circumstances offer an environmentally preferable alternative to refinement or removal (downgrade) of the designated use? Under what circumstances?

2. Does the current water quality standards regulation or Agency guidance or policy discourage persons from seeking variances and/or discourage States and Tribes from granting variances (including temporary standards)? What components of the procedures are most problematic?

3. Reflecting EPA's current interpretation of the regulation, should the regulation make explicit that individual variances and temporary standards must be documented in a State's or Tribe's water quality standards before implementation as part of NPDES permits?

4. Reflecting EPA's current interpretation of the CWA and the regulation, should the regulation contain express reference to the factors listed in 40 CFR 131.10(g) as the criteria under which a variance (including temporary standards) from water quality standards will be allowed? Should any of these factors be deleted? Should any new factors be added?

5. Reflecting EPA's current interpretation of the CWA and the regulation regarding existing uses, should the variance portion of the regulation at 40 CFR 131.13 underscore that the granting of a variance must not result in any loss or impairment of an existing use, for example by cross-referencing the requirement at 40 CFR 131.12(a)(1) that existing uses must be protected?

6. To reflect current practice and EPA guidance, should the regulation be

amended to require documentation by either the applicant or the State or Tribe demonstrating that treatment more advanced than that required by sections 303(c)(2)(A) and (B) of the CWA has been carefully considered, and that alternative effluent control strategies have been evaluated and reasonable progress is being made toward meeting the underlying or original standards?

7. Should the regulation require that States and Tribes document in their water quality standards the criteria that are applicable to the water body or segment thereof during the period of a variance or temporary standards?

8. Should the regulation discuss ambient-based criteria mechanisms more specifically?

9. Should the regulation be more explicit about the biological evaluation necessary to describe the aquatic life use being protected where ambient-based criteria are used?

10. EPA is also interested in comments on whether the other relief mechanisms based on the § 131.10(g) reasons, such as variances and temporary standards, should in the regulation, expressly be required to require criteria which reflect the best attainable conditions?

11. Do the alternatives to use removal help address pulsed or intermittent impacts, such as those from urban and rural runoff?

C. Criteria

The following section discusses water quality criteria in the water quality standards programs. EPA is considering the implementation of and effectiveness of different types of criteria and on the desirability of changes to the water quality standards regulation as it pertains to criteria. The scope of the criteria section includes all Clean Water Act criteria for which EPA has issued national criteria guidance, and several types of criteria for which there is no national criteria guidance but where criteria guidance and policy are being contemplated.

1. Background

Water quality criteria are levels of individual pollutants or water quality characteristics, or descriptions of conditions of a water body that, if met, will generally protect the designated use of the water. EPA, under section 304(a) of the Act, periodically publishes recommendations (guidance) for use by States and Tribes to set water quality criteria. Water quality criteria are developed to protect aquatic life and human health, and in some cases wildlife, from the deleterious effects of pollutants and other effects of pollution. There are three principal categories of water quality criteria: criteria to protect human health, criteria to protect aquatic life, and criteria to protect wildlife. Within these broad categories, there are different types of criteria, for example within the human health category, there are chemical-specific and microbiological criteria. Within the aquatic life category, there are chemical-specific criteria, toxicity criteria, biological criteria, sediment criteria and physical criteria such as habitat and flow balance. These criteria may be expressed in either narrative or numeric forms. Many of these criteria may be developed to apply generally, or they may be developed to apply to site-specific situations. The CWA section 303(a)–(c) requires all States, and any Tribe that has water quality program authority, to evaluate the need for water quality criteria to protect a designated use and then adopt water quality criteria (either EPA's or its own) sufficient to protect uses designated for State or Tribal waters. Economic and technological factors (e.g., the ability of analytical techniques to detect the pollutant and treatment cost considerations) may not be used to justify adoption of criteria that do not protect the designated use.

Narrative criteria are descriptions of conditions necessary for the water body to attain its designated use. Often expressed as ''free from'' certain characteristics, narrative criteria can be the basis for controlling nuisance conditions, e.g. floating debris or objectionable deposits. Narrative criteria are often the basis for limiting toxicity in discharges. States and Tribes establish narrative criteria where numeric criteria cannot be established or to supplement numeric criteria under 40 CFR 131.11(b)(2). When a water body is classified for more than one use, criteria necessary to protect the most sensitive use must be applied to the water body. 40 CFR 131.11(a).

CWA section 304(a) directs EPA to develop criteria guidance. These criteria recommendations assist States and Tribes in developing water quality standards. The AWQC are published pursuant to Section 304(a)(1) of the CWA which states:

> The Administrator * * * shall develop and publish * * * (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on the biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

Pursuant to section 304(a), EPA has developed to date, aquatic life criteria guidance for 31 chemicals and human health criteria guidance for 100 chemicals. For the most part, States and Tribes have found such EPA criteria guidance useful in setting standards to protect designated uses. Since 1980, most States and Tribes have adopted at least some of the criteria guidance published by EPA pursuant to CWA section 304(a). However, EPA's resources available to develop criteria guidance are limited. Thus, there are cases where the scientific information or data necessary to develop criteria exist but EPA has been unable to establish section 304(a) criteria guidance.

States and Tribes may establish numeric criteria using CWA section 304(a) criteria guidance, section 304(a) criteria guidance modified to reflect site-specific conditions, or other scientifically defensible methods. 40 CFR 131.11(b)(1). There are situations where EPA relies on the 304(a) criteria guidance when promulgating replacement standards for a State or Tribe pursuant to section 303(c). EPA promulgation of 304(a) criteria for States or Tribes is discussed in more detail below.

Numeric criteria are values expressed as levels, concentrations, toxicity units, or other numbers deemed necessary to protect designated uses. Water quality criteria developed under Section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. EPA criteria under section 304(a) do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. As discussed below, 304(a) criteria are used by States and Tribes to establish water quality standards, and ultimately provide a basis for controlling discharges or releases of pollutants.

Numeric criteria are important because they provide a proven effective basis for implementation of the CWA. For example, these criteria often form the basis for NPDES water quality-based permit limits for point source dischargers and for establishing TMDLs for a water body as a whole. Numeric criteria can also be useful in assessing

and managing nonpoint source pollution problems.

The Act uses the term ''criteria'' in two separate ways. In section 303(c), the term is part of the definition of a water quality standard. That is, a water quality standard is comprised of designated uses, and the criteria necessary to protect those uses. Thus, States and Tribes are required to adopt regulations that contain legally enforceable criteria. However, in section 304(a) the term ''criteria'' is used in the scientific sense. That is, under section 304(a), EPA develops scientifically sound criteria guidance which may form the basis for State, Tribal or Federal adoption of water quality standards pursuant to section 303(c). Thus, two distinct purposes are served by the section 304(a) criteria. The first is as guidance to the States and Tribes in the development and adoption of water quality criteria that will protect designated uses, and the second is as the basis for promulgation of legally enforceable water quality criteria by the State or Tribe, or via a superseding Federal rule when such action is necessary.

As with all science, new information leads to new insights concerning pollutant impacts on water quality. This ongoing evolution affects two important and inter-related responsibilities of the Agency, which are carried out concurrently. First, from time to time EPA revises the 304(a) water quality criteria to reflect the latest data and advances in criteria science. EPA compiles the current water quality criteria guidance from time to time in a series of guidance documents: the Green Book in 1968, the Blue Book in 1972, the Red Book in 1976, and the Gold Book in 1986. The second responsibility pertains to the requirements of section 303(c).

As part of the water quality standards triennial review process defined in section 303(c)(1), the States and Tribes are responsible for maintaining and revising water quality standards. Section 303(c)(1) requires States and Tribes to review, and modify if appropriate, their water quality standards at least once every three years. If EPA determines that a new or revised standard is not consistent with the requirements of the CWA, or EPA determines that a revised standard is necessary to meet the requirements of the Act, Section 303(c)(4) authorizes EPA to promulgate replacement water quality standards. From time to time EPA has chosen to undertake such promulgations. In doing so, EPA considers the most current available scientific information, such as toxicity data and exposure assumptions.

With a number of Federal promulgations of water quality criteria under section 303(c)(4) occurring over time, or the publication of a new or revised 304(a) criteria guidance document, the criteria value(s) in an earlier Federal action may differ from the value(s) in a subsequent Federal action. This has led to some confusion among the public with regard to what EPA's current section 304(a) water quality criteria may be for a given chemical at any given time, and, what values EPA would promulgate for a State or Tribe under section 303(c). Currently, EPA interprets the most recent Federal action, whether taken pursuant to 303(c) or 304(a), as establishing the current section 304(a) criteria guidance. When EPA determines that a Federal rule is necessary to correct deficiencies in State criteria, EPA looks to the most recent criteria science, as articulated in either section 304(a) criteria guidance or EPA's most recent statement contained in a proposed or final section 303(c) rule.

To date, the most recent Federal recalculation of section 304(a) criteria occurred in the proposed California Toxics Rule (CTR)(62 FR 42160), July 30, 1997. The proposed CTR was undertaken pursuant to CWA section 303(c)(2)(B). In the Water Quality Act of 1987, Congress increased the emphasis on numeric criteria for toxic pollutants by enacting section 303(c)(2)(B). This section requires all States and any Tribe with water quality standards authority to adopt ambient water quality criteria for toxics (priority pollutants) for which EPA has published criteria under section 304(a), and for which the discharge or presence could reasonably be expected to interfere with the designated use adopted by the State or Tribe. In adopting such criteria, States and Tribes must establish numerical values based on: (1) 304(a) criteria; (2) 304(a) criteria modified to reflect site-specific conditions; or, (3) other scientifically defensible methods.

Again, EPA views the criteria program as constantly evolving. Whenever new or revised criteria are published, whether under 304(a) or a rule under 303(c), that action establishes the Agency's most current section 304(a) criteria guidance.

Whenever a State or Tribe revises its water quality criteria EPA compares the State criteria values and the basis of their derivation to the criteria contained in the most recent Federal action (either 303(c)(4) rule making or 304(a) criteria guidance publication). Thus, there may be cases where the applicable policies and science have evolved such that EPA would be comparing State or Tribe adopted criteria values to Federal criteria values other than those in older rules or criteria guidance to determine whether to approve the State's or Tribes's criteria. This approach is necessary to encourage State and Tribal adoption of the most recent section 304(a) criteria.

2. Ambient Water Quality Criteria to Protect Aquatic Life

Aquatic life criteria are scientifically-derived values, derived by States, Tribes, or EPA, to protect aquatic life from the deleterious effects of pollutants in ambient water. States and Tribes may use EPA's section 304(a) criteria guidance in developing such criteria. When developing numeric aquatic life criteria, States and Tribes usually express two concentrations; one that protects against acute effects (effects from short term exposure) and one that protects against chronic effects (effects from long term exposure). The short-term concentration is expressed as a Criterion Maximum Concentration (CMC) and is the highest ambient concentration of a toxicant to which aquatic organisms may be exposed for a short time period without causing an unacceptable effect. The long-term concentration is expressed as a Criterion Continuous Concentration (CCC) and is the highest ambient concentration of a toxicant to which aquatic organisms can be continuously exposed without causing an unacceptable effect.

Water quality criteria to protect aquatic life consist of three components—magnitude, duration and frequency. Magnitude refers to the acceptable concentration of a pollutant. Duration is the period of time (averaging period) over which the ambient concentration is averaged for comparison with criteria concentrations. Frequency is how often the criteria can be exceeded to allow the aquatic community sufficient time to recover from excursions of aquatic life criteria and to thrive after recovery.

The numerical aquatic life criteria are expressed as short-term and long-term concentrations in order that the criteria more accurately reflect toxicological and practical realities. The combination of a Criterion Maximum Concentration (CMC), over a one-hour acute duration (a short-term average acute limit), and a Criterion Continuous Concentration (CCC), over a four-day chronic duration (a long-term average chronic limit) provide protection of aquatic life and its uses. Recommended averaging periods are kept relatively short because excursions higher than the average can

kill or cause substantial damage in short periods.

The frequency limitations specify that both the acute and chronic criteria may be exceeded once in a three-year period on the average. The recommended once in a three-year period coupled with the 4-day chronic averaging period used for the CCC approximately corresponds to the historically used criterion concentrations that occurs in a once-in-ten year seven-day-average low flow (7Q10). The once-in-three-year period coupled with the one-hour acute averaging period used for the CMC approximately corresponds to the historically used criterion concentration that occurs in a once-in-ten year one-day-average low flow (1Q10)

The method by which EPA derives criteria is updated from time to time, to incorporate advances in the science. To overcome the limitations in the previous approaches to duration and frequency, a new risk assessment methodology is being developed. EPA expects that the new risk assessment methodology will include an approach that will better handle variable concentrations by use of a kinetic-based toxicity model coupled with a population response model. A kinetic-based toxicity model considers the speed at which effects appear in different individuals and at different concentrations. The kinetic-based model allows prediction of the toxicity of any series of time-variable concentrations. It can predict how often effects would occur, and what fraction of individuals in the species would be affected.

To weigh the full impact that a particular time series of concentrations would have on the exposed population of a species, an additional factor is being considered: how long it takes to replace those individuals lost due to the toxic effects. Consideration of this involves the use of a population model indicating rates of recovery of different taxonomic groups to stresses. The intent of this part of the derivation is to allow the toxic impact to be portrayed as the overall average reduction in the number of individuals in a species, both during lethal or sublethal periods and during recovery periods, accounting for both partial lethality and partial recovery.

Request for public comment on Aquatic Life Criteria

EPA requests comments on the following question:

1. Prior to completion of all of the aquatic life methodology revisions, should EPA use the tools that have thus far been developed (the kinetic model of individual organism response to derive the appropriate duration/averaging period of the criterion or to evaluate mixing zone alternatives and the population effects model to derive the allowable frequency of excursion above the criterion) to re-examine and possibly revise its recommendations on the duration and frequency of criteria excursions?

3. Site-Specific Criteria

EPA also provides guidance on how States and Tribes may develop site-specific numeric aquatic life criteria that are either more or less stringent than the criteria adopted by the State or Tribe and that would normally apply to a water body. Currently, national guidance only has recommendations and methods for establishing site-specific water quality criteria for aquatic life but guidance is under development for deriving site-specific sediment quality criteria as well.

The regulation currently specifies that States and Tribes may adopt numeric criteria based on published CWA section 304(a) guidance, section 304(a) guidance modified to reflect site-specific conditions, or other scientifically defensible methods. 40 CFR 131.11(b). EPA recognizes that States and Tribes may want to develop numeric criteria that vary from CWA section 304(a) guidance for specific waters (e.g., where chemical and physical characteristics of local waters alter the bioavailability and/or toxicity of a pollutant; or when the species or community actually present or desired may be more or less sensitive than the species or community represented by the criteria database.) In such situations, a site-specific criterion may be appropriate. EPA has developed and continues to develop guidance to assist States and Tribes in the development of site-specific criteria. (See *Water Quality Standards Handbook, Second Edition,* EPA 823–B–94–005a, August, 1994, pp 3–38 through 3–45 and documents cited therein.)

Site-specific criteria are allowed by regulation and must be submitted to EPA for review and approval, as are any changes to a WQS. The regulation at 40 CFR 131.11(b)(1) specifically provides States and authorized Tribes with the opportunity to adopt water quality criteria that are ''* * * modified to reflect site specific conditions.'' Under 40 CFR 131.5(a)(2), EPA reviews State and Tribal standards to determine ''whether a State has adopted criteria to protect the designated uses'' and whether such criteria are scientifically defensible (40 CFR 131.11(b)).

Existing guidance and practice are that EPA will approve site-specific criteria developed on the basis of sound scientific rationales.

Currently, EPA has specified three scientifically defensible procedures that States and Tribes may follow in deriving site-specific aquatic life criteria. These are the Recalculation Procedure, the Water-Effect Ratio Procedure and the Resident Species Procedure. These procedures can be found in the Water *Quality Standards Handbook* (USEPA, 1994). States may also develop other procedures for deriving such criteria as long as they are scientifically defensible. EPA also recognizes there may be naturally occurring concentrations of pollutants that may exceed the national criteria guidance published under Section 304(a) of the Clean Water Act.

The Great Lakes Guidance contains a procedure for developing site-specific criteria for protection of wildlife. While the Great Lakes States and Tribes must adopt a procedure consistent with that procedure, other States and Tribes may derive site-specific criteria using the procedure in the Great Lakes Guidance and such criteria can be more or less stringent than the applicable wildlife criteria where scientifically defensible. This is most likely to be in cases where a site-specific Bioaccumulation Factor (BAF) has been developed.

The Great Lakes Guidance also provides a procedure for modifying human health criteria on a site-specific basis based on differences in fish consumption or BAF. With regard to aquatic life criteria, if a State or Tribe could demonstrate that physical or hydrological conditions preclude aquatic life from remaining at a site for a period of time in which acute or chronic effects may occur, less stringent site-specific aquatic life criteria are allowed.

EPA's current thinking is that States and Tribes should identify in their water quality standards the methods they intend to use for site-specific criteria development and generally the circumstances under which such criteria may be developed. Additional discussion and request for comment on emerging rationales and methods for site-specific criteria, beyond that described and referenced above, is contained in section B.4.d of this notice, entitled ''Alternatives to Removal of the Designated Use.''

Request for Comments on Site-Specific Criteria

EPA seeks public comment on the following questions:

1. Should the regulation be modified to require States and Tribes to specifically authorize and identify the procedures for developing site-specific water quality criteria? Would additional EPA guidance be necessary?

2. Should the regulation or EPA guidance specify the circumstances under which site-specific criteria are necessary?

3. Does EPA need to develop guidance, policy, or clarify the regulation regarding site-specific criteria based on ambient conditions?

4. Should EPA explore broadening the concept of site-specific criteria to include watershed-specific or ecosystem-specific criteria perhaps in conjunction with a refined use designation? If so, what type of additional guidance or policy is necessary to fully explain these concepts and are any changes to the regulation needed to enable and/or facilitate use of watershed or ecosystem-specific criteria?

4. Narrative Water Quality Criteria

Narrative criteria can be an effective tool for controlling the discharge of pollutants when numeric criteria are not available. Narrative criteria, which have become known as ''free froms'', were first developed in 1968 and continue to be used in State and Tribal water quality standards. EPA guidance explains that these ''free froms'' apply to all waters of the United States at all flow conditions (including ephemeral and intermittent streams) (see *Water Quality Standards Handbook: Second Edition* (EPA–823-B–94–006, August 1994). Narrative 'free from' criteria guidance indicates that all waters be free from substances, for example, that (a) cause toxicity to aquatic life or human health, (b) settle to form objectionable deposits, (c) float as debris, oil, scum and other materials in concentrations that form nuisances, (d) produce objectionable color, odor, taste or turbidity, or (e) produce undesirable aquatic life or result in the dominance of nuisance species.

The toxic ''free froms'' include protection from both chronic and acute toxicity and include all pollutants which cause toxic effects, including but not limited to those listed under Section 307(a) if necessary to protect the designated use. All States have adopted narrative water quality criteria pursuant to section 303(c). See 48 FR 51400–51402, November 8, 1983. EPA guidance interprets these ''free froms,'' as with all criteria, to apply to the ambient water quality, not distinguishing between point sources and nonpoint sources of toxicity.

Currently, 40 CFR 131.11(a)(2) of the water quality standards regulation requires States and Tribes that have established narrative criteria for toxic pollutants to identify the methods by which the State or Tribe intends to regulate point source discharges of toxic pollutants based on such narrative criteria. EPA regulations at 40 CFR 122.44(d)(1)(v) and (vi) require narrative criteria to be implemented through NPDES permit limits. More specifically, when the permitting authority determines that a discharge causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion, the permit must, under most circumstances, contain effluent limits for whole effluent toxicity. In addition, where the permitting authority determines that a specific pollutant for which the State or Tribe has not adopted a chemical criterion is in a discharge in an amount that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion, the permit must contain effluent limits for that pollutant that are based on an interpretation of the State's or Tribe's narrative criterion. The regulation provides three options for interpreting the narrative criterion, and in addition, EPA has provided guidance on this requirement in both the Technical Support Document for Water Quality-Based Toxics Control and the Water Quality Standards Handbook (both Cited above). The guidance advises States and Tribes to develop implementation procedures that explain the application and integration of all mechanisms used by the State or Tribe to ensure that narrative criteria are attained (e.g., chemical-specific requirements, whole effluent toxicity requirements, and biological criteria, where biological criteria programs have been developed by the State or Tribe). The rationale for this approach is that comprehensive written procedures facilitate implementation decisions, reduce inconsistencies that can result in different requirements for similar situations, and promote effective and sensible application of narrative toxics criteria.

Although all States and Tribes have some type of customary practice for implementing narrative criteria, and many States and Tribes have developed implementation policies on narrowly defined topics (e.g., to explain application of whole effluent toxicity testing requirements), very few, if any, States and Tribes have developed comprehensive written implementation procedures that address all of the narrative toxics criteria implementation issues. The result may be inconsistent application of narrative toxics requirements within those States and Tribes that have not developed such procedures. In addition, the lack of documented methods makes it difficult for EPA to evaluate whether aquatic life and or human health is being adequately protected.

Request for Comments on Narrative Criteria

EPA seeks public comment on the following questions:

1. Should the regulation require adoption of ''free froms'' and similar criteria as being the minimum floor allowable under the Clean Water Act.

2. Reflecting current practice, should the regulation specify that States and Tribes are required to adopt narrative criteria for all waters?

3. At this time, EPA has limited information about how States and Tribes are implementing narrative criteria with regard to nonpoint source activities. How can narrative criteria best be implemented in the nonpoint source context and what might EPA do, including modifying the regulation, to enhance or further the use of narrative criteria?

4. Does the existing requirement for States and Tribes to identify methods for implementing narrative toxics criteria need to be clarified, and if so, should EPA clarify the requirement with additional guidance, or with revisions to the regulation?

5. What minimum elements should be included in an implementation method for narrative toxics criteria? Should implementation methods describe application and integration of all of the various mechanisms used to regulate point sources, or should such methods focus on only certain aspects of toxics control (e.g., chemical-specific limits, whole effluent toxicity limits)?

6. The current regulation requires the State or Tribe to identify the method by which the State or Tribe intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria.

Should this narrative criteria translation method apply only to point source discharges of toxic pollutants on water quality limited segments or to both point and non-point sources?

7. Should the regulation more explicitly require implementation procedures for narrative criteria other than toxics criteria? Should the regulation include minimum requirements for these implementation procedures?

5. State or Tribe Derived Criteria

States and Tribes may develop their own criteria although the water quality standards regulation 40 CFR 131.11 provides that where such criteria are less stringent than 304(a) criteria

guidance, the State or Tribe must demonstrate the criteria are scientifically defensible. Despite this available flexibility, and for a variety of reasons, most States and Tribes are reluctant to derive their own criteria. EPA is evaluating whether either changes to the water quality standards regulation or development of additional guidance would assist State or Tribal efforts to develop protective criteria. For example, for many pollutants where EPA criteria guidance has not been issued, information is available which would be useful in determining a protective water quality criterion. Sources of such information include relevant scientific literature, EPA's Integrated Risk Information System (IRIS), EPA's Aquatic Toxicity Database (AQUIRE), a database of high quality aquatic life toxicity data (under development), and other sources.

Request for Comment on State or Tribal Derived Criteria

EPA requests comment on the following question:

1. Would changes to the water quality standards regulation or development of additional guidance assist State or Tribal efforts to derive criteria? What changes or guidance would be most helpful?

6. Water Quality Criteria for Priority Pollutants

EPA has not revised the water quality standards regulation to incorporate CWA section 303(c)(2)(B) which was added to the CWA in 1987. EPA has, however, issued guidance on how States and Tribes may comply with section 303(c)(2)(B). The ''Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B):December, 1988'' provides three options for compliance:

Option 1 States and Tribes may adopt Statewide or Reservation-wide numeric chemical-specific criteria for all priority toxic pollutants where EPA has issued CWA section 304(a) criteria guidance.

Option 2 States and Tribes may adopt numeric chemical-specific criteria for those stream segments where the State or Tribe determines that the priority toxic pollutants for which EPA has issued CWA section 304(a) criteria guidance are present and can reasonably be expected to interfere with designated uses.

Option 3 States or Tribes may adopt a chemical-specific translator procedure that can be used to develop numeric criteria as needed.

The phrase ''translator procedure'' in this context means a method for translating a State's or Tribe's narrative toxics criterion into chemical-specific, numeric criteria sufficient to comply with CWA section 303(c)(2)(B). As discussed in EPA guidance (''Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B),'' December 1988, Notice of Availability at 54 FR 346, January 5, 1989), such translator procedures generally identify the equations, protocols, and data sources that are used to translate narrative criteria into derived chemical-specific criteria. Such translator procedures are different from the narrative criteria implementation procedures required in 40 CFR 131.11(a)(2) of the water quality standards regulation in that such implementation procedures must be adopted into the State's or Tribe's regulations and generally describe all mechanisms that are used and integrated to attain narrative criteria, including chemical-specific, whole effluent toxicity, and biological methods (see the discussion of narrative criteria implementation procedures in sub-section (c)(6) above). EPA believes that revisions to the water quality standards regulation to incorporate the CWA section 303(c)(2)(B) requirements would enhance public understanding of EPA's implementation of the provision.

EPA's guidance on CWA section 303(c)(2)(B) established a presumption that any information indicating that such pollutants are discharged or present in surface waters (now or in the future) may be considered sufficient justification to require adoption or derivation of numeric criteria. The guidance made clear that the requirement to adopt (or derive) criteria applies not just to pollutants that are already affecting surface waters, but also to pollutants that have the potential to affect surface waters in the future. The rationale for this approach is that it is important to have numeric criteria applied to waters where current or future activities may result in sources of priority toxics that warrant regulatory controls or other pollution abatement or assessment activities. This interpretation of section 303(c)(2)(B) is now reflected in EPA guidance included in the *Technical Support Document (TSD) for Water Quality-Based Toxics Control* (TSD) and the *Water Quality Standards Handbook* (see page 30 in the TSD).

In implementing CWA section 303(c)(2)(B), many States and Tribes have adopted statewide or reservation-wide criteria for all priority toxics where EPA has issued CWA section 304(a) criteria guidance. Taking this approach eliminates the need to determine whether a ''reasonable expectation'' for use interference exists on a water body-by-water body basis, and thus greatly simplifies the process for establishing numeric criteria for priority toxics. In other States and Tribes, however, broad application of numeric criteria for priority toxics has not occurred, and the ''reasonable expectation'' question has been a significant implementation issue. EPA is considering whether its existing guidance on this issue is adequate to support equitable decisions nationally.

Another issue stemming from CWA section 303(c)(2)(B) implementation concerns the State or Tribe option to develop a ''translator procedure'' to achieve compliance. In EPA's CWA section 303(c)(2)(B) guidance, this approach was described as Option 3. The guidance intended to be used are the 1980 Human Health Guidelines and 1985 Aquatic Life Guidelines. All of which have been both peer reviewed and publicly reviewed and thus meet the requirements of ''scientific defensibility'' under 40 CFR 131.11.

Although EPA believes that adoption of such chemical-specific translator procedures potentially provide a State or Tribe with a useful means of establishing criteria, there are several issues associated with the use of such procedures. For example:

(1) It may be difficult for the public to stay abreast of the current applicable criteria where a State or Tribe does not routinely publish an updated list of State or Tribe criteria and provide wide distribution.

(2) Public participation may occur primarily on the details of the procedure itself, rather than the pollutant-specific criteria resulting from application of the procedure.

(3) Without requirements to submit to EPA for review and approval the individual criteria generated using the translator procedure, there could be a tendency to not include such criteria in the State's or Tribe's water quality standards at the time they are generated.

A third issue that arises from State and Tribal efforts to implement CWA section 303(c)(2)(B) concerns the provision for priority toxic pollutants that are not the subject of CWA section 304(a) criteria guidance. Where such numeric criteria guidance is not available, and where necessary to protect the designated uses, CWA section 303(c)(2)(B) provides that when a State or Tribe (1) reviews Water Quality Standards or (2) revises or adopts new standards pursuant to this paragraph, States and Tribes are to adopt criteria based on biological monitoring or assessment methods.

When adopting criteria based on biological monitoring or assessment methods, States and Tribes currently

have considerable latitude to devise an approach to satisfy the requirement. For example, States and Tribes may establish ambient criteria for the parameter toxicity. Alternatively, States and Tribes could adopt narrative biological criteria. Clearly, a variety of approaches, representing a range of resource commitments, may be used to satisfy this requirement. All of these approaches must meet the test of ''scientific defensibility'' and be consistent with the goals of the CWA.

Request for Comments on Water Quality Criteria for Priority Pollutants

EPA seeks public comment on the following questions:

1. With regard to compliance with section CWA section 303(c)(2)(B), would it be better to include only a general requirement, such as one which repeats the language in the statute itself, or should the regulation reflect EPA's interpretation of the options to achieve compliance with the provision?

2. Have problems or issues arisen in the implementation of CWA section 303(c)(2)(B) that may need to be addressed by changes in the regulation or revised EPA guidance?

3. What factors should be considered in determining whether a ''reasonable expectation'' for use interference exists? How has the ''reasonable expectation'' threshold decision been interpreted and addressed by the States or Tribes? Does EPA need to clarify when a ''reasonable expectation'' for use interference exists, and if so, should the Agency clarify the requirement by issuing additional guidance, by issuing regulatory requirements, or a combination of the two approaches?

4. Where a State or Tribe adopts a chemical-specific translator procedure for derivation of numeric criteria, what process should the State or Tribe follow to ensure that notice of State derived criteria is provided to the public?

5. Should EPA require States or Tribes using translator procedures to publish an updated list of criteria for all water bodies?

6. Should EPA revise the regulation to explicitly require that, where a translator procedure is used to derive criteria, public participation is required for each individual criterion, even where an opportunity for public participation was previously provided when the procedure itself was adopted?

7. Should submission of each criterion derived using translator mechanisms for review and approval or disapproval be a requirement, even where EPA previously reviewed and approved the procedure itself? If so, should implementation of derived criteria (e.g., in NPDES permit renewal and development) proceed even where EPA has not yet issued an approval/disapproval decision?

8. Does this statutory provision need to be further clarified and interpreted by the Agency? Should changes to the water quality standards regulation or Agency guidance be pursued?

7. Criteria for Non-Priority Pollutants with Toxic Effects

Over the years, an issue which has periodically arisen, particularly for non-priority pollutants, has been the proper approach to identifying the circumstances for which adoption of numeric criteria is required. Currently, the regulation does not elaborate on how this question should be addressed; it only provides the general mandate to adopt criteria ''sufficient to protect uses.''

EPA's current thinking is that the regulation should probably be modified to further specify the circumstances under which numeric criteria for non-priority pollutants must be adopted. One approach would be to model the requirements for non-priority pollutants after the requirements included in CWA section 303(c)(2)(B) for priority pollutants. That is, for non-priority pollutants where EPA has issued criteria guidance, the regulation could require adoption of numeric chemical-specific criteria where the discharge or presence of the pollutant can reasonably be expected to interfere with designated uses. EPA could define ''reasonable expectation'' broadly to support adoption of criteria before new pollution sources are proposed, or more narrowly for non-priority pollutants, limiting such a requirement for adoption of criteria to only those water bodies and pollutants where uses are already being interfered with, or where pollution sources now exist or are certain to occur in the near future. Establishing Such a requirement would encourage development of criteria for commonly-discharged and highly toxic pollutants like ammonia and chlorine that are currently not considered priority pollutants under section 307(a) of the CWA.

Strengthening the requirements for adoption of criteria for non-priority pollutants would address a concern of some that many of the CWA section 307(a) priority pollutants are no longer an appropriate focal point for State, Tribe and EPA toxic control efforts (e.g., some of the pesticides included on that list are no longer in widespread use).

Request for Comments on Criteria for Non-Priority Pollutants With Toxic Effects

EPA seeks public comment on the following questions:

1. For what specific pollutants and under what circumstances should adoption of criteria for non-priority pollutants be required by regulation?

2. Should EPA amend the water quality standards regulation or issue additional guidance to clarify when adoption of numeric chemical-specific criteria for non priority pollutants is necessary to ''protect designated uses''?

3. Should EPA require States or Tribes to adopt narrative criteria and a narrative criteria translation method for both 307(a) and other pollutants which elicit toxic effects on organisms?

8. Criteria Where Data or Guidance is Limited

A key issue facing States and Tribes seeking to develop aquatic life and human health criteria concerns the data requirements necessary to support derivation of a criterion. (In developing national CWA section 304(a) criteria guidance, EPA has established minimum data requirements.) When sufficient, acceptable data are not available, however, many States and Tribes have resorted to adoption of lowest observed effect levels (LOELs) as criteria in order to ensure that some level of protection is in place. LOELs are based on the lowest observed concentration of a chemical at which a statistically significant adverse effect was observed in an aquatic test organism. However, EPA would counsel against adoption of water quality criteria based on LOELs alone because they may not ensure protection of aquatic life uses since: (1) they represent effect concentrations, and (2) there may be significant limitations in the database upon which they are supported.

Thus, if this approach is used, States and Tribes are encouraged to use safety factors to approximate better a protective water quality level. The particular safety factor employed generally depends on the amount and quality of data concerning the LOEL. EPA has approved this approach in particular instances because criteria based on such LOELs provide more protection than no criteria at all.

A better approach to developing values with sparse data was developed and promulgated by EPA as part of the Water Quality Guidance for the Great Lakes System (Great Lakes Guidance). Under that Guidance's Tier II procedure, States and Tribes derive values to interpret the narrative criteria for

pollutants where the minimum data requirements for derivation of a criterion are not satisfied (see appendix C of 40 CFR Part 132.) These values are then used in place of the absent criteria as the basis for NPDES permit limits where needed. EPA's current thinking is that this approach for establishing values for interpreting the narrative for pollutants where data are limited is preferable to adoption of criteria based on a LOEL.

The Tier II methodology in the Great Lakes Guidance is designed to be used in the absence of the full set of data needed to meet criteria data requirements. For pollutants for which criteria have not been adopted into State or Tribal water quality standards, Great Lakes States must, under the guidance, use methodologies consistent with either the criteria (GLI Tier I) or Tier II methodologies, depending on the data available to implement their existing narrative water quality criteria that prohibit toxic pollutants in toxic amounts in all waters.

In adopting the Great Lakes Tier II methodology, EPA, working with the States, determined that there is a need to regulate pollutants more consistently in the Great Lakes System when faced with limited data on which to base criteria. Many of the Great Lakes States are already employing procedures similar to the approach in the final Guidance to implement narrative criteria. EPA determined the Tier II approach improves upon existing mechanisms by utilizing all available data. The Tier II aquatic life methodology is used to derive Tier II values which can be calculated with fewer toxicity data than under the Tier I water quality criteria methodology. Tier II values can, in certain instances, be based on toxicity data from a single taxonomic family, provided the data are acceptable. The Tier II methodology generally produces more stringent values than the Tier I criteria methodology, to reflect greater uncertainty in the absence of additional toxicity data. As more data become available, the derived Tier II values tend to become less conservative. That is, they more closely approximate Tier I numeric criteria.

States and Tribes may also develop their own criteria derivation procedure under option 3 of EPA's CWA section 303(c)(2)(B) guidance for priority toxic pollutants. This approach allows for timely derivation of criteria based on the latest available data, and may be used to derive criteria for pollutants for which EPA has not issued guidance. However, as for all criteria, such a procedure would need to result in criteria that are scientifically defensible, so again the issue of minimum data requirements is important.

Request for Comment on Criteria Where Data or Guidance is Limited

EPA requests comment on the following questions:

1. Should adoption of a lowest observed effect concentration be considered an acceptable option where no other criteria guidance is available, or should use of an uncertainty factor (e.g., 0.1, 0.5) be required to better approximate a protective water quality level? If an uncertainty factor is used, should that factor vary based on the amount and quality of data used to drive the LOEL? If so how?

2. Should EPA develop a method for derivation of alternative values for pollutants where the minimum data requirements included in EPA's criteria guidelines are not satisfied, such as the tier 2 procedure in EPA's Water Quality Guidance for the Great Lakes System?

3. How applicable should the Tier 2 process be to States and Tribes outside of the Great Lakes? Does the regulation need to be modified to include Tier 2 specifically for the entire country?

4. Does the information included in EPA's toxicity databases (e.g., IRIS, AQUIRE) need to be made more accessible to States, Tribes, or others seeking to develop their own criteria? If so, how can this be accomplished?

9. Toxicity Criteria

Toxicity criteria are an additional type of water quality criteria used to protect aquatic life. Toxicity criteria are expressed in terms of ''toxic units'' that cause toxic effects to aquatic organisms and are determined by exposing aquatic organisms to water samples (e.g., ambient water or effluent discharges). Whole effluent toxicity (WET) testing can be effective for controlling discharges containing multiple pollutants. It can also provide a method for addressing synergistic and antagonistic effects on aquatic life.

EPA is considering revising the water quality standards regulation to require States and Tribes with water quality standards authority to develop a numeric quantification of acceptable surface water levels for the parameter ''toxicity.'' Doing so would implement the narrative criteria that waters be ''free from'' toxics in toxic amounts. Currently, States and Tribes use various approaches to implementing their narrative criteria, including using numeric toxicity values and implementing them through NPDES permits. However, there is no current requirement for States or Tribes to specify numeric criteria for toxicity in their water quality standards. Under current requirements and guidance, States and Tribes do not always specify implementation of toxicity criteria and test methods as a required means to implement the narrative water quality criteria.

Toxicity is commonly measured by exposing test organisms (e.g. Ceriodaphnia, Fathead minnow) to various concentrations of chemicals or chemical mixtures in water. EPA has promulgated methods for measuring aquatic toxicity in effluents and surface waters in 40 CFR Part 136. EPA provided a recommendation on the allowable magnitude of this parameter in the 1991 Technical Support Document for Water Quality-based Toxics Control (TSD) that would facilitate State or Tribal implementation of such a requirement. The recommendation reads: For protection against acute toxicity, ''the criterion maximum concentration (CMC) should not exceed 0.3 acute toxic units to the most sensitive of at least 3 test species; for chronic protection, the criterion continuous concentration (CCC) should not exceed 1.0 chronic toxic units to the most sensitive of at least 3 test species.'' Such a quantification serves, in conjunction with numeric criteria for individual pollutants and biological criteria, to establish an integrated and fully protective basis for assessment and control of pollutants.

Request for Comment on Toxicity Criteria

EPA seeks public comment on the following question:

1. Should the regulation be modified to explicitly require States and Tribes to adopt numeric toxicity criteria, or alternatively to use toxicity values and test methods as a required means to interpret and implement the narrative criteria? Or, is the current practice acceptable, whereby some States or Tribes have numeric toxicity criteria, some utilize toxicity methods to interpret their narrative requirements of no toxics in toxic amounts, and others use toxicity mainly as a tool to assess effluent quality, but not as the basis for permit limits?

10. Sediment Quality Criteria

Sediment quality criteria (SQC) are being developed by EPA pursuant to sections 304(a)(1) and 118(c)(7)(C) of the CWA in recognition that many water bodies are not meeting water quality goals even though ambient water quality criteria are being met. (See ''The Incidence and Severity of Sediment Contamination in Surface Waters of the

United States, Volume 1: National Sediment Inventory,'' Office of Science and Technology, September 1997, EPA–823–R–97–006.) The contaminants of interest are those that preferentially partition to sediments, become sequestered, and remain bioavailable to the aquatic community. SQC are intended to protect against chronic effects to benthic organisms resulting from sediment contamination. The development and implementation of SQC is intended primarily to enable development of pollutant-specific State standards and NPDES permit limits needed for implementation of a more effective source control program. In addition, SQC will be useful in other programs, such as developing clean-up levels for sediment remediation activities and in evaluating sediments dredged from the Nation's waterways.

Sediment quality criteria have been proposed for five non-ionic organic compounds: acenapthene, dieldrin, endrin, fluoranthene, and phenanthrene. See, Technical Basis for Deriving Sediment Quality Criteria for Nonionic Organic Contaminants for the Protection of Benthic Organisms by Using Equilibrium Partitioning (EPA–822–R–93–011); Acenapthene (EPA–822–R–93–013); Dieldrin (EPA–822–R–93–015); Endrin (EPA–822–R–93–016); Fluoranthene (EPA–822–R–93–012); Phenanthrene (EPA–822–R–93–014). In addition to non-ionic organic compounds, the Agency also is working to develop SQC for metals. After considering public comments, EPA intends to publish final SQC dieldrin and aldrin in final form. The proposed criteria for acenapthene, fluoranthene, and phenanthrene will not go final; instead, EPA plans to propose a total PAH sediment criterion. In addition to its work on SQC, the Agency also is working to develop standardized methods for performing chronic sediment bioassay tests.

The EPA Science Advisory Board subcommittee reviewing SQC for non-ionic organics concluded that: ''these criteria not be used as stand-alone, pass-fail values for all applications.'' (EPA–SAB–EPEC–93–002). EPA is developing a users manual to provide guidance on use of SQC in a regulatory context to ensure consistency with that recommendation. The guidance would recommend that SQC be used in conjunction with chronic sediment bioassay tests in determining compliance with State standards, such as in interpreting the narrative criterion of no toxics in toxic amounts. Such an approach is currently being developed in more detail, and the users guidance will be made available to the public for comment prior to being finalized.

Request for Comment on Sediment Quality Criteria

EPA seeks public comment on the following questions:

1. Should the current regulation be revised to specifically address sediment quality criteria, and if so, what should such revisions address?

2. What chemicals or classes of compounds should receive priority for development of SQC?

11. Biological Criteria

Biological Integrity, Assessments and Criteria '

The Clean Water Act directs EPA to work with States and Tribes to restore and maintain the biological integrity of the Nation's surface waters (CWA 101(a), 303, 518(e)). Biological integrity is defined as a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitat of a region (Karr and Dudley, EPA–440/5–90–004, 1981). Biological integrity does not necessarily represent an aquatic system untouched by human influence, but does represent one that is balanced, adaptive and reflects natural evolutionary processes. Designated uses and criteria to protect those uses in State and Tribal water quality standards programs provide the means to achieve biological integrity.

To more fully protect aquatic resources and provide more comprehensive assessments of aquatic life use attainment, it is EPA's policy that States and Tribes should designate aquatic life uses for their waters that appropriately address biological integrity and adopt biological criteria necessary to protect those uses (EPA–823–B–93–002, Office of Water Memorandum to EPA Regions, Policy on Bioassessment and Biological Criteria, 1991). Designated uses to support aquatic life can cover a broad range, or continuum, of biological conditions with some waters being closer to the ideal of biological integrity than others. The attainable levels of biological integrity for any water is a State and/or Tribal determination involving public participation.

For example, the State of Maine used the water quality classification law to establish the minimum standards for three levels of biological integrity. These levels correspond to the water quality classification system and are increasingly restrictive, proceeding from the minimum state standard, Class C, to Class A, the most protective standard. These refinements serve to explicitly specify the designated aquatic life uses that apply to each classification category. Class C requires that the structure and function of the biological community be maintained and provides for the support of all indigenous fish species. The intermediate standard of Class B requires that there be no detrimental changes to the aquatic community, that all indigenous species are supported and that habitat be unimpaired. The Class A standard requires that aquatic life be ''as naturally occurs'' and habitat be characterized as ''natural.'' Within Class A, there is even a subset, Class AA, that further specifies ''free-flowing'' habitat. Waters with the Class AA designation are protected from any additional discharge or alteration. Under this system, attainment of the aquatic life classification standards for a given water body is evaluated using numeric biological criteria that were statistically derived from a statewide database. The numeric biological criteria are slated to go to rule-making in 1998.

Biological assessments are used to evaluate the condition of a water body using direct measurements of the resident biota in surface waters. Biological assessments integrate the cumulative impacts of chemical, physical, and biological stressors on aquatic life. Biological criteria, derived from biological assessment information, can be used to define State and Tribal water quality goals for aquatic life by directly characterizing the desired biological condition for an aquatic life use designation. Biological criteria are narrative descriptions or numerical values that describe the reference condition of the aquatic biota inhabiting waters of a specific designated aquatic life use (EPA–440/5–90–004). Biological criteria are based on integrated measures, or indices, of the composition, diversity, and functional organization of a reference aquatic community. The reference condition describes the attainable biological conditions for water body segments with common characteristics within the same biogeographic region. In summary, biological criteria provide a direct measure of the desired condition of the aquatic biota. This capability serves a dual purpose—goal setting and environmental impact analysis. Biological assessments are then conducted to evaluate if a water body is attaining its designated aquatic life use.

Biological criteria can play an important role in water quality programs and when properly implemented, complement and support

other methods and criteria, such as chemical water quality criteria and whole effluent toxicity criteria. The latter are measures, or indicators, of environmental stress and exposure whereas the biological assessments and criteria measure the cumulative effects of stressors on the aquatic community, whether chemical, physical or biological stressors, singly or in combination. A water quality program that employs the full array of methods and criteria will develop the information needed for more accurate assessment of impairment and effective resource management.

The linkage of biological effects, stressor identification and exposure assessment is particularly important when there are multiple stressors impacting a water body, especially when a watershed management approach is taken, or where wet weather flows are a major source of impairment in the water body. A comprehensive water quality program with biological, chemical, toxicity, and physical components will enable States and Tribes to make better decisions and focus limited resources to maximize environmental gain. A critical issue facing EPA's National Water Program is the manner and extent to which biological assessments and criteria should be incorporated into water quality programs to transition to a more comprehensive water quality control program that will better identify impairments and track improvements. This includes integrating biological assessments and criteria into use designations and attainability analyses, watershed management strategies and source control requirements.

Biological criteria typically include measures of the types, abundance, and condition of aquatic plants and animals, providing information on the status and function of the aquatic community in response to the cumulative impact of both chemical and nonchemical stressors. For example, Ohio uses a multi metric approach to develop numeric biological criteria for two different assemblages: benthic macro invertebrates (bottom dwelling insects, etc.) and fish (Yoder, 1995). Biological indices have been derived that integrate measurable structural and functional characteristics of the in-stream fish and macro invertebrate communities which help assess the health of the community. Structural characteristics are based on measures of biological community structure such as diversity or taxa richness (e.g. total number of taxonomic groups) and the representation of specific taxonomic groups (e.g. number of mayfly or caddisfly taxonomic groups) within the community. Functional characteristics include measures of biological function such as feeding strategy (e.g. percent carnivores, omnivores), environmental tolerance (e.g. number of intolerant and tolerant species), and disease symptoms (e.g. percent diseased species and anomalies, including deformities, eroded fins, lesions and external tumors in fish).

The Ohio biological criteria were developed based on ecoregional reference conditions and provide a quantitative biological description of the State's designated aquatic life uses for warm water rivers and streams, including exceptional, general, modified and limited warm water habitat. The description and derivation of the indices and ecoregions are contained in the ''Biological Criteria for the Protection of Aquatic Life: Volume II. Users Manual for Biological Field Assessment of Ohio Surface Waters'' cited in Ohio's Water Quality Standards. Ohio uses biological criteria to support all aspects of its water quality management program (Yoder, 1995). Ohio's approach is another example of how a State can adopt biologically-based refined designated aquatic life uses and biological criteria consistent with EPA's policy.

Application of Biological Assessments and Criteria in State and Tribal Water Programs

Biological assessments and criteria can be an important component of State and Tribal watershed management programs by assisting in prioritization and targeting of actions, setting restoration goals and performance standards, and documenting results. For example, North Carolina has adopted narrative biological criteria into its water quality standards regulation that references standardized methods for data collection and analysis for fish and macro invertebrate communities. Specific biological indices, metrics, or numeric criteria are not included in the water quality standards regulation. However, by citing the standardized methods in the State's water quality standards, North Carolina established a mechanism for consistent, quantitative translation of the narrative biological criteria. Under the State's five year basin-wide management program, benthic macro invertebrate and fish community data are presented in individual basin-wide assessment reports. Macroinvertebrate and fish community surveys, special studies, and other water quality sampling activities are conducted in the second and third years of the cycle to provide information for assessing status and trends through the basin. Water quality management plans are being developed for all of the State's major river basins on five year cycles.

Biological assessments and criteria can fulfill several assessment functions within the NPDES permitting process. In conjunction with pollutant concentration and toxicity data, biological assessments can be used to detect previously undetected chemical water quality problems and to evaluate the effectiveness of control actions. Biological findings of use impairment can trigger the necessary technical investigations which can identify the source or sources of impairment and determine appropriate corrective measures through point or nonpoint source controls as appropriate. The State of Maine uses biological assessments and criteria to evaluate the effectiveness of controls and to inform the permit review process. Aquatic life criteria are specified in the water quality classification law and attainment is assessed using quantitative data and a multi variate statistical model. Findings of biological impairment trigger management intervention to identify possible causes. Permits have been modified and enforcement actions initiated to address biological impacts. Alternatively, favorable biological findings have been used in a tiered approach to re-direct limited agency and permittee resources to more urgent concerns.

In Maryland, investigators use bioassessments as an integral part of the Rapid Stream Assessment Technique (RSAT) to conduct watershed-wide stream quality reconnaissance, rapid screening of general storm water BMP performance and for elucidating general watershed land use—stream quality relationships (Galli, J., 1997). In Michigan, biological assessments have been used in the Wayne County Rouge River National Wet Weather Demonstration Project to identify impacts and to guide decision-makers and the public in evaluating options for preventing, reducing and minimizing pollution loading impacts on the river under a watershed approach to wet weather pollution management (Cave, 1997).

Biological assessments and criteria can be useful in evaluating highly variable or diffuse sources of pollution such as storm water runoff. These types of point source pollution do not lend themselves well to traditional chemical water quality monitoring and a biological assessment of their cumulative impact may effectively evaluate these discharges and the success of control actions.

Bioassessments have been successfully used in Florida to assess the cumulative impacts of multiple pollution sources within a watershed, in particular, storm water runoff and other nonpoint source discharges (McCarron, Livingston and Frydenborg, 1997). The Florida Storm water/Nonpoint Source Bioassessment Projects have found that bioassessments, over time, help reflect impacts from the fluctuating environmental conditions and highly variable pollutant inputs of wet weather discharges. Bioassessments also help to evaluate the habitat degradation typically associated with Storm water discharges. Bioassessments were also identified by key storm water experts from across the Nation as an important environmental indicator tool for assessing the impacts of storm water runoff and the effectiveness of storm water management strategies (Claytor and Brown, 1996).

When attempting to identify the specific sources of use impairment (stressors), the role that biological assessments and criteria will play needs to be carefully defined. Stressor identifications based solely on biological information may be straightforward in certain water bodies where a single source is the cause of impairment. In these cases, paired bioassessments, conducted above and below the discharge point, or in the vicinity of the source, may readily identify the degree of impairment and the efficacy of chosen control strategies. In small urban watersheds, dominated by storm water runoff, bioassessments and criteria may provide a direct means to measure and control the storm water impacts.

However, in complex water bodies, where numerous sources contribute to the observed biological impairment, it may be difficult for bioassessments to distinguish the relative degrees of impairment from each contributing source. Given these situations, EPA anticipates that a stressor identification evaluation (SIE) procedure will need to be developed to provide the technical tools and information that watershed managers can use to identify and evaluate the different sources of impairment that the bioassessments reveal and the specific stressors associated with each source (e.g. flow, turbidity, temperature, metals, etc.).

Guidance on Development of Biological Criteria

EPA has developed and will continue to develop technical guidance on conducting bioassessments and developing biological criteria for the following specific water body types: streams and wadable rivers, lakes and reservoirs, estuaries and near coastal waters, wetlands and large rivers. Technical guidance for streams and small rivers biological assessments and criteria was published in 1996 (EPA 822–B–96–001). Publication of technical guidance on lakes and reservoirs is expected in 1998 followed by guidance on estuaries and near coastal waters by 1999. Technical guidance development for wetlands was initiated in 1997 and for large rivers in 1998. Completion of these documents is planned within 5 years.

Guidance on Implementation of Biological Criteria

EPA is currently considering how to best advance State and Tribal adoption and implementation of biological criteria. A draft discussion document on implementation of biological criteria by States and Tribes sets forth an iterative, step-wise approach to development of biological criteria and adoption in State and Tribal water quality standards. (draft guidance document on biological criteria implementation, EPA, March 1998) Elements of a stepwise approach could include:

(1) establishment of a long term goal to restore and maintain biological integrity of State or Tribal surface waters where determined feasible;

(2) implementation plan for development of biological criteria for specific water body types, including time frame;

(3) development of standardized biological assessment methods, regional reference conditions, and biological database to support refinement of designated aquatic life uses and development of biological criteria;

(4) adoption of narrative biological criteria into water quality standards;

(5) adoption of quantitatively-based biological criteria in water quality standards.

In developing a flexible, stepwise approach, EPA is evaluating options for adoption of biological criteria that would result in the consistent translation of narrative biological criteria into numeric criteria (e.g. quantitatively-based biological criteria). A quantitatively-based biological criteria could be defined as:

(1) A narrative statement adopted into State or Tribal water quality standards that describes specific designated aquatic life uses and cites technical procedures existing outside of regulation. The technical procedures result in the translation of the narrative statement into quantitative measures; including description of how biological assessment data is collected and analyzed, and how the biological criteria are developed.

—and/or—

(2) A narrative statement as above plus the adoption of the technical procedures or the actual numeric biological criteria in State or Tribal water quality standards.

These two options for adopting quantitatively-based biological criteria are based on existing State models such as Maine, North Carolina and Ohio (EPA 230–R–96–007). North Carolina has adopted a narrative biological criteria for its aquatic life use classification and cites in the water quality standard regulation the standardized methods for data collection and analysis. Maine and Ohio have developed more refined classifications of their aquatic life uses and developed biological criteria for each specific use. Both States cite technical manuals specifying standardized methods. Ohio has adopted its numeric biological criteria directly into its standards regulation. As mentioned earlier, the Maine Department of Environmental Protection is currently embarking on a rule making process to adopt its existing standardized field methods, statistical analysis protocols and numeric classification criterion (numeric biological criteria) into its water quality regulation. Similar to Ohio, these rules will codify the technical procedures for determining attainment of aquatic life use classification. EPA describes these various States' work for consideration as possible models of biological criteria that would result in the consistent translation of narrative biological criteria into numeric criteria (e.g. quantitatively-based biological criteria).

A Regulatory Requirement for Biological Criteria

EPA is considering whether it should explicitly require States and Tribes to adopt biological criteria in either the narrative or numeric form, and, if not, whether an alternative approach to encouraging the use of biological criteria is appropriate. Some States and Tribes have already allocated resources to biological criteria development because a regulatory requirement is anticipated at some time in the future. Others have been unwilling to commit resources to development of biological criteria before specifically required to do so. Concerns have also been raised about yet another regulatory requirement to be imposed over existing requirements that are still not fully implemented—adding new layers of requirements in a piecemeal fashion without adequate resources. EPA is sensitive to the concern that

generating the data and developing the analytical capacity to incorporate biological criteria into water quality standards may present a significant resource challenge to some States and Tribes.

Advocates for a requirement for States and authorized Tribes to adopt biological criteria argue that States and Tribes will not implement biological criteria in a timely manner, if at all, without an explicit Federal regulatory requirement. The viewpoint has been expressed that States and authorized Tribes will not adequately increase program emphasis or resources if biological criteria are not required and, as a consequence, biological criteria will be relegated to a lesser role then chemical water quality criteria or whole effluent toxicity. Some States have either direct (i.e. executive orders, legislative mandates) or indirect limitations on adopting new regulations and policies that are more stringent than that required by Federal legislation. Adopting biological criteria may be seen in some States and Tribes as exceeding minimum Federal requirements. Concern has been expressed that without biological criteria as a fundamental component of a State or Tribal water quality standards program, transition of water quality standards programs to a more integrated ecosystem approach with an emphasis on watersheds will not succeed.

Adoption of Narrative Biological Criteria

As an alternative to requiring adoption of numeric biological criteria, EPA could require States and Tribes to adopt a narrative biological criteria. The narrative biological criteria could be a statement of intent adopted in a State's or Tribe's water quality standards to formally consider the fate and status of aquatic biological communities and to establish the framework for the consistent and quantitative translation of a State's or Tribe's designated aquatic life uses and development of numeric biological criteria. EPA has published a document on procedures for initiating narrative biological criteria (EPA–822–B–92–002). An example of a narrative biological criteria based upon that publication follows:

> The State will preserve, protect, and restore the water resources in their most natural condition deemed attainable. The condition of these water bodies shall be determined from the measures of physical, chemical, and biological characteristics of each surface water body type, according to its designated use. As a component of these measurements, the biological quality of any given water system shall be assessed by comparison to a reference condition(s) based upon similar regional hydrologic and watershed characteristics (reference standardized methods and operating protocols).
>
> Where attainable, such reference conditions or reaches of water courses shall be those observed to support the variety and abundance of aquatic life in the region as is expected to be or has been historically found in natural settings essentially undisturbed or minimally disturbed by human impacts, development or discharges. This condition shall be determined by consistent sampling and reliable measures of selected indicated communities of flora and/or fauna as established by [cite appropriate State agency or agencies] and may be used in conjunction with acceptable chemical, physical, and microbial water quality measurements and records judged to be appropriate to this purpose.
>
> Regulations and other management efforts relative to these criteria shall be consistent with the objective of preserving, protecting and restoring the most natural communities of fish, shellfish, and wildlife attainable in these waters; and shall protect against degradation of the highest existing or subsequently attained uses or biological conditions pursuant to State antidegradation requirement.

EPA is considering what could constitute approvable narrative biological criteria and the feasibility of EPA promulgating narrative biological criteria where a State or Tribe fails to adopt such criteria.

Time Frame for Adoption of Biological Criteria in State and Tribal Water Quality Standards

In 1991 EPA issued a policy that established as a long-term Agency goal the development and adoption of biological criteria in State and Tribal water quality programs (Transmittal of Final Policy on Biological Assessments and Criteria, memorandum from Tudor Davies, Director of the EPA Office of Science and Technology, to Regional Water Management Division Directors, June, 1991). EPA has identified as a program priority during the FY1997–1999 Water Quality Standards Triennium that States and Tribes initiate and continue to expand development of scientifically defensible biological-based classification systems (FY 1997–1999 Water Quality Standards Priorities, memorandum from Tudor Davies, Director of the EPA Office of Science and Technology, July 22, 1996). Based on State experiences, development of biological criteria can range between five to ten years, depending on several factors such as available resources, existing State expertise, existing data bases and geographic variability. If EPA were to require or recommend that States and Tribes adopt biological criteria, EPA would need to determine appropriate time frames for adoption and implementation of these criteria. EPA is considering whether the following are reasonable and appropriate time frames for adoption of biological criteria in State and Tribal water quality programs:

1. narrative biological criteria for streams and an implementation plan for development of quantitatively-based biological criteria for streams in the 2000–2003 Water Quality Standards Triennium.

2. narrative biological criteria and an implementation plan for development of quantitatively-based biological criteria for other applicable water body types (e.g. lakes and reservoirs, estuaries and near coastal waters, large rivers and wetlands) within ten years following EPA publication of technical guidance.

Linkage of Biological Criteria to Stressor-Identification

One of the potential benefits of developing a biological criteria program is the increased ability to assess water quality impairment due to nonpoint source pollution, broadening the scope of most water quality-based programs beyond regulation of effluent discharges. However, many currently regulated point source dischargers are skeptical that greater focus on nonpoint source would actually occur, particularly considering the time and resource constraints on most State and Tribal programs. Industry and municipalities are concerned that biological criteria bring an additional layer of regulatory and associated costs and that they may be an easy target for additional requirements whether their discharge is the source of impairment or not. EPA recognizes that the role biological assessments and criteria will play to help identify specific stressors or sources of use impairment will need to be carefully defined and is interested in practical, effective approaches to evaluate potential stressors and sources of impairment when a water body fails biological criteria.

Request for Comment on Biological Criteria, Assessment and Implementation

EPA is soliciting comment on the following questions:

1. Should EPA amend the regulation to explicitly require States and Tribes to adopt biological criteria or are there alternative approaches that EPA should consider? Should EPA seek to ensure that biological criteria will be developed and implemented in all State and Tribal water quality programs?

2. If EPA were to explicitly require States and Tribes to adopt biological

criteria, should it require a narrative only, or a combination of both narrative and numeric criteria as described in the draft implementation guidance (e.g quantitatively-based biological criteria)? What should EPA promulgate if a State or Tribe fails to adopt biological criteria in its water quality standards?

3. If EPA were to explicitly require biological criteria, what is a reasonable time frame for State or Tribal adoption?

4. What are practical, effective approaches to identify and evaluate potential stressors and sources of impairment when a water body fails biological criteria?

5. In what ways can biological criteria and biological assessments be used to effectively manage known stressors or sources of impairment, including urban and rural runoff?

12. Wildlife Criteria

Wildlife criteria are designed to protect mammals and birds from adverse impacts from pollutants due to consumption of food or water from a water body. A wildlife criteria methodology applicable to the Great Lakes Basin and a few wildlife criteria were published as part of the Great Lakes Guidance. EPA does not have an active wildlife criteria guidance program at this time but it is a potential emerging criteria program. The wildlife criteria that EPA promulgated in the Great Lakes Guidance are for the following four chemicals: DDT (and metabolites), mercury, PCBs, and dioxin (2,3,7,8–TCDD).

Request for Comment on Wildlife Criteria

EPA requests comment on the following question:

1. Does the regulation need to be clarified to specifically address the development of wildlife criteria guidance for the protection of aquatic dependent wildlife?

13. Physical Criteria

Physical criteria is a concept that takes into account the physical attributes of the aquatic environment, such as quality of habitat and hydrologic balance. Commenters on the draft ANPRM identified physical habitat and hydrologic balance criteria as additional important forms of criteria that should be discussed in the ANPRM. EPA agrees that physical habitat parameters, including flow, are important and often overlooked parameters that influence and at some sites control whether or not an aquatic life use is or will be attained. For example, research referenced by Schueler (see Schueler, T. The Importance of Imperviousness. Watershed Protection Techniques, Fall 1994) suggests that in many small urban streams substantial loadings from municipal separate storm sewer systems are severely degrading the aquatic habitat. The authors suggest that the primary cause of this habitat impairment is the high volume and velocity of the storm water flows into this type of stream. The high flows exceed the peaks in the natural flow regime of these streams and as a result stream bank erosion, turbidity and siltation occur and the local habitat is degraded. Further habitat destruction in larger downstream receiving waters often results from the physical deterioration of the upstream urban systems. For example, some recent studies have shown that in some lakes the biggest source of silt and sediment deposition into the lake is actually from the eroded material that comes directly out of the stream bed and stream banks that are scoured out during elevated wet weather peak discharges and extended hydrographs. This can lead to eutrophication, increased turbidity, decreased light penetration, submerged aquatic vegetation (SAV) loss, spawning bed smothering, and shellfish habitat damage.

Studies of this phenomenon suggest that until these man-made flow regimes are better managed and the resulting stresses to physical habitat corrected, no amount of control of pollutants is likely to restore the aquatic ecosystem to a level more closely resembling a natural state.

The character of natural waters is obviously affected by wet weather events. Flowing waters, especially, can change dramatically with the seasons and in response to specific precipitation events. Seasonal and event driven changes in flows, sediment loads, temperature, etc. are common and natural processes which are integral to the maintenance of natural waters and their aquatic communities. Human-caused changes to the landscape, however, have altered these natural processes, and for many waters, the altered flows and the contamination now associated with wet weather discharges (discharges that occur in whole or in part as the result of wet weather events) present significant environmental problems. Although these problems are generally well recognized, they have been difficult to address effectively precisely because of their magnitude and variable nature.

The CWA's objectives include the protection and restoration of the physical integrity of our nation's waters. Scientific experts agree that overall physical habitat loss is the single biggest factor in the loss of aquatic species. Physical habitat damage and loss to the nation's waters includes: (1) Wetlands losses; (2) the denuding of stream banks through unwise forestry, farming, mining, and urbanization; (3) the embedding of stream bottoms with fine-grained silt from poorly designed and managed farm and construction sites; (4) the damming of river systems; (5) the channelization and/or concrete lining of rivers and streams; (6) the obliteration of ephemeral and first-order streams and springs during urbanization and; (7) the widening and deepening of stream channels due to high-velocity urban storm flows.

All seven of these phenomena are common forms of aquatic habitat damage and loss, and yet there is little national guidance to address the physical parameters that contribute to these impacts. In addition, EPA does not have a clear picture of how often physical habitat parameters, including flow are used by States and Tribes to assess, manage, and/or regulate activities that damage habitat. Some commenters on the draft asserted that water quality criteria guidance is needed to address these forms of habitat loss, to create threshold values to protect designated uses and to provide measuring tools for monitoring watershed and water body health. EPA agrees that further investigation of the role of physical habitat parameters, including hydrologic balance, in water quality standards programs is necessary. EPA is considering the relative importance of such criteria guidance as compared to other forms of criteria guidance such as ambient water quality criteria, sediment criteria and biological criteria; and on the likelihood that States and Tribes would develop and implement such criteria if technical guidance and supporting policy were available. EPA is also interested in identifying examples of where such criteria guidance has already been used as the basis for assessing, managing and protecting water quality.

With respect to hydrologic balance, EPA discusses the issue in the antidegradation section of this ANPRM. Some commenters on the draft ANPRM suggested that maintaining hydrologic balance in surface waters, though important in the context of antidegradation, is also important for other aspects of water quality standards. These commenters suggested that hydrologic balance should be part of basic water quality criteria guidance for watershed and water body assessment and for long-term urban storm water abatement and prevention plans under

the storm water NPDES program, as well as for the traditional NPDES program.

EPA is further interested in issues associated with hydrologic imbalances created by various industries and land operations, and the options for researching and creating a set of hydrologic balance criteria guidance. These could include, for instance, regional minimum stream flow criteria on a seasonal or average monthly basis, a groundwater-recharge criterion meant to maintain adequate stream base flow, and a peak-flood and bank full discharge prevention criterion, perhaps based on hydrologic regions of the country.

Request for Comment on Physical Criteria

EPA seeks comment on the following questions:

1. Would it be useful to explicitly identify physical criteria such as habitat and hydrologic balance in 40 CFR 131 as a valid form of criteria that States and Tribes can adopt in their water quality standards?

2. Would EPA technical guidance on physical criteria be useful to States and Tribes? Is it necessary?

3. What are some examples of physical criteria that are being used today and what are they being used for?

4. What should be the principal uses for physical criteria? Would these help address pulsed or intermittent impacts, such as those from urban and rural runoff?

14. Human Health

Human health water quality criteria are scientifically derived values developed by States, Tribes, or EPA to protect human health from the deleterious effects of carcinogens and noncarcinogenic toxicants. Human health criteria take into account the health effects from the consumption of aquatic organisms and drinking water. Human health criteria are based on the potential of carcinogens and noncarcinogenic toxicants to cause adverse impacts to human health. When adopting criteria to protect human health, a State or Tribe may use EPA's Section 304(a) criteria documents or other information on factors to derive human health criteria. However, if a State or Tribe decides to adopt criteria less stringent than recommended by EPA, the State or Tribe must provide documentation which supports that the approach is based on sound scientific rationale.

Changes to the Human Health Criteria Methodology are anticipated for proposal in the **Federal Register** in 1998. These changes to the 1980 ambient water quality criteria (AWQC) derivation guidelines (45 FR 79347) are intended to reflect the many significant scientific advances that have occurred during the past 17 years in such key areas as cancer and noncancer risk assessments, exposure assessments and bioaccumulation. Comments on any of the key area issues, as well as implementation issues, are welcome and should be made during the public comment period following the anticipated 1998 proposal.

The following discussion focuses on three key policy-related issues, including: choice of risk levels; fish consumption assumptions and environmental justice, and the use of maximum contaminant levels.

a. Risk Levels. Criteria for specific pollutants for the protection of human health rely in part on risk levels (incidence of cancer). Numeric criteria for carcinogens are based on three inter-related assumptions: exposure, cancer potency, and risk level. Exposure considerations are based on a wide range of factors, including an estimate of the rate of fish and drinking water consumption, an estimate of the body weight of an exposed individual, and an estimate of the rate of a chemical's relative tendency to bioaccumulate in fish tissue as compared to the surrounding water. Cancer potency factors (q1*) provide a measure of a chemical's potential to cause cancer, and are typically derived from studies on laboratory animals. The risk level represents an incremental increase in cancer incidences resulting from exposure to the chemical.

EPA guidance sets forth a range of criteria values that result in calculated risk levels of 10^{-5}, 10^{-6}, and 10^{-7} for informational purposes. Most States and Tribes select either a 10^{-5} or 10^{-6} risk level as an appropriate value, i.e., one additional cancer incidence per one hundred thousand or one million exposed individuals, respectively. This level seems to represent some general scientific and public consensus that the cancer risks are acceptably small or insignificant. States and Tribes, however, are not limited to selecting among the risk levels published in the CWA section 304(a) guidance documents.

If exposure assumptions are changed, while the assumed risk level remains the same, the criterion will change accordingly. The risk to people who intake more than the default exposure assumptions increases with the degree of change in the intake rates. For example, if the State or Tribe chooses to protect at a risk level of 10^{-5} and assumes a fish consumption rate of 6.5 gm/day, but some individuals within the State or Tribe actually eat 65 gm/day of fish, the criterion actually protects those individuals at a risk level of 1 x 10^{-4} (one additional cancer case per 10,000 people). The risk level can change based on the relative change in each parameter. When adopting these standards, States and Tribes are strongly encouraged to provide documentation that the assumptions made in establishing the criteria are reasonable and adequately protect the population, including highly exposed subpopulations at the risk level asserted in the States' and Tribes' standards. EPA strongly encourages States and Tribes to highlight these provisions of their standards during the public participation process.

EPA's current criteria documents indicate the risk level within a range of 10^{-5} to 10^{-7} for the general population. The policy has been to allow States and Tribes to select appropriate risk levels and is consistent with the framework of the CWA that recognizes and supports State and Tribal primacy in making risk management decisions to protect its population provided that the goals of the Act are met. EPA's approval of different cancer risk levels to protect human health in different States or Tribes is subject to debate. Many have questioned States' and Tribes' selection and EPA's approval of various risk levels to protect human health. Some assert that EPA should require all States and Tribes to adopt a single risk level. Others believe EPA should require States and Tribes to develop data on the different exposure assumptions that may be present within the State or Tribe.

With regard to subpopulations that may consume higher amounts of fish than is assumed for the general population, EPA's Great Lakes Guidance stated that a risk level of 10^{-4} for such subpopulations in the Great Lakes basin can be protective.

In a draft proposal of the water quality criteria methodology revisions, EPA is considering proposing that risk levels in the range of 10^{-4} to 10^{-6} be adopted in deriving criteria. However, the proposed revisions also note that care must be taken in situations where the AWQC includes fish intake levels based on the general population to ensure that the risk to more highly exposed subgroups (subsistence, minority) does not exceed the 10^{-4} risk level. Furthermore, EPA is considering proposing the 10^{-6} risk level as the level that ensures protection for all exposed population groups. As stated before, all comments regarding methodology, including risk levels,

should be made during the public comment period following the anticipated 1998 Human Health Criteria Methodology proposal.

EPA intends to foster consistent approaches between Agency program offices, including its approach to determining allowable risk levels. The Food Quality Protection Act of 1996 (FQPA) amended the Federal Food, Drug and Cosmetic Act (FFDCA) to prohibit EPA from issuing tolerances for pesticide residues in or on food unless the Agency determined that there is a ''reasonable certainty'' that the residues will result in ''no harm.'' Tolerances are allowable levels of chemicals in food; food containing residues in excess of a tolerance may not be sold in commerce. The legislative history of FQPA indicated Congressional support for EPA's view that reasonable certainty of no harm would generally be met when a non-threshold risk is below a 10^{-6} level. For threshold risks, the legislative history contained general support for a margin of safety of 100, except that the Statute required the Agency to add an additional 10-fold margin of safety to protect infants and children, unless the Agency concluded on the basis of reliable data that a different margin would be safe for infants and children. In determining whether dietary exposures are safe, the FQPA also directs EPA to consider non-occupational exposures to chemicals used as pesticides, and to aggregate risks from chemicals that share a common mechanism of toxicity. EPA's Office of Pesticide Programs is in the process of developing new policies in response to the FQPA. EPA's Office of Water will consider these policies when they are completed.

b. Fish Consumption Assumptions. EPA's recommended human health criteria under CWA section 304(a) guidance are currently derived with a fish consumption rate of 6.5 grams per day (roughly one quarter ounce of fish and shellfish). This value represents an average based on market survey data gathered in 1973–74, and reflects a national average for all consumers and nonconsumers of fish and shellfish from estuarine and fresh waters. Again, EPA intends to propose revisions to the human health methodology for deriving ambient water quality criteria, including revisions of the fish consumption rate. Some assumptions regarding fish consumption and criteria policy are also discussed in FR Vol. 61, No. 239, 65183 (December 11, 1996).

EPA recognizes that, while important, the national fish consumption estimate is one of many different parameters used to set ambient water quality criteria to protect human health and that the interactions of these parameters adds substantial complexity to the methodology. However, because this component is easily understood, it receives the most attention from the general public. Overall, EPA considers its human health criteria methodologies to be conservative and protective of human health.

EPA also recognizes that there are subpopulations that consume greater quantities of fish and has considered this as part of the human health methodology for developing water quality criteria. State and Tribal human health criteria are often based on a risk level of 10^{-5} or 10^{-6} to protect people inclined to consume higher quantities than the average. In addition, with regulatory actions for carcinogens, individuals consuming even 20 times the 6.5 gram amount would still be protected at the 10^{-4} risk level. (EPA is *not* proposing a national risk level of 10^{-4} here, rather EPA is acknowledging that the level of risk is relative to the consumption of fish (i.e., it is greater for individuals consuming more fish than the national average).

A similar rationale for the protectiveness of a criterion may not apply to non-carcinogenic pollutants (i.e., RfD-based chemicals), where significantly higher fish consumption rates may (when combined with other exposure sources) result in exposures significantly exceeding the RfD. Although there are safety factors associated with an RfD, they are related to uncertainties associated with the toxicological evaluation, not with the sources and levels of exposure. Therefore, significantly higher intakes may require more stringent criteria to protect human health.

EPA is seeking ways to implement Executive Order 12898 (February 16, 1994, 59 FR 7629) regarding environmental justice to ensure that water quality criteria are developed taking into account populations such as Native Americans and other minorities, as well as other subsistence fishers. This would include working with the scientific community and the public to improve EPA's health assessments and risk assessments and incorporate relevant issues into its policies and guidance. This also includes mechanisms for public participation (e.g., meetings) for the purposes of fact-finding, receiving comments, and conducting inquiries concerning environmental justice.

Relevant to water quality standards, EPA recognizes the need to address issues regarding different fish consumption patterns among subsistence, minority populations. EPA acknowledges that these groups may consume a greater quantity of fish than the national average. In addition, these groups have asserted that States and Tribes should be required to take a more aggressive role in protecting them.

Guidance for Assessing Chemical Contaminated Data for Use in Fish Advisories (Vol. 1–IV, USEPA, 1993 and 1994) notes that fish and shellfish consumption rates vary greatly for sections of the U.S. population (e.g., by gender, race, age, cultural and recreational activity, and income levels). Given the wide variations in consumption patterns, it would not seem to be possible for States and Tribes to provide the same level of protection from contaminated fish for all consumers. EPA believes criteria should ensure adequate protection of all significant populations and subpopulations from reasonable risks.

States and Tribes are encouraged to consider local surveys when selecting fish consumption rates to protect their populations since the national average value may not be indicative of local consumption habits. In its Water Quality Guidance for the Great Lakes System (60 FR 15366, March 23, 1995), EPA included a Great Lakes-specific fish consumption rate of 15 grams per day. This rate was based on several fish consumption surveys from the Great Lakes (see 60 FR 15366 at 15374, March 23, 1995.) EPA has also published for external peer review ''Draft Guidance for Conducting Fish and Wildlife Consumption Surveys.'' (U.S. EPA 1997).

States and Tribes could be encouraged to modify criteria on a site-specific basis to provide additional protection appropriate for highly exposed subpopulations. That is, where high-end consumers would not be adequately protected by criteria derived using the default fish intake assumption, the State or Tribe may modify this assumption to provide appropriate additional protection. Again, such a recommendation was made in the Great Lakes Guidance. This preference will also be stated in the proposed revisions to the human health methodology for deriving ambient water quality criteria.

c. Maximum Contaminant Levels. Under the Safe Drinking Water Act (SDWA), EPA develops chemical-specific numeric values for use in protecting public drinking water supplies. They are maximum contaminant level goals (MCLGs) and maximum contaminant levels (MCLs). A MCLG is a non-enforceable concentration of a drinking water contaminant that is protective of

adverse human health effects and allows an adequate margin of safety. A MCL is the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. MCLGs are based solely on human health considerations (i.e., an identified adverse effect to human health, combined with an exposure intake estimate). In contrast, MCLs are to be as close to the MCLG as feasible, taking into consideration the availability and the cost of treatment technologies as well as the availability of analytical methodologies. When these two additional factors beyond health (treatment cost and analytical factors) are considered, the MCL for some chemicals is a higher (i.e., less stringent) value than the MCLG. However, there are also many chemicals for which the MCL is equal to the MCLG. This is particularly true for noncarcinogens. Over 80% of all current MCLs for noncarcinogens are identical to the corresponding MCLG for that substance. For carcinogens, MCLs are always higher than MCLGs because MCLGs for carcinogens are routinely set to zero.

Some States and Tribes utilize MCLs and MCLGs, as criteria to protect human health under the CWA. For some chemicals, the MCL or MCLG is more stringent than CWA section 304(a) human health criteria. In other cases, CWA criteria are more stringent than the MCL or MCLG. These differences come about for three basic reasons. First, as noted above, the 304(a) criteria under the CWA and MCLGs under the SDWA are strictly health-based values that do not account for treatment costs or analytical limitations. The MCL, however, does take into account treatment costs and analytical limitations. Second, the methodologies used to calculate the 304(a) criterion and the MCLG—both health-based values—for the same chemical often differ. Third, the MCLG and the 304(a) criterion sometimes have been calculated at different times, often years apart, using the current risk and exposure information at the time. Where different information on risk and exposure was used, differences in the numerical values can be expected.

It is important to consider some of the methodological differences between the derivation of 304(a) criteria and MCLs and MCLGs. Although the methods under SDWA and CWA both use the same reference dose (RfD) or cancer potency slope, and both methods assume a 70 kg adult and consumption of 2 liters of water per day, there are several important differences. One difference is that MCLGs for chemicals that are known or likely carcinogens are usually set equal to zero, while CWA section 304(a) criteria for carcinogens are based on an incremental cancer risk level and are never set equal to zero. For chemicals with limited evidence of carcinogenicity, the MCLG is usually based on the chemical's reference dose (RfD) for noncancer effects with the application of an additional uncertainty factor of 1 to 10 to account for its possible carcinogenicity. In contrast, the 1980 CWA section 304(a) criteria guidelines do not differentiate among carcinogens with respect to the weight of evidence grouping; all were derived based on lifetime carcinogenic risk levels.

Another important difference between the two methodologies is that a single determined risk value (single reference dose or single cancer risk value within the 10^{-4} to 10^{-6} range) is used in setting an MCLG, while CWA section 304(a) criteria have been derived for each of the three incremental risk levels spanning 10^{-5} to 10^{-7}, with the decision on which value to adopt left to the State or Tribe.

Another important methodological difference is in the approach to accounting for exposure sources. MCLGs for RfD-based chemicals developed under the SDWA follow a relative source contribution (RSC) approach in which the percentage of exposure that is attributed to drinking water is determined relative to the total exposure from all sources (e.g., drinking water, food, air). The rationale for this approach is to ensure that an individual's total exposure to a chemical does not exceed the RfD. To develop CWA human health criteria for noncarcinogens, the 1980 CWA National Guidelines recommended taking non-fish dietary sources and inhalation into account. However, data on these other sources were generally not available. Therefore, it was typically assumed that an individual's total exposure to a chemical came solely from drinking water from the water body and consumption of fish and shellfish living in the water body. Also, CWA criteria are based on a prediction of exposure from fish and shellfish using a bioconcentration factor (BCF) to estimate the bioconcentration of the individual chemical, and a fish/shellfish consumption rate. To date, under the current MCLG methodology, BCFs have not been used in the exposure estimates and fish/shellfish consumption rates have been only marginally accounted for (e.g., via general FDA dietary estimate or conservative default assumption).

Because of the differences in the approach to exposure and the basis of toxicity values, the health-based drinking water goal (MCLG) is sometimes more stringent than the CWA human health criterion (304(a) criterion). However, the opposite is sometimes true. An example of the former is 1,4-dichlorobenzene, for which both the MCL and MCLG are 75 ug/L and the 304(a) criterion (for protection of human health from the exposures of drinking water and consuming contaminated fish) is 400 ug/L. In this case, the MCLG was developed based on an assumption that 20% of the total exposure is from drinking water (the RSC factor applied to this noncarcinogen), whereas the CWA criterion effectively assumes that non-water exposure is negligible. Additional sources of difference between the two values are: (1) the BCF/BAF for 1,4-dichlorobenzene is low and thus does not make the 304(a) value significantly lower; (2) the MCLG was derived from an RfD of 0.1 mg/kg/day, while the 304(a) criterion utilized an Acceptable Daily Intake (ADI, now replaced by the use of RfDs) of 0.013 mg/kg/day; and, (3) the MCLG included a safety factor of 10,000, whereas the water quality criterion included a safety factor of only 1,000.

In contrast, for noncarcinogens where the BCF/BAF is high, the CWA criteria may be roughly equivalent or more stringent than the health-based drinking water levels because of the considerable exposure via fish/shellfish consumption that is assumed in deriving the CWA criteria. As with the previous example, the difference may be compounded if the toxicological values have a different basis. An example is endrin, for which the MCL and MCLG are 2 ug/L and the CWA section 304(a) human health criterion (again, for protection from the exposures of drinking water and consuming contaminated fish) is 0.76 ug/L. In this case, the drinking water level is, again, developed based on the RSC assumption of 20%, whereas the CWA criterion assumes that non-water exposure is negligible. However, the BCF/BAF for endrin is quite high (3,970) and drives the 304(a) value significantly lower. Furthermore, the MCLG was derived from an RfD of 3.0×10^{-4} mg/kg/day, while the CWA criterion utilized an ADI of 1.0×10^{-3} mg/kg/day. With endrin, both the MCLG and the water quality criterion included a safety factor of 100.

Of course as noted above, the MCL takes into account the cost or availability of treatment technology or analytical methods, and may be much less stringent than the CWA human health criterion, regardless of the

exposure assumptions or toxicological basis (e.g., 1,1,2-trichloroethane).

Because of the differing methods used to implement the SDWA and the CWA, EPA has recommended that, where consideration of available treatment technology, costs, or availability of analytical methodologies has resulted in MCLs that are less protective than MCLGs or CWA section 304(a) criteria, States and Tribes should consider using MCLGs and/or health-based CWA section 304(a) criteria to protect surface waters that are designated for water supply use under the State's or Tribe's water quality standards. Furthermore, when adopting water quality criteria to protect a surface water designated for drinking water supply use, States and Tribes should carefully consider what value (e.g., the MCLG or the 304(a) value) provides a defensible estimate of the water quality level necessary to fully protect the use, and whether relevant exposure routes have been adequately considered in the derivation of each value.

EPA stated its policy on the use of Section 304(a) human health criteria versus MCLs in 45 FR 79318, November 28, 1980. Additionally, a memorandum from R. Hanmer to the EPA Regional Water Management Division Directors dated December 12, 1988, provided detailed guidance with regard to this policy. Specifically, for the protection of public water supplies, EPA encouraged the use of MCLs. When fish ingestion is considered an important activity, EPA recommended the use of 304(a) criteria to protect human health. In all cases, if a 304(a) criterion did not exist for a chemical, an MCL was deemed a suitable level of protection.

The forthcoming proposed human health criteria guidelines (scheduled for publication in 1998 and cited above) are expected to recommend a slightly different approach. Although EPA considers the use of MCLs to protect surface waters under the CWA to be acceptable in the absence of 304(a) criteria, EPA expects to recommend that:

—MCLs only be used when they are numerically the same as the MCLG and only when the sole concern is the protection of public water supply sources (e.g., where the chemically toxic form in water is not the form found in fish tissue and, therefore, fish ingestion exposure is not an issue of concern);

—where consideration of available treatment technology, costs, or availability of analytical methodologies has resulted in MCLs that are different than MCLG values or 304(a) criteria, States and Tribes consider using MCLGs and/or 304(a) criteria to protect surface waters designated for water supply use;

—where fish consumption is an existing or potential activity, States and Tribes ensure that their adopted human health criteria adequately address this exposure route;

—where fish consumption is a designated use, States and Tribes use 304(a) criteria to protect that use because fish consumption and bioaccumulation are explicitly addressed by the 304(a) methodology;

—where water monitored at existing drinking water intakes has concentrations at or below MCLGs, then the water could be considered to meet a CWA designated use as a drinking water supply and a criterion reflecting that level could be adopted; and,

—for carcinogens where the MCLG is equal to zero, States and Tribes base a criteria value at the drinking water intake on an acceptable cancer risk level (i.e., a level within the range of 10–4 to 10–6), to protect human health. It is not intended that MCLGs of zero would be used as the basis for State or Tribal water quality criteria.

As States and Tribes may be more stringent than EPA, States and Tribes may adopt an MCL or MCLG as a water quality criterion that is more stringent than EPA's recommended section 304(a) criterion. In situations where a recommended 304(a) criterion is less protective than an MCL, EPA expects to recommend in the 1998 human health criteria methodology proposal use of the MCL instead of the recommended 304(a) criterion because it would help to ensure adequate source water protection and avoid costly compliance problems for downstream water supply utilities.

EPA has considered extensively this issue of equivalency between the drinking water component of CWA section 304(a) criteria and MCLGs or MCLs. EPA expects to move toward similar assessment methodologies (including its exposure and relative source contribution [RSC] policies) for deriving CWA criteria and MCLGs. Consistent exposure evaluation methodologies for deriving CWA 304(a) criteria for human health protection *and* MCLGs under SDWA, would, over time, eliminate the need to consider using MCLs for adopting State water quality standards. In the meantime, where there are differences between the MCLG and the 304(a) criteria for human health protection, EPA expects to continue to recommend using as the water quality criterion the value that, in the judgement of the State or Tribe, best accounts for the relevant routes of exposure. Of course, EPA will also approve use of the more stringent value.

Request for Comments on Human Health Criteria

EPA seeks public comment on the following questions:

1. Should the regulation require, or should guidance recommend, higher intake assumptions for site-specific or regional situations when subpopulations that are highly exposed have been identified? If so, what should be the basis for such intake assumptions?

2. Should the regulation be modified to clarify (beyond the guidance being proposed in 1998) the use of MCLs and MCLGs in State water quality standards? [Note: Comments on the establishment of similar assessment methodologies for deriving CWA criteria and MCLGs should be made during the public comment period following the anticipated 1998 Human Health Criteria Methodology proposal.]

15. Microbiological Criteria

Currently EPA has a criteria document titled ''Ambient Water Quality Criteria for Bacteria—1986'' which provides information on microbiological indicator organisms, sampling frequencies, and risk based criteria guidance which States and Tribes can use in establishing State or Tribal standards, especially for recreational waters. The indicators used are the Enterococci for fresh and salt waters (33/100mL and 35/100mL respectively) and *E. Coli* for fresh waters (126/100mL). It is recommended that sampling be performed on a weekly basis and the acceptability criteria are based on a running average level of the indicators on a monthly basis. The EPA Office of Research has completed a new Enterococci method (See ''Membrane Filter Test Method for Enterococci in Water,'' EPA–821–R–97–004, May 1997). This indicator method allows samples to be read in 24 hours rather than the 48 hours of the old Enterococci method.

In 1997, EPA established the Beaches Environmental Assessment Closure and Health Program (''BEACH'' Program) to protect the health of beach goers through assistance to State, Tribal, and local health officials in designing, developing and implementing beach monitoring and advisory programs. The BEACH Program will also survey local beach authorities about their programs and develop an Internet website to provide the public with information on local beach water quality conditions,

beach advisories and closures, and health risks associated with swimming in contaminated water.

While the Enterococci and *E. Coli* indicators and criteria guidance are satisfactory for determining risks from acute gastrointestinal disease they are not necessarily acceptable for determining risks from enteric viruses nor from pathogenic enteric protozoa such as *Giardia* and *Crypto Sporidium* since these pathogens are much more resistant environmentally and experience different treatment effectiveness. EPA is currently evaluating how it may develop human health criteria for protection from these organisms.

EPA may conduct additional research to develop indicator methods for non-enteric pathogens that cause skin, respiratory, eye, ear, and throat infections that are not detected by the current indicator methods. EPA also intends to examine the phenomenon of regrowth of the current indicators on soil and vegetation in tropical areas, and if deemed necessary add indicator development studies to replace the current indicators in tropical recreational areas. Further studies are proposed to examine rapid chemical indicators of fecal pollution to see if a tiered sampling protocol can be established for recreational water monitoring. Also, EPA plans to examine the development of improved monitoring strategies that States, Tribes and local authorities could use to assess the true impact of pollution during wet weather events. Finally, EPA will examine various computer models that could be used to predict microbial pollution from storm water events in watersheds and at recreational areas. These models would be validated by microbiological monitoring.

Request for Public Comment on Microbiological Criteria

EPA seeks public comment on the following questions:

1. Where and how is it best to conduct future programs to determine the safety of recreational waters?

2. What communication strategies would best inform the public about pathogen exposures?

3. What guidance should EPA provide to States, Tribes, and local governments on how to conduct beach monitoring activities?

16. Nutrient Criteria

In the National Water Quality Inventory 1994 Report to Congress, nutrients (nitrogen and phosphorous) are cited as one of the leading causes of water quality impairment in our Nation's rivers, lakes and estuaries. While nutrients are essential to the health of aquatic ecosystems, excessive nutrient loadings can result in the growth of aquatic weeds and algae, leading to oxygen depletion, increased fish and macro invertebrate mortality and other water quality impairments. In December 1995, EPA held a National Nutrient Assessment Workshop with the goal of developing a comprehensive nutrient strategy which would provide tools that can be used in assessing and controlling nutrients in all types of water bodies. Major conclusions from that workshop were: (1) a single set of national nutrient criteria is not a realistic goal, and (2) nutrient criteria need to be set on an ecoregional or watershed basis. EPA has since been developing a national nutrient strategy in order to communicate the specific approach and activities necessary to meet the goals and major conclusions of the National Nutrient Assessment Workshop.

On February 14, 1998, the ''Clean Water Action Plan'' was announced by the Administrator of EPA and the Secretary of Agriculture. The ''Clean Water Action Plan'' is a blueprint for restoring and protecting the Nation's precious water resources. As part of this Action Plan, EPA intends to identify the major sources of nitrogen and phosphorous in our waters and to identify actions to address these sources. In particular, EPA intends to accelerate development of nutrient criteria guidance for waters in every geographic region in the country, so that EPA and the States and Tribes can begin implementing a criteria system for nitrogen and phosphorous runoff for lakes, rivers, and estuaries by the year 2000. EPA will assist States and Tribes in adopting numeric water quality criteria for nitrogen and phosphorous, which EPA expects will take the form either of State- or Tribe-derived criteria where data is available, or criteria based on EPA default ranges applicable to their ecoregion(s). Where a State or Tribe does not adopt appropriate nutrient standards, EPA intends to begin the process of promulgating nutrient standards. To support meeting these expectations, EPA anticipates the following actions described below.

First, EPA intends to publish a National Nutrient Strategy which will present currently available tools for assessing eutrophication, identify important implementation issues related to controlling eutrophication, and provide the Agency's plan for developing water body-type guidance on nutrient over enrichment.

This national strategy will also present EPA's expectations for action on the part of States and Tribes, namely, development of numeric nutrient criteria and standards on a regional/watershed basis. Second, by the end of the year 2000, EPA expects to publish the water body-type guidance documents which would serve as ''user manuals'' for assessing and controlling nutrient over enrichment for specific water body types: lakes and reservoirs, rivers and streams, and estuarine and coastal waters. These documents will include techniques for assessing the trophic state of a water body and a methodology for developing region-specific nutrient criteria. In each document, EPA intends to provide regional nutrient ranges for phosphorus and nitrogen (and other parameters), which EPA would expect States and Tribes to use in setting nutrient criteria in the absence of any criterion that has been developed site-specifically. EPA intends to use existing State and Tribal projects and data, supplemented with new regional case studies and demonstration projects that are being conducted to collect information in data-limited areas of the country. An important component in developing default nutrient values is determining the appropriate scale of application (e.g., watershed, ecoregion, Northern lakes/Southern lakes, etc.). Finally, in order to promote the use of the water body-specific guidance, and ensure the development of nutrient criteria on a watershed or ecoregional basis nationwide, EPA will undertake several activities, including: (1) training in EPA regions and States, and Tribes, through the use of Regional Technical Assistance Centers; (2) appointing EPA Regional Nutrient Coordinators who will oversee the development and implementation of nutrient criteria and standards in each of the EPA Regions; and (3) offering assistance grants which will provide financial support to States and Tribes in their efforts to assemble existing data, including nutrient endpoint data, and to establish nutrient criteria either by watershed or ecoregion, where sufficient data are available.

Request for Comments on Nutrient Criteria

EPA requests comment on the following questions:

1. Should the regulation specifically require States and Tribes to adopt and implement numeric nutrient criteria?

2. What capabilities do States and Tribes have right now for developing and implementing water quality criteria for nutrients?

3. What are the institutional impediments to collecting nutrient data and developing nutrient standards, for example, staff numbers and expertise and financial resources?

4. Which States or Tribes are using an ecoregion or watershed approach to develop numeric nutrient standards (EPA is aware of some States doing this)? For those States and Tribes that do not, on what scale do their nutrient standards apply—statewide or by water body type?

D. Antidegradation

1. Background

The Federal antidegradation policy has its roots in the Water Quality Act of 1965 (Pub. L. 89–234), which stated in its declaration of policy, ''The purpose of this Act is to enhance the quality and value of our water resources and to establish national policy for the prevention, control, and abatement of water pollution.'' Policy guidelines established by the Department of the Interior in 1966 for use in the approval of States' water quality standards contained additional direction on antidegradation, stating that ''In no case will standards providing for less than existing quality be acceptable'' and ''The water quality standards proposed by a state should provide for: . . . The maintenance and protection of quality and use or uses of waters now of a high quality or of a quality suitable for present and potential future uses.'' Secretary of the Interior Udall further defined the Federal policy on antidegradation in 1968, when he said that each State was to include a statement similar to the following in their water quality standards:

Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at their existing high quality. These and other waters of a State will not be lowered in water quality unless and until it has been affirmatively demonstrated to the State water pollution control agency and the Department of the Interior that such change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently possible in, such waters. This will require that any industrial, public or private project or development which would constitute a new source of pollution or an increased source of pollution to high quality waters will be required, as part of the initial project design, to provide the highest and best degree of waste treatment available under existing technology, and, since these are also Federal standards, these waste treatment requirements will be developed cooperatively.

The Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) continued to emphasize the prevention of pollution and, in 1973, EPA developed guidance for State water quality standards under the Amendments that essentially repeated the 1968 statements of Secretary Udall.

In 1975, EPA promulgated regulations at 40 CFR 130.17(e) that required the States to develop an antidegradation policy and implementation procedures. The 1975 rule contained provisions that are very similar to those in 40 CFR 131.12, and provided protection for existing uses, high quality waters, high quality waters that constituted an outstanding National resource, and waters impaired by thermal discharges. EPA issued final rules on November 8, 1983 (48 FR 51400) that retained, with certain changes, the 1975 antidegradation policy and incorporated it into the regulations at 40 CFR 131.12. The changes to the 1975 antidegradation policy are discussed in the preamble to the 1983 rulemaking (48 FR 51402–51403), but they were generally intended to clarify the policy with no change in coverage or effect. An exception to this was the change in the provisions applicable to outstanding National resource waters, which eliminated the strict ''no degradation'' requirement in favor of a limited exception for activities that result in temporary and short-term lowering of water quality. The 1983 regulation (40 CFR 131.12(a)) provides that a State or Tribe is to identify its method for implementing the antidegradation policy, i.e., decision measures for assessing activities that may impact the integrity of a water body.

The 1987 Water Quality Act Amendments to the Clean Water Act (CWA) explicitly incorporated reference to antidegradation policies in section 303(d)(4)(B), which requires that such antidegradation requirements be satisfied prior to modifying certain NPDES permits to include less stringent effluent limitations (this concept is referred to as antibacksliding).

On March 23, 1995, EPA published the final Water Quality Guidance for the Great Lakes System (the Great Lakes Guidance). The Great Lakes Guidance includes an antidegradation component that is intended to work in conjunction with the other components of the Great Lakes Guidance to address the most pressing threats to water quality in the Great Lakes. In order to achieve this end, the focus of the antidegradation component is on decisions pertaining to new or increased loadings of specified bioaccumulative chemicals of concern within the Great Lakes basin. For other types of pollutants, States and Tribes are required to comply with the existing regulations at 40 CFR 131.12.

In the course of establishing a framework for making decisions regarding increased loadings of bioaccumulative chemicals of concern, the Great Lakes Guidance touches on a number of issues. The Great Lakes Guidance provides a procedure for identifying high quality waters on a pollutant-by-pollutant basis. The Great Lakes Guidance also defines how a significant lowering of water quality will be identified for purposes of determining whether or not an antidegradation review is required. Finally, the Great Lakes Guidance includes implementation procedures that describe how an antidegradation review should be conducted. In all cases, the antidegradation components of the Great Lakes Guidance are tailored to the control of bioaccumulative chemicals of concern; other solutions may be necessitated by environmental threats faced elsewhere in the Nation.

EPA's current thinking is that on a national scale, antidegradation is not being used as effectively as it could be and that a structured national debate on antidegradation is key to improvement. The debate needs to identify deficiencies in antidegradation policy and implementation provisions and begin the process of strengthening antidegradation as a meaningful mechanism to attain and maintain water quality standards. EPA invites comments and suggestions on the three-tiered approach currently in use and described below, as well as possible other approaches to more effectively accomplish the intent of the antidegradation requirements. As part of the ''Clean Water Action Plan'' announced on February 14, 1998 by the Administrator of EPA and the Secretary of Agriculture, EPA plans to develop additional guidance on Antidegradation. The discussion below articulates current EPA thinking in several areas of antidegradation. Elements of this current EPA thinking will likely be incorporated into the Antidegradation guidance EPA develops under the ''Clean Water Action Plan.''

2. General Description of Antidegradation

An antidegradation policy performs an essential function as part of the of States' and Tribes' water quality standards. Designated uses establish the water quality goals for the water body, water quality criteria define the minimum conditions necessary to achieve the goals and an antidegradation policy specifies the framework to be used in making

decisions regarding changes in water quality. The intent of an antidegradation policy is to ensure that in all cases, at a minimum, water quality necessary to support existing uses is maintained (tier 1), that where water quality is better than the minimum level necessary to support protection and propagation of fish, shellfish and wildlife, and recreation in and on the water (''fishable/swimmable''), that water quality is also maintained and protected unless, through a public process, some lowering of water quality is deemed to be necessary to allow important economic or social development to occur (tier 2), and to identify water bodies of exceptional recreational or ecological significance and maintain and protect water quality in such water bodies (tier 3). Antidegradation plays a critical role in allowing States and Tribes to maintain and protect the finite public resource of clean water and ensure that decisions to allow reductions in water quality are made in a public manner and serve the public good.

The watershed approach may be a powerful tool to achieving antidegradation goals (i.e., maintaining the chemical, physical, and biological integrity of the Nation's waters). Many and varied uses are made of the Nation's waters and in some cases, these uses conflict. The ability of particular waters to accommodate all uses is limited. High quality surface waters are an important and finite resource whose availability affects the health, welfare, and economic well-being of all the citizens of the United States. When operating properly, the antidegradation policies of States and Tribes ensure that water quality is conserved where possible and lowered only when necessary, and that those affected by the lowering of water quality have a say in the final decision. As a result, antidegradation policies are well-suited to assist States, Tribes and local communities in establishing and achieving watershed goals. Sensitive or highly valued water bodies can be identified and protected from degradation through outstanding national resource water (ONRW) or related designations. In other water bodies, where water quality is better than the minimum necessary to support fish and aquatic life and recreation, water quality should be maintained unless there is a demonstrated need to lower water quality. Consistent with the watershed approach and community-based environmental management, States' and Tribes' antidegradation policies and procedures can be a basis for a systematic and accessible planning process that protects against development having negative impacts on water quality. Additional authorities exist at the local level beyond State, Tribal and federal authorities which may allow additional protections to be put in place in accordance with the watershed management plan.

The water quality standards regulation requires each State and authorized Tribe to adopt, as part of its water quality standards, an antidegradation policy consistent with 40 CFR 131.12 and identify implementation methods for such a policy. This antidegradation policy provides a multi-level approach for the protection of water quality and applies to both point and non-point source activities. The level of protection that is provided to a specific segment depends upon a number of factors (e.g., a key determinant is whether existing water quality is found to exceed levels necessary to support ''fishable/swimmable'' uses). Antidegradation requirements are typically triggered when an activity is proposed that may have some effect on existing water quality. Such activities are reviewed to determine, based on the level of antidegradation protection afforded to the affected water body segment, whether the proposed activity can be authorized. ''Antidegradation reviews'' under all three tiers of antidegradation should be documented and subjected to public review and comment (e.g., as part of the public review of the water quality certification, NPDES permit, or other regulatory action).

Identifying the universe of activities that trigger antidegradation requirements is a fundamental and often controversial issue because of the number and variety of activities that can affect water quality. Clearly, a wide range of activities that affect water quality may be subject to antidegradation requirements, and States and Tribes have considerable flexibility in applying antidegradation policies.

The federal antidegradation requirements do not create, nor were they intended to create, State or Tribal regulatory authority over otherwise unregulated activities. It is the position of EPA that, at a minimum, States and authorized Tribes must apply antidegradation requirements to activities that are ''regulated'' under State, Tribal, or federal law (i.e., any activity that requires a permit or a water quality certification pursuant to State, Tribal or federal law, such as CWA § 402 NPDES permits or CWA § 404 dredge and fill permits, any activity requiring a CWA § 401 certification, any activity subject to State or Tribal nonpoint source control requirements or regulations, and any activity which is otherwise subject to State or Tribal regulations that specify that water quality standards are applicable). Where a State or Tribe wishes to require antidegradation reviews for activities that are not currently ''regulated'' under this definition, EPA recommends that a complete discussion of the activities requiring an antidegradation review be included in the State or Tribal water quality standards or other State or Tribal regulation. Although States and authorized Tribes have discretion to apply antidegradation requirements more broadly than minimally required, application of antidegradation requirements to activities that are otherwise unregulated under State, Tribal, and federal water law is not required by the federal water quality standards regulation.

EPA's current thinking is that antidegradation principles can and should be considered in connection with a number of activities even where application of the antidegradation review requirements is not explicitly required by the regulation. EPA is interested in identifying ways to better implement antidegradation, especially for activities such as urban and agricultural run-off. As part of general planning for development that is likely to affect surface water quality, it makes sense to consider existing ambient water quality and evaluate available means to protect that water quality. Thus, although a State or Tribe may not require a formal antidegradation review for a particular activity (e.g., an unregulated nonpoint source), there may still be value in applying the antidegradation principles in an analysis of potential environmental impacts.

In sum, EPA's current thinking is that the antidegradation policy is significantly underused as a tool to attain and maintain water quality and plan for and channel important economic and social development that can impact water quality. EPA believes this is especially true for nonpoint source run-off. This ANPRM provides an opportunity to identify and evaluate options for clarifying and strengthening antidegradation policy and its implementation.

States and authorized Tribes often submit implementation procedures to EPA for review as part of the water quality standards triennial review required by section 303(c) of the Act. This enables EPA to determine if the implementation procedures fulfill the requirements of the antidegradation

policy. The antidegradation policy itself is expressly required by 40 CFR 131.20(c) to be submitted to EPA for review. EPA's longstanding policy is that the implementation procedure should also be submitted to EPA for review. Often, however, implementation procedures are not submitted to EPA. EPA's current thinking is that an important change to the regulation would be to clarify under 40 CFR section 131.20(c) that State and Tribal antidegradation implementation procedures (in addition to the policy) must be included in the submittal of a State's or Tribe's water quality standards. Such a change could establish the foundation for additional substantive changes to the regulation concerning national norms for antidegradation implementation procedures.

A State's or Tribe's implementation method is on occasion so constructed as to essentially set aside the intent of the antidegradation policy. EPA has disapproved this aspect of State standards where the implementation procedure is inconsistent with the policy. Revising the regulation to specify requirements addressing the content of such implementation procedures (e.g., a core set of issues that must be resolved), and clarifying that implementation procedures must be included in the submittal package, may help to clarify EPA's role in determining whether State or Tribal antidegradation implementation procedures adequately uphold and implement the State's or Tribe's antidegradation policy. In addition, specifying in the regulation the basic elements of an implementation procedure could serve to better establish national norms for State and tribal antidegradation procedures. EPA is considering whether it would assist States and Tribes if the regulation were amended to identify the basic elements that must be included in an antidegradation implementation method.

Guidance on developing antidegradation implementation methods is provided through EPA's Regional Offices. EPA has not issued national guidance on these implementation methods and is interested in comments on whether national guidance on antidegradation implementation methods is needed, and whether elements of such guidance should be referenced or included in the Regulation.

Request for Comments on General Antidegradation Policy

EPA requests comment on the following questions:

1. What changes or clarifications could be made to the current tiered approach to protecting waters under antidegradation that would streamline and enhance antidegradation implementation?

2. Should the regulation be amended to identify the basic elements that must be included in an antidegradation implementation method and would such changes assist States and Tribes in understanding the requirements and in utilizing the flexibility available?

3. Is national guidance on antidegradation implementation methods needed and should elements of such guidance be referenced or included in the Regulation?

3. 40 CFR 131.12 (a)(1) ''tier 1''

Section 131.12 (a)(1) of the antidegradation policy contained in the water quality standards regulation requires that existing uses and the water quality necessary to protect them be maintained and protected. This provision, in effect, establishes the floor of water quality in the U.S. It also protects the environment where the existing use of a water body happens to be better than the use designated by the State or Tribe. An existing use as defined in 40 CFR 131.3 can be established by demonstrating that a use has actually occurred since November 28, 1975, or that the water quality is suitable to allow such uses to occur, whether or not such uses are designated uses for the water body in question. All waters of the U.S. are subject to tier 1 protection. In general, waters that are subject to only tier 1 antidegradation policies are those water bodies that do not exceed the CWA Section 101(a)(2) goals, or do not have assimilative capacity to receive additional quantities of a pollutant(s) without jeopardizing the existing use. Existing uses and additional issues related to defining them and their relationship to designated uses are further discussed in section III(B)(3) of this document.

Antidegradation policies are generally implemented for tier 1 by a review procedure that evaluates any discharge to determine whether it would impair an existing use. Prior to authorizing any proposed activity, a State or authorized Tribe shall ensure that water quality sufficient to protect existing uses fully will be achieved. In addition to ensuring that existing uses will be protected, the State or Tribe should ensure that all existing uses are designated in accordance with 40 CFR 131.10(i).

a. Tier 1 Implementation. In order to implement tier 1, a State or Tribe must define what is meant by the term ''existing in-stream water use'' (40 CFR 131.12(a)(1)) and must also be able to identify the level of water quality that is required to permit an existing use to continue to occur. Section 131.3 defines existing uses as, ''those uses actually attained in the water body on or after November 28, 1975 * * *'' Traditionally, when establishing designated uses, States and Tribes tend to define uses in terms of broad classes, such as warm water fishery or secondary contact recreation. Inherent in each of the broad use categories are specific uses that may be affected by a change in water quality. For example, a warm water fishery designated use may include the existing use of large mouth bass fishery. Many people would be upset if the warm water fishery designated use was protected in such a way as to allow a decline in the bass population. The central question faced by States and Tribes in determining whether or not a proposed action will impact existing uses is whether each specific use within a use class must be maintained (each individual type of species), or whether only the use class itself must be maintained (allow changes in species composition, but maintain a fishery). State and Tribal interpretations of this requirement vary considerably and are often tied to the degree of precision the State or Tribe achieves in defining designated uses.

Many States and some Tribes have addressed these questions by using the same degree of precision for both designated and existing uses. EPA's current thinking is that this is an acceptable approach as long as the State's or Tribe's designated uses and criteria applicable to those uses are adequate to ensure that existing uses are maintained under the federal antidegradation provisions. It would not be acceptable, for example, for a state to allow the loss of an existing natural cold water community in favor of a warm water community because both satisfy the general use designation of ''aquatic life.'' Nor would it be acceptable to allow shifts from existing pollution intolerant communities to communities that tolerate degraded conditions. The advantage of this approach is that the same criteria used to protect the designated use can be assumed to also protect the existing use. Under this approach, however, the protection afforded to existing uses is limited by the degree of refinement associated with the designated uses. States and Tribes that have more specific designated uses (i.e., including a number of use sub-categories) can potentially provide more protection by addressing more subtle changes to the existing use. States and

Tribes with less specific designated uses would have less precision associated with their existing use protection scheme.

An important tier 1 implementation issue concerns how a State or Tribe will prevent negative or harmful impacts to existing uses when water quality criteria that have been established to protect the designated uses are not adequate to protect the existing uses. For example, a regulated discharge of uncontaminated sediment may result in significant negative or harmful impacts to aquatic life habitat and loss of aquatic life use. In such cases, where clean sediment or siltation criteria have not been developed for the site, and where the State or Tribe has not established clear procedures to implement narrative criteria governing sedimentation, it may be difficult to prohibit such loss of use, particularly where a State or Tribe has not adopted biological criteria.

A second example arises where a proposed activity will result in the discharge of a substance for which numeric criteria have not been adopted by the State or Tribe, but sufficient data to derive criteria or a numeric translation of the narrative criteria are available. Where a range of numeric criteria can potentially be justified for the particular substance to protect the designated and/or existing use, it may be difficult or contentious for the State or Tribe to derive effluent limits protective of the existing use.

A third example arises where a proposed hydrologic modification will result in diminished flow in a water body and create the potential for loss of existing aquatic life use either through increased temperatures or turbidity, or loss of habitat. State and Tribal water quality criteria generally do not describe minimum acceptable flows and may not, by themselves, adequately protect against such loss of use. In *P.U.D. No. 1 of Jefferson County and City of Tacoma* v. *Washington Department of Ecology,* (114 S.Ct 1900 (1994)), the Supreme Court ruled that State certifications under section 401 of the CWA may include conditions to ensure compliance not only with a State's water quality criteria, but also with a State's designated uses or antidegradation policy. The Court concluded that a State could require, in this case, a dam to be designed and operated in such a way as to maintain stream flows necessary to protect the designated use of a stream. While this specific case had to do with a dam and stream flows necessary to protect a use, it should be noted that the opinion applies more broadly than to just flow and that in addition to maintenance of in-stream flows to protect water quality standards, States may also apply any other parameter that may not be specifically identified in the State's standards. EPA notes that where such implementation methods are spelled out, as a practical matter, they may be more easily implemented. (See related discussion in Section III.B. on uses). EPA believes that tier 1 methods or policies for addressing situations such as those described above may need to be included in an antidegradation implementation procedure.

Request for Comments on Antidegradation Tier 1

EPA specifically requests public comment on the following questions:

1. Do State and Tribal programs under the existing regulation do an adequate job of protecting existing in-stream uses?

2. Is a more detailed definition of ''existing in-stream water uses'' needed in the regulation? Should it be the same as ''existing uses?'

3. Should the regulation define what constitutes loss of an existing in-stream water use?

4. Should a clear approach to maintaining and protecting existing uses that may not be adequately protected by strict application of water quality criteria be a required element of an antidegradation implementation procedure?

5. Should the regulation specify under antidegradation that protection of both existing and designated uses is required?

4. 40 CFR 131.12 (a)(2) ''tier 2''

''Tier 2'' (§ 131.12(a)(2)) antidegradation policies are intended to protect the waters in which water quality is better than necessary to support propagation of fish, shellfish and wildlife, and recreation in and on the water body. These are called high quality waters. For such high quality waters, existing water quality must be maintained and protected unless it is demonstrated that a lowering of water quality is necessary to accommodate important economic or social development. The protection of high quality waters envisioned by the regulation encourages a systematic, public decision making process for determining whether or not to allow limited deterioration of water quality in high quality waters.

a. Identification of ''High Quality'' Waters. Identifying waters that are ''high quality'' and subject to tier 2 protection is an important antidegradation issue. The water quality standards regulation requires application of tier 2 requirements ''where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.'' However, the regulation does not include specific guidelines for identifying high quality waters. Various EPA guidance documents, including those issued by EPA's Regional offices, make a variety of suggestions concerning approaches to defining tier 2 waters. Not surprisingly, States and Tribes have developed various ways to identify tier 2 waters.

Existing approaches for identifying high quality waters fall into two basic categories: (1) pollutant-by-pollutant approaches, and (2) water body-by-water body approaches. States and Tribes following the first approach determine whether water quality is better than applicable criteria for specific pollutants that would be affected by the proposed activity. Thus, available assimilative capacity for any given pollutant is always subject to tier 2 protection, regardless of whether the criteria for other pollutants are satisfied. Such determinations are made at the time of the antidegradation review (i.e., as activities that may degrade water quality are proposed). States and Tribes following the second approach weigh a variety of factors to judge a water body segment's overall quality. Such determinations may be made prior to the antidegradation review (i.e., the State or Tribe may assign ''high quality'' designations in the State or Tribal standards), or during the course of the antidegradation review. Under this water body-by-water body approach, sometimes referred to as the ''designational'' approach, assimilative capacity for a given pollutant may not be subject to tier 2 protection if, overall, the segment is not deemed ''high quality.''

There are advantages and disadvantages to each approach. EPA's current thinking is that neither approach is clearly superior and that either, when properly implemented, is acceptable. EPA has approved both approaches in State standards. Some States and Tribes have found the pollutant-by-pollutant approach to be easier to implement because the need for an overall assessment considering various factors is avoided. Also, decisions are driven strictly by water column data (i.e., rather than judgments concerning a segment's overall value or quality) and thus may be less susceptible to challenge. The pollutant-by-pollutant approach may result in more waters receiving some degree of tier 2 protection because it would cover

waters that are clearly not attaining goal uses (i.e., waters which are not supporting ''fishable/swimmable'' goal uses but that possess assimilative capacity for one or more pollutant).

The water body-by-water body approach, on the other hand, allows for a weighted assessment of chemical, physical, biological, and other information (e.g., unique ecological or scenic attributes). In this regard, the water body-by-water body approach may be better suited to EPA's stated vision for the water quality standards program: refined designated uses with tailored criteria, complete information on uses and use attainability, and clear national norms. The water body-by-water body approach preserves water quality even if criteria for certain pollutants are not attained or if criteria for certain uses may be limited, such as fish consumption. This approach also allows for the high quality water decision to be made in advance of the antidegradation review (and included in the water quality standards for the segment), which may facilitate implementation. A water body-by-water body approach also allows States and Tribes to focus limited resources on protecting higher-value State or Tribal waters. The water body-by-water body approach can also distinguish between high quality waters and high water quality and preserve high quality waters on the basis of physical and biological attributes, rather than high water quality attributes alone. However, the flexibility of the water body-by-water body approach is also its principal disadvantage where a State or Tribe does not develop inclusive qualification criteria. For example, where a State's or Tribe's implementation guidelines define a narrow universe of waters, many deserving high quality waters may not receive tier 2 protection. Thus water quality may actually decrease in the waters not classified for tier 2 protection without a public review of the development decision. Also, a potential problem can arise if the process of identifying high quality waters becomes so complicated, resource-intensive, and data-intensive that the primary purpose of tier 2 (i.e., seeking to maintain and protect existing quality by identifying whether there are reasonable less-degrading or non-degrading alternatives) is not adequately accomplished. In other words, the limited resources available for water quality protection could be spent on the identification process at the expense of analysis of the necessity for degradation.

b. Tier 2 Implementation. The current regulation provides a great deal of flexibility to States and Tribes in implementing tier 2 requirements. Some States and Tribes devote little effort to implementing their tier 2 requirements, some States and Tribes apply tier 2 requirements in an inconsistent or infrequent manner, and other States and Tribes have active programs that routinely and consistently implement tier 2. In general, those States and Tribes that actively implement their tier 2 requirements do so by conducting an antidegradation review to determine whether proposed activities that might affect water quality may be authorized. EPA's current sense is that the antidegradation policy, in reality, has little effect on decisions related to surface water quality unless the State or Tribe adopts an implementation procedure and uses it. EPA currently reviews all State and Tribal water quality standards at the time of adoption/revision to ensure they establish a clear approach to implementation. A brief discussion of a number of the major implementation issues is presented below.

i. Triggers for tier 2 Review. Although not discussed in 40 CFR 131.12 of the water quality standards regulation, State and on occasion Tribal tier 2 implementation procedures often include guidelines which are used to determine when the water quality degradation that will result from a proposed activity is significant enough to warrant further antidegradation review. Where the degradation is not significant, the antidegradation review is typically terminated for that proposed activity. The significance evaluation is usually conducted on a pollutant-by-pollutant basis, even where a water body-by-water body approach is used to identify high quality waters, and significant degradation for any one pollutant triggers further review for that pollutant.

Applying antidegradation requirements only to activities that will result in significant degradation is a useful approach that allows States and Tribes to focus limited resources where they may result in the greatest environmental protection. However, there is a great deal of variation in how States and Tribes define significant degradation. Significance tests range from simple to complex, involve qualitative or quantitative measures or both, and may vary depending upon the type of pollutant (e.g., the approach may be different for highly toxic or bioaccumulative pollutants). In some cases, States have also created categorical exemptions from tier 2 review (e.g., they have exempted entire categories of activities from antidegradation reviews based on a general finding that such activities do not result in significant degradation). States or Tribes that define a high threshold of significance may be unduly restricting the number of proposed activities that are subject to a full antidegradation review. Further the approach currently used by some States may not adequately prevent cumulative water quality degradation on a watershed scale. The current regulation does not specify a significance threshold below which an antidegradation review would not be required. EPA's current thinking is that a clear national norm regarding this ''significance test'' is necessary and should be developed and established in either the regulation or national guidance.

A related issue concerns whether tier 2 should be applied to pollutants where numeric criteria have not been adopted. For example, where there is a proposed discharge of a pollutant to a ''high quality'' segment, and the background concentration of the pollutant is at or near zero in the water body, should significant degradation be evaluated and should it be evaluated any differently where numeric criteria for the pollutant have not been adopted? For example, where a State or Tribe lacks numeric criteria for nutrients such as nitrogen and phosphorus (a common occurrence), increased discharges of these nutrients can be expected to result in changes in plant life or species diversity. If the State or Tribe relies entirely on a pollutant loadings comparison to numeric criteria for the tier 2 evaluation, new loadings of nutrients may not even be evaluated under tier 2.

EPA's sense is that, in practice, the current tier 2 requirements tend to be used to protect high quality waters only where such high quality supports fishing and swimming uses. However, limiting tier 2 protection to assimilative capacity associated with only fishing and swimming uses means that the protection afforded by tier 2 can end up being narrower than intended. For example, where a water has unique ecological significance (e.g., acid bog or thermal spring) not captured by ''fishable/swimmable,'' the State or Tribe may not believe it is appropriate to designate the water as high quality under tier 2. In this case, the unique ecological characteristic would warrant protection as an existing use. The State or Tribe also has the option of designating the water ONRW, yet, as discussed elsewhere in this section, EPA believes that many States and Tribes are not inclined to designate waters ONRW. The result in this example is that a water with unique

ecological significance that may warrant a relatively high level of protection, falls through the crack between tiers 1 and 2 where the State or Tribe interprets the level of protection afforded by those tiers too narrowly.

ii. ''Necessary'' Lowering of Water Quality. The water quality standards regulation requires that the water quality of high quality waters not be lowered unless the State or Tribe determines that such degradation is necessary to accommodate important social and economic development. Given the variety of available engineering approaches to pollution control and the emerging importance of pollution prevention, the finding of necessity is among the most important and useful aspects of an antidegradation program and potentially an extremely useful tool in the context of watershed planning. An approach that has been recommended by EPA is to require the proponent of the proposed activity to develop an analysis of pollution control/pollution prevention alternatives. In conducting its antidegradation review, the State or Tribe then ensures that all feasible alternatives to allowing the degradation have been adequately evaluated, and that the least degrading reasonable alternative is implemented. Also, note that where less-degrading alternatives are more costly than the pollution controls associated with the proposal, the State or Tribe should determine whether the costs of the less-degrading alternative are reasonable. EPA believes that such an alternatives analysis approach can be an effective tool for maintaining and protecting existing assimilative capacity. EPA's current thinking is that specifying what would constitute an acceptable alternatives analysis in the regulation, could result in the addition of substance and rigor to the ''tier 2'' antidegradation reviews conducted by States and Tribes.

iii. Identification of ''Important'' Social or Economic Activities. Another task that must be completed as part of an antidegradation review is to evaluate whether a proposed activity that will result in degradation is necessary to accommodate important social or economic development in the area in which the waters are located. (40 CFR 131.12(a)(2)) The significance of determining if an activity will provide for important social or economic benefit is that, absent important social or economic benefit, degradation under tier 2 must not be allowed. Factors that may be addressed in such an evaluation include: (a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment), (b) increased production, (c) improved community tax base, (d) housing, and (e) correction of an environmental or public health problem. Some States or Tribes have addressed this issue by requiring the applicant to bear the burden of demonstrating the social and economic importance of the proposed activity. However, approaches for evaluating social and economic importance vary widely. EPA published *Interim Economic Guidance for Water Quality Standards: Workbook,* Appendix M to the ''Water quality Standards Handbook—Second Edition'' in March 1995 (EPA–823–B–95–002, March 1995). This guidance specifically addresses the determination of social and economic importance in the context of a tier 2 antidegradation review and should be useful to States and Tribes in determining the relative economic consequences of various development proposals and their relationship to water quality standards. EPA's current thinking is that determining the social and economic importance of a proposed activity is an important public question best addressed by State, Tribal or local interests, perhaps as part of the development of a basin plan.

iv. Tier 2 and Identification of Waters under CWA Section 303(d). Section 303(d) of the Clean Water Act and EPA regulations require States to develop lists of waters that do not meet State water quality standards, even after point sources of pollution install the minimum required levels of pollution control technology. Section 303(d) lists must be submitted to EPA every two years. The waters on the lists are called water quality-limited waters and are defined in EPA regulations as waters ''where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by section 301(b) and 306 of the [Clean Water] Act.'' 40 CFR 130.2(j). States are then required to develop total maximum daily loads (TMDLs) for water quality-limited waters.

EPA's current policy is that States include waters on section 303(d) lists if applicable water quality standards are not met or are not expected to be met by the next list submission deadline, i.e., within two years (see memorandum from Robert Wayland, Director Office of Wetlands, Oceans and Watersheds, to Water Management Division Directors, Regions I–X, Directors Great Water Body Programs and Water Quality Branch Chiefs, Regions I–X, Subject: National Clarifying Guidance for 1998 State and Territory Section 303(d) Listing Decisions, August 27, 1997). In determining whether to list waters, States should consider all aspects of applicable water quality standards, including narrative and numeric criteria, designated uses, and antidegradation policies.

EPA is currently discussing with stakeholders possible changes and clarifications to the water body listing regulations and guidance under section 303(d) of the Act. Changes and/or clarifications could include a statement in the regulation, or a clarification, that identifies existing tier 2 antidegradation analyses and decisions as ''existing and readily available water quality-related data and information'' that must be considered under 40 CFR 130.7(b)(5) when deciding whether to place a water body on a section 303(d) list. Information from existing antidegradation tier 2 reviews on assimilative capacity for particular water bodies could be used to determine whether a water body is likely to not meet water quality standards in the near future and thus required to be included on the section 303(d) list. In addition, EPA could amend the existing antidegradation regulations to direct States and Tribes to consider the 303(d) listing status of a water body, and the information supporting that status, when determining whether a proposed activity that is expected to degrade water quality in that water body can be authorized under tier 2 of the State's or Tribe's antidegradation provisions.

v. Achieving all cost-effective and reasonable best management practices for nonpoint sources. This implementation issue arises from one sentence that is included in the federal antidegradation policy at 40 CFR 131.12(a)(2):

> Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

This sentence has been somewhat controversial over the years because it could be interpreted to require a State or Tribe to include, in its water quality standards, a provision requiring adoption of authority for, as well as achievement of, best management practices (BMPs) for nonpoint sources prior to allowing degradation of high quality waters. EPA has interpreted 131.12(a)(2) as not requiring a State or Tribe to establish BMP requirements for nonpoint sources where such BMP requirements do not exist. As EPA clarified in a February 22, 1994 guidance memorandum, State and

Tribal antidegradation rules need only include provisions to assure achievement of BMPs that are required under State or Tribal nonpoint source control laws or regulations. (Memorandum from Tudor T. Davies, Director EPA Office of Science and Technology to EPA Water Management Division Directors, Regions I–X, Subject: Interpretation of Federal Antidegradation Regulatory Requirement, February 22, 1994) Thus, States and Tribes that have adopted nonpoint source controls must assure that such controls are properly implemented before authorization is granted to allow point source degradation of water quality.

EPA's current thinking is that the term ''all cost-effective and reasonable best management practices for nonpoint source control'' in 40 CFR 131.12(a)(2) would be more effective if read more broadly. In other words, the term could include nonpoint source best management practices established through Federal, State, Tribal, and local authorities and programs that address activities on the land or water that create or exacerbate impacts to surface waters. This construction is consistent with EPA's Total Maximum Daily Load (TMDL) program under Section 303(d) of the Clean Water Act. There, EPA's current policy is that in achieving pollutant load reductions from nonpoint sources, EPA and States should work in partnership, using all available Federal, State, and local authorities and programs. As EPA stated in an August 1997 TMDL guidance memorandum, States are expected to achieve nonpoint source pollutant load reductions through such authorities and programs, including non-regulatory, regulatory, or incentive-based programs. EPA is considering applying the same test to § 131.12(a)(2).

In addition, EPA's current thinking is that it may be time to begin to more actively ensure implementation of this requirement: to implement cost effective and reasonable best management practices for nonpoint source control before allowing lowering of water quality in a water body. One way to do this would be to specify that State and Tribal antidegradation implementation procedures include a step under which States and Tribes inventory their nonpoint source authorities and programs, and, as part of each antidegradation review, include in the record documentation on how those authorities and programs were applied to activities in a watershed in which additional loadings subject to an antidegradation review have been considered. Emphasizing this requirement by specifying it as a required aspect of a State or Tribal antidegradation implementation procedure, in EPA's view, would facilitate use of antidegradation policy as a tool to ensure that nonpoint sources are controlled where possible in accordance with water quality standards, before any additional assimilative capacity in a water body can be allocated to an activity. EPA is interested in comment on this current thinking and specifically on whether it would be helpful to revise the regulation to clarify the relationship between nonpoint source controls and tier 2 antidegradation requirements.

In summary, numerous stakeholders have commented to EPA that antidegradation reviews are conducted inconsistently across the country and that EPA should attempt to improve the national consistency of such reviews. EPA is interested in comment on the appropriate balance between national consistency and State and Tribal flexibility in the implementation of the tier 2 provision and on what changes may be needed to the regulation or EPA policy or guidance to ensure that the tier 2 provision is implemented in a nationally consistent manner that is consistent with the intent of the antidegradation provision, and whether a consistent approach should be the goal of States' and Tribes' watershed programs.

Request for Comments on Antidegradation Tier 2

EPA requests comment on the following questions:

1. Does the existing requirement to apply tier 2 ''where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water'' while at the same time ''protecting existing uses fully'' need to be clarified with respect to which waters are afforded tier 2 antidegradation protection, and if so, should the Agency clarify the requirement with additional guidance, or with revisions to the regulation?

2. What factors should be considered in identifying ''high quality'' waters? Should the decision be based strictly on chemical water column quality (i.e., a pollutant-by-pollutant approach), or should a segment's overall quality or other factors be considered (i.e., a water body-by-water body approach)?

3. Given EPA's current thinking that both approaches may be acceptable and neither is necessarily superior, are the two approaches compatible and could they be implemented together?

4. Should application of tier 2 be clarified so that protection of assimilative capacity associated with non-fishable/swimmable uses is clearly required?

5. What methods are currently being used by States and Tribes to define ''significant degradation''?

6. How should ''significant degradation'' be defined? Is there a need for a nationally consistent approach? Should EPA issue additional guidance, or revise the regulation to include, for purposes of implementing tier 2 requirements, a definition of significant degradation? Are categorical exemptions appropriate, and if so, under what circumstances?

7. How should cumulative effects in a watershed be considered in assessing the significance of the degradation that will occur as a result of a proposed activity?

8. How should the ''necessity'' of degradation be determined? When should the costs of less degrading alternatives be considered reasonable?

9. How should significant degradation be evaluated for pollutants where no numeric criterion has been adopted?

10. Is additional Agency guidance or regulatory requirements necessary to help States and Tribes address social and economic importance (e.g., additional methods or options beyond those discussed in the March 1995 Interim Economic Guidance document)?

11. Should evaluating the importance of proposed discharges be entirely a State or Tribal determination and not be a required element for EPA review?

12. Would it be appropriate to revise the regulation to clarify the relationship between nonpoint source controls and tier 2 antidegradation requirements?

13. Should EPA revise the regulation to expressly state that States and Tribes are to consider the 303(d) listing status of a water body, and the information supporting that status, when determining whether a proposed activity that is expected to degrade water quality in that water body can be authorized under tier 2 of the State's or Tribe's antidegradation provisions?

14. Is greater consistency between individual State and Tribal programs desirable and, if so, what changes may be needed to the regulation or EPA guidance to ensure that the tier 2 provision is implemented in a nationally consistent manner?

5. 40 CFR 131.12 (a)(3) ''Tier 3''

Tier 3 of the antidegradation policy is intended to identify and protect waters of extraordinary ecological, recreational or other significance. Tier 3 of the antidegradation policy incorporates the

concept of Outstanding National Resource Waters (ONRW). The rationale for this provision is that some water bodies are of such high quality or of such exceptional ecological significance that the commonly applied designated uses such as warm water fishery and primary contact recreation and criteria to protect those uses are not suitable or may not provide adequate protection to maintain the high water quality or ecological significance in a given water body.

ONRWs are intended to include the highest quality waters of the United States. Additionally, the ONRW antidegradation classification offers special protection for waters of ''exceptional ecological significance,'' i.e., those water bodies which are important, unique, or sensitive ecologically, but whose water quality, as measured by the traditional characteristics such as dissolved oxygen or pH, may not be particularly high, such as thermal springs. Waters of exceptional ecological significance also include waters whose characteristics cannot adequately be described by traditional parameters (such as wetlands and estuaries).

Tier 3 of the antidegradation policy provides the highest level of protection to water bodies by prohibiting the lowering of water quality. The only exception to this prohibition as discussed in the preamble to the water quality standards regulation is for activities that result in short-term and temporary changes in the water quality of the ONRW. EPA guidance has not defined temporary and short-term specifically, but views these terms as limiting water quality degradation for weeks or months, not years. The intent is to limit degradation to the shortest possible time.

a. Designating ONRWs. The designation of water bodies as ONRWs has been limited in its application. Overall, there are relatively few water bodies designated as ONRWs in the United States, although some States have designated a high percentage of State waters as ONRWs. Several States have been reluctant to adopt ONRWs because of concerns regarding the process for adopting ONRW classifications and the level of protection afforded to a water once it is classified as an ONRW.

Regarding the process for adoption of ONRWs, the existing regulation requires the State or Tribe to provide an ONRW level of protection in their antidegradation policies, but there is no requirement that any water body be so designated or any specificity as to how that is to be done. One way to address this issue may be for EPA to amend the regulation to require States and Tribes to establish a nomination process with criteria guidelines in which the public could petition the State or Tribe for designation of certain waters as ONRWs. It would then be up to the State or Tribe to set criteria for the ONRW selection process with the final decision made by the State or Tribe after consideration of the public comment. EPA currently recommends three categories of waters which could be eligible for ONRW designation: waters of (1) National and State parks, (2) wildlife refuges, and (3) exceptional recreational or ecological significance.

Regarding the level of protection that is afforded to a water body once it is classified as an ONRW, a common concern is that classifying a water as ONRW will result in a federal prohibition on any further development of any kind in the watershed. As described above, the federal antidegradation policy regarding ONRWs is that once classified as an ONRW, the water quality of the ONRW must be maintained and protected. One way, but perhaps not the only way, to ensure that the water quality is maintained and protected would be to prohibit activities that would generate additional pollutant loads and or water quality impacts in the ONRW. This approach is commonly referred to as ''no new or increased discharge'' and was explained by EPA in its promulgation of antidegradation provisions for the State of Pennsylvania in 1996 (61 FR 64816, December 9, 1996). As discussed in the Pennsylvania rule, the federal policy requiring the water quality to be maintained and protected is subject to some interpretation by States and Tribes.

EPA believes there is considerable uncertainty from jurisdiction to jurisdiction concerning the impact of the ONRW classification on the local community or the State or Tribe. How will the State or Tribe handle future needs for development in the area of the ONRW? What role does EPA play in ensuring that the State or Tribe provides the highest protection measures to ONRWs? EPA's current thinking is that this ''no further development in the watershed prohibition'' may be an overly strict interpretation of the protection required by tier 3 and that a public debate is necessary to clarify the level or range of protection that is afforded to a water by classifying it as an ONRW, and how that level or range should be determined.

One way to remove uncertainty surrounding the implications of ONRW designations is for States and Tribes to adopt concurrent with the ONRW the implementation methods for that water body that define what attributes of the water will be protected and how this will be accomplished by both point and nonpoint sources. It may make sense for the regulation to include this requirement in order for all parties concerned to know the impact on development of such a designation before adopting an ONRW.

i. Relationship of Tier 3 to the Wild and Scenic Rivers Act. Additionally some States have not adopted waters as ONRWs when there has been concern regarding ONRW requirements and the requirements of a wild, scenic, or recreational water body. Although the Department of Interior (DoI) founded the antidegradation policy from which the concept of an outstanding national resource water (ONRW) that EPA currently uses evolved, an ONRW is different from the Wild and Scenic Rivers program administered by DoI. ONRWs are designated by the State or Tribe in their water quality standards. Wild and scenic rivers are given their designation by Congress or the Department of Interior pursuant to the Federal Wild and Scenic Rivers Act. The main purpose of the Wild and Scenic Rivers Act is to keep waters free-flowing. The main purpose of an ONRW designation is to maintain and protect high quality waters that constitute outstanding resources due, for example, to their exceptional recreational or ecological significance, which can include free-flowing water. EPA does not see any conflict between these two programs.

b. Tier 3 Implementation. EPA in chapter 4 of the Water Quality Standards Handbook interprets the ''water quality to be maintained and protected'' provision of the regulation as requiring no new or increased discharges to ONRWs and no new or increased discharge to tributaries to ONRWs that would result in lower water quality in the ONRWs. The only exception is for short-term and temporary changes. In contrast, some States, Tribes, and EPA Regions have interpreted this provision to allow new discharges as long as the water quality is either maintained or improved. Alternatively, some States, Tribes and Regions have interpreted water quality in terms of the characteristics for which the water body was selected to be an ONRW and have strictly maintained those characteristics while allowing other characteristics to become degraded. EPA has also allowed a proposed activity that will result in a new or expanded source where the applicant agrees to implement or

finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity. This offset is generally called trading and is accomplished through a TMDL pursuant to CWA Section 303(d) requirements. Such TMDLs include an appropriate margin of safety and address, in particular, the uncertainties associated with any proposed nonpoint source controls, as well as variability in effluent quality for point sources.

This variability in interpretation has created ONRWs across the Nation that vary in terms of the stringency of point source controls, and types of water bodies considered to be ONRWs. Restrictions on physical changes have also been implemented in an inconsistent manner. EPA is considering whether the existing ONRW protection program is addressing an appropriate universe of waters and whether the flexibility provided under the regulation, in terms of coverage and protection requirements, needs to be further restricted, maintained, or expanded. It may make sense to have an ONRW designation which is permanent and allows no change in water quality and applicable to few waters while creating a subset of waters which can have some change in water quality under certain circumstances.

c. Tier 2½. Several States and Tribes have already created, as part of their antidegradation policy, a provision that is in between EPA's recommended tier 2—high quality waters and tier 3—Outstanding National Resource Waters, sometimes referred to as Tier 2½. This additional tier is given various names, such as Outstanding State Resource Waters, Outstanding Tribal Waters, Special Protection Waters, or Water of Exceptional Significance. When it supplements tier 2 and tier 3 provisions, EPA has accepted this provision as being consistent with the intent and spirit of the antidegradation policy. Inclusion of a tier 2½ within the regulation would encourage States and Tribes to apply more stringent controls than would be required under tier 2 but with more flexibility to make adjustments in criteria and permitting decisions than would normally be allowed if the water body in question were designated as an ONRW. Any additional flexibility that might be created by a tier 2½ classification to allow additional activities that could marginally affect water quality, might not be necessary where a State or Tribe (or EPA) considers such flexibility to already exist in the context of the ONRW classification. In commenting on the flexibility afforded by the tier 2½ classification, commenters are urged to state their understanding of the flexibility currently afforded in the ONRW classification.

Request for Comments on Antidegradation Tier 3

EPA seeks comment on the following questions:

1. Should EPA add definitions of important terms to the ONRW part of the regulation, including a definition of ''degradation'' which clarifies that temporary or short-term effects on ONRW waters could be authorized? Should definitions of ''short-term'' and ''significant'' also be included?

2. Should EPA require States and authorized Tribes to establish both a process and qualification criteria which would allow the public to nominate waters for the ONRW designation? Would EPA guidance be helpful?

3. Should the tier 2½ antidegradation policy concept be explicitly recognized in the federal regulation and what, if any, limits or factors for application of the tier should be included?

4. States (and Tribes) have differing interpretations of the level of protection afforded ONRWs. Should EPA further specify in the regulation what maintaining and protecting water quality in ONRWs means?

6. 40 CFR 131.12 (a)(4) ''Thermal Discharges''

The requirement to prevent potential water quality impairment associated with thermal discharges contained in § 131.12 (a)(4) of the regulation is intended to coordinate the requirements and procedures of the antidegradation policy with those established in the CWA for setting thermal discharge limitations. Regulations implementing section 316 may be found at 40 CFR 124.66. The statutory scheme and legislative history indicate that limitations developed under section 316 take precedence over other requirements of the CWA. EPA is not requesting comment on this section of the regulation. This provision is mentioned here only in the interest of completeness.

E. Mixing Zones

1. Background

The current regulation (at 40 CFR 131.13) describes States' and Tribes' discretionary authority to include, in their water quality standards, policies that affect the implementation of those standards. For example, States and Tribes may adopt policies on mixing zones, variances, and schedules of compliance for water quality-based NPDES permit limits. If included in their water quality standards or other implementing regulations, States and Tribes are required to submit such policies to EPA for review and approval. The policies governing the implementation of water quality standards are inseparable from the standards themselves and, consequently, EPA reviews both to determine whether implementation policies are compatible with the State or Tribal water quality standards provisions, technically well founded and consistent with the CWA.

Concerns have been expressed both by the regulated community and environmental groups over the lack of specificity in State and Tribal mixing zone policies and implementation procedures adopted under this general policies provision. These groups believe that this lack of specificity may result in rather subjective and inconsistent implementation of water quality standards, from site-to-site. EPA has also, through its ten regional offices, not always applied uniform standards in reviewing individual States' and Tribes' mixing zone provisions.

In encouraging the implementation of water quality management activities consistent with a broader watershed approach, EPA has encountered inconsistent implementation of mixing zone provisions across State and Tribal borders, within whole watersheds, and sometimes along a single water body. Remedies to water quality problems designed along watershed boundaries can be limited in their effectiveness as a result of differing policies, procedures and treatment of the same water body by different authorities. A certain amount of flexibility is, however, essential when dealing with complex water quality problems on a watershed or basin scale. EPA's current thinking is that it is preferable to be more explicit about where the program requires consistency and where flexibility is allowed or encouraged.

The current regulation does not articulate any EPA requirements regarding the content of mixing zone implementation procedures. Rather, EPA guidance addressing mixing zones, and stream design flows is contained in several documents, including the *Water Quality Standards Handbook: Second Edition* (the Handbook) and the *Technical Support Document for Water Quality-based Toxics Control, March, 1991* (the TSD). Although program and technical guidance identifies the approaches to standards implementation which EPA recommends and considers protective of water quality, guidance is not equally effective at delineating what constitutes

minimally acceptable content or the approaches EPA considers to be not approvable or inconsistent with the CWA. Further, most regulatory agencies, as well as the regulated community, are most concerned with what is required rather than what is recommended. Policy or guidance is not binding whereas regulation is. Guidance is better designed to provide detailed descriptions of the variety of technically sound implementation approaches and their underlying scientific basis; regulation provides the clearest direction regarding required minimal program content and identification of those components of the program where flexibility is allowed.

EPA is considering an expansion of the section of the regulation addressing general policies to provide clear, detailed and specific direction to States and Tribes on the development and content of mixing zone policies and implementation procedures. EPA's current thinking is that greater specificity within this portion of the regulation may be needed to clarify the minimum necessary elements of State and Tribal mixing zone policy and implementation procedures. EPA's current thinking is that this area of the regulation needs to articulate a clear level of national consistency in mixing zone implementation that results in a consistent level of protection across the country and at the same time, where State and Tribal flexibility is not only encouraged, but possibly essential to program efficiency and accuracy.

2. EPA Policy and Guidance on Mixing Zones

The concept of mixing zones as a regulatory tool to address the incomplete mixing of wastewater discharges in receiving waters has been embraced by both EPA and its predecessor agencies as part of a larger regulatory effort to ensure that point source discharges of wastes do not impair beneficial uses. EPA interprets the CWA as allowing the use of mixing zones as long as the provisions addressing toxicity at section 101(a)(3) are met and the designated uses of the water body as a whole are protected. One court has considered the application of a mixing zone in a discharge permit and upheld EPA's use of a limited mixing zone (*See Hercules* v. *EPA*, 598 F.2d 91 (D.C. Cir. 1978)). The concept of a mixing zone is covered by a series of guidance documents issued by EPA and its predecessor agencies (see, for example: *Water Quality Criteria* (Green Book), Federal Water Pollution Control Administration, 1968, pp. 29–31; *Water Quality Criteria 1972* (Blue Book), EPA, March 1973, pp. 112–115, 231–232, 403–457; *Guidelines for Developing or Revising Water Quality Standards*, January 1973; *Chapter 5—Guidelines for State and Areawide Water Quality Management Program Development*, November, 1976; *Allocated Impact Zones for Areas of Non-Compliance*, EPA Region 1, October 1986; *The Water Quality Standards Handbook*, August, 1994, pp.5–1 to 5–11; *Technical Support Document for Water Quality-based Toxics Control* (TSD), March, 1991, pp. 31–34, 56–60, 69–89).

Many definitions of mixing zones have been offered, differing primarily by perspective (i.e., engineering, hydrological, ecological, regulatory) and their application. From a hydrological/engineering perspective, mixing zones can be defined based upon the recognition of incomplete mixing of an effluent with its receiving water (e.g., ''that area or volume of dilution water necessary to reduce contaminant concentrations to some acceptable level or to a totally mixed condition''). Biologically, mixing zones can be defined based on the premise that surface water quality criteria can be exceeded under limited circumstances without causing unacceptable toxicity or, more broadly, impairment of the designated beneficial uses (e.g., ''the area contiguous to a discharge where receiving water quality is not required to meet water quality criteria nor other requirements applicable to the receiving water'').

EPA's policy on the use of mixing zones has evolved since its early recognition within general water quality guidance, primarily in association with the institution and evolution of the NPDES permit program (e.g., the TSD). Initially, guidance emphasized the need to ensure that the biological integrity of the aquatic community in the receiving stream was protected and that such determinations must be based on site-specific evaluations. In the late 1980's EPA and authorized NPDES States began increasing the development and issuance of water quality-based effluent limits. With this increase, came a demand for widely applicable national guidance to support those programs. EPA and States, in essence, needed wasteload allocation and water quality-based permit limit derivation methods that were relatively simple to use and could be implemented with little site-specific data. EPA met this demand by issuing revised guidance (the TSD and Handbook, cited above, are examples) and by accepting a wide range of State mixing zone practices. As a result, mixing zone provisions have become less prescriptive than earlier guidance that envisioned data rich, site-specific studies, and more reliant on often cursory evaluations, general mixing assumptions, and best professional judgement.

EPA's current policy addresses mixing zones as allocated impact zones (AIZs) where certain numeric water quality criteria may be exceeded as long as: there is no lethality to organisms passing through the mixing zone, there are no significant risks to human health, and the designated and existing uses of the water body are not impaired as a result. These AIZs or mixing zones, if disproportionately large, could unacceptably impact the integrity of the aquatic ecosystem and have unanticipated ecological consequences on the water body as a whole resulting in impairment of the designated or existing uses. Therefore, EPA's policy has emphasized a holistic approach to mixing zone regulation which considers location, size, shape, outfall design and in-zone quality. Mixing zone guidance produced by EPA since 1972 has consistently emphasized the need to protect both nonmotile benthic and sessile organisms in the mixing zone as well as swimming and drifting organisms (Water Quality Criteria 1972). States and Tribes, however, have focused primarily, if not exclusively, on the protection of swimming and drifting organisms and the need to provide ''zones of passage'' within waters with mixing zones. In its dependence upon conditions protective of swimming and drifting organisms to define mixing zones, this approach results in an incomplete implementation of the original concept supporting mixing zones. As originally designed, EPA's mixing zone policy provided for the prevention of lethality to swimming and drifting organisms by limiting the size of the mixing zone and to nonmotile organisms by limiting the placement or location of mixing zones.

Although existing EPA guidance on the implementation of mixing zones (cited above) is quite detailed, at present, the regulation itself simply provides that States and Tribes may adopt, as part of their water quality standards, mixing zone policies and that such policies are subject to EPA review and approval (40 CFR 131.13). In addition, EPA may separately review individual State and, once approved to administer NPDES, Tribal mixing zone determinations as part of the wasteload allocation and NPDES permit review process, outside the standards adoption and review process to ensure appropriate implementation of the State's mixing zone policy.

EPA is considering expanding the current provisions at 40 CFR 131.13 addressing State and Tribal development of mixing zone policies within their water quality standards program to address the content and design of those policies.

3. State and Tribal Mixing Zone Policies

While there are advantages to the more flexible general approach adopted in the late 1980's, the generality of the current regulation has led to some uncertainty as to what constitutes an approvable mixing zone policy. Because the regulation lacks detailed requirements concerning EPA's standards of review of State and Tribal mixing zone provisions, EPA is considering changing the language regarding State and Tribal adoption of mixing zone policies to address specifically the content of such policies. EPA's current thinking is that greater specificity would provide for increased public participation in State, Tribal and Federal decision-making; a clearer understanding by the State, Tribe and public of what EPA considers an approvable mixing zone policy; a reduction in the number of NPDES permit appeals and objections based on differing interpretations of a State or Tribal mixing zone policy; and a more consistent review of State and Tribal submissions by EPA itself.

Fundamental to any such policy, EPA is considering requiring States and Tribes to indicate explicitly in their water quality standards whether or not they allow mixing zones for each of the various uses designated for a given water body. Such provisions could address mixing zones applied to either acute or chronic aquatic life and other water quality criteria (e.g., public water supply, livestock watering, wildlife protection, etc.). Under this approach, if the State or Tribe does not explicitly authorize mixing zones, then no mixing zones would be allowed in State or Tribal waters, and all applicable criteria would have to be met at the end-of-pipe. (Memorandum from Robert Perciasepe, Assistant Administrator for Water to Water Program Directors, Regions I-X, Subject: EPA Guidance on Application of State Mixing Zone Policies in EPA-Issued NPDES Permits, August 6, 1996). Alternatively, States and Tribes could determine that such prohibitions would be applied to only a subset of uses or pollutants rather than across all use categories and pollutants. Some States or Tribes have used this approach to prohibit mixing zones in their highest use classes (e.g., class AA), while allowing mixing zones in more highly impacted watersheds (e.g., class C or D waters).

States and Tribes could also be required to specify the conditions under which mixing zones are allowed in each site-specific application and the limitations to those applications (e.g., size, shape, length, placement, etc.). In addition, States and Tribes could be required to identify any circumstances, pollutants, locations or conditions for which the use of mixing zones is prohibited. States and Tribes could specify circumstances where only chronic mixing zones would be allowed (i.e., no acute mixing zone or zone-of-initial dilution) and circumstances where acute and/or chronic mixing zones would be prohibited. Current EPA guidance, for example, recommends States and Tribes consider prohibition of mixing zones when bioaccumulative pollutants are present in the discharge or where an effluent is known to attract biota. Other circumstances where mixing zone prohibitions or location restrictions might be appropriate include areas used by aquatic life for breeding or feeding, locations of shellfish beds, locations of critical habitat for threatened and endangered species, across tributary mouths, shallows, near shore areas and in areas of critical habitat.

This change would clarify in the regulation the State and Tribal general authority to provide mixing zones, the scope of that authority, and the site-specific factors evaluated by States and Tribes when deciding whether a mixing zone is authorized in each individual case. EPA is considering making this potential clarification to the regulation, its implications, and how mixing zone policies can be designed to better support and foster a watershed management framework.

4. Mixing Zone Requirements

Some States and Tribes that have adopted mixing zone provisions within their water quality standards have not specified mixing zone requirements (e.g., water quality within mixing zones, the allowable size of mixing zones, etc.) under their mixing zone policies. EPA is therefore considering including as regulatory requirements certain specifications derived from EPA's guidance on mixing zones. Regarding policy content, EPA might revise the regulation to require that State and Tribal mixing zone policies address a minimum number of elements. Those required elements might include provisions that: identify conditions and circumstances (e.g., particular locations) when mixing zones are not permitted; identify any pollutants or classes of pollutants for which mixing zones are prohibited; identify the mechanisms to be used to ensure that mixing zones do not impinge on ecologically or recreationally sensitive areas; identify the mechanisms to be used to determine complete and incomplete mixing of effluent and receiving water; identify conditions when a mixing analysis is required; identify default design flows for implementing criteria; identify maximum allowable mixing zone size and configuration, as well as how mixing zones dimensions are determined; specify what water quality conditions must be met within mixing zones; state whether zones of initial dilution are allowed; and state whether there are special conditions established for bioaccumulative pollutants.

Identification in the regulation of minimum elements of State or Tribal mixing zones procedures would establish the basis for EPA review and approval of State and Tribal mixing zone provisions. It would also facilitate the review of individual mixing zone determinations made under the wasteload allocation/permit approval process by EPA, other agencies and the public. This would not significantly change EPA's guidance or current approach to mixing zone policies. Rather, it would clarify and codify the basis by which EPA will review and approve or disapprove State and Tribal mixing zone policies and their site-specific implementation through NPDES permits.

As discussed previously, EPA's mixing zone guidance is premised fundamentally on the prevention of lethality within the mixing zone and siting such that areas of critical habitat are avoided, resulting in the protection of designated uses. One aspect of this guidance is that, for aquatic life uses, water quality within the mixing zone should be such that, at a specified concentration of a contaminant (i.e., magnitude), any ''swimming or drifting'' organism would not remain in the mixing zone long enough to receive an exposure that is sufficiently long (i.e., duration) to cause lethality. If the combination of the concentration of a given pollutant or the combined effect of multiple pollutants (e.g., whole effluent toxicity) in a discharge and the duration of exposure to that concentration are low enough, there is no lethality within the mixing zone, and the criteria (magnitude and duration components together) are met.

This approach, however, only provides protection in situations in which water column organisms pass in and out of the mixing zone. This interpretation does not adequately

protect stationary or sessile organisms within the mixing zone; organisms that remain within the mixing zone for extended periods because the mixing zone extends into feeding or breeding areas or critical habitat (e.g., tributary mouths, shallows, shoreline habitat in large, fast-flowing rivers); critical habitat areas for endangered or threatened species; or instances where mixing zone conditions attract organisms. EPA's mixing zone policy and guidance address those instances where the provisions protecting swimming and drifting organisms are not adequate to protect nonmotile benthic and sessile organisms or critical habitat areas by limiting the location, size and shape of mixing zones. In some instances, this policy has been implemented in a fragmented manner. In such instances, these latter restrictions to mixing zone placement are inadequately addressed. EPA always has discretion to object to, and take over if necessary, permits that provide site-specific mixing zones in cases where such mixing zones would fail to protect all aspects of designated uses. However, oversight of individual permits is not an efficient approach to resolving program-level issues. To clarify the meaning of its policy and ensure a more complete implementation of protective mixing zone provisions, EPA is considering changes to the regulation.

EPA could require that State and Tribal mixing zone policies specifically identify prohibitions (where appropriate) or limit mixing zones where necessary to protect existing or designated uses. Some States and Tribes already include prohibitions against the use of mixing zones where they could intrude upon public drinking water supply intakes or public swimming beaches, or where mixing zones prove to be attractive to aquatic life or wildlife (e.g., water temperature). EPA might require that State and Tribal mixing zone provisions specifically address instances such as these where restrictions on mixing zones are appropriate. Additionally, EPA is considering requiring that State and Tribal water quality standards include a description of the State's or Tribe's methodology for specifying the location, geographic boundaries, size, shape and in-zone quality of mixing zones.

EPA could also clarify its current policy that an approvable mixing zone methodology must be scientifically defensible and ensure the protection of designated uses in the water body as a whole. This would require that the methodology, at a minimum, be sufficiently precise to support consistent regulatory actions (e.g., an NPDES permit). EPA is considering this change to ensure that State and Tribal mixing zones do not adversely affect the integrity of State and Tribal waters and to address inconsistent allocation of mixing zones from site-to-site. Under this approach, for example, when a State or Tribe assumes that either complete or incomplete mixing occurs, the State's or Tribe's implementation procedure could require the analyses supporting the mix assumption to be documented in the record (e.g., permit fact sheet). EPA is considering the need for additional language in the water quality standards regulation to clarify the essential elements of State or Tribal mixing zone provisions and, alternatively, whether such language would be better established in guidance. EPA's current thinking is that a certain amount of professional judgement is necessary in making site-specific mixing zone determinations and that clarifications to the regulation regarding the minimum mixing zone policies and implementation procedures should not preclude such flexibility. However, the policy and implementation procedures should be clarified so that the guidelines and framework for making site-specific mixing zone determinations are clear to everyone.

5. Mixing Analyses

The above discussion focuses on establishing State and Tribal mixing zone policies and procedures. The following discussion addresses the application of such procedures in individual permitting decisions.

Where point source discharges mix in a slow or ''incomplete'' manner with receiving waters and the State or Tribe has authority to provide a mixing zone, EPA guidance recommends that a mixing zone analysis be incorporated into the derivation of water quality-based effluent limits (WQBELs) in NPDES permits. The mixing zone analysis should demonstrate compliance with State or Tribal mixing zone requirements (e.g., size, shape, location and in-zone quality) that are included in the water quality standards. Providing a mixing zone in incomplete-mix situations acknowledges the mixing behavior of the discharge and limits excursions above criteria to a specified zone. Where a discharge mixes with the receiving water in a rapid and ''complete'' manner, by definition a mixing zone analysis is not needed and an evaluation of the assimilative capacity of the receiving water and a dilution allowance based on stream design flow conditions specified in the State or Tribal water quality standards is often incorporated into the derivation of WQBELs.

Presently, all State-issued NPDES permits are reviewable by EPA. EPA may object to individual permits and assume authority to issue such permits. When EPA is the permit issuing authority, it must follow the applicable State or Tribal water quality standards and ensure that any water quality-based effluent limits in the permit are derived from and comply with the applicable State or Tribal water quality requirements. A permit that does not include a defensible mixing zone analysis might not fully protect downstream designated uses. A common example is where a discharge mixes slowly (i.e., incomplete mixing is occurring), but the permit limit is based on an assumption that the entire design flow of the stream rapidly and completely dilutes the effluent. When this does not occur and not all of the dilution water mixes rapidly with the effluent discharge, the result may be a lengthy downstream plume (i.e., mixture of effluent and surface water) with water quality characteristics that exceed applicable chemical-specific or toxicity criteria, are potentially lethal to aquatic life, and may impair the designated use. Such plumes are of concern because:

(1) Chemical-specific criteria, ambient toxicity criteria or other narrative criteria may not be achieved in the extended plume;

(2) Effluent plumes can extend far downstream, causing impact beyond the limited area of a mixing zone and resulting in use impairment;

(3) There may be intakes for public drinking water systems located downstream, but within reach of an extended plume;

(4) Effluent plumes may be located along the shore in shallow waters that are critical nursery areas for sensitive species and which constitute important or critical habitat, particularly in large, channelized rivers;

(5) Aquatic life might be attracted to the plume because of its temperature differential or other characteristics;

(6) Threatened or endangered species may reside within or near the plume area, and

(7) Additional dischargers may be located downstream and the cumulative effects of all discharges may not be adequately considered, particularly regarding unintended overlapping plumes.

EPA believes the rate of ambient mixing and the complete versus incomplete mix decision is a critical but frequently overlooked component of water quality-based permitting.

Although a mixing zone analyses requires site-specific information and additional resources, EPA believes that the approach currently followed by some States and Tribes might be too simplistic, might allow lethality within areas of critical habitat or ecological importance and may not fully protect designated uses. EPA's current thinking is that the regulation should be made more explicit as to the circumstances under which mixing zones must be supported by site-specific data and analysis. EPA is considering the need for specific requirements within the regulation governing the development and content of mixing zone analysis procedures as part of State and Tribal implementation procedures.

6. Narrative Criteria for Mixing Zones

Historically, States have relied on narrative criteria as a means to provide baseline protection for water quality, to address toxicity from combinations of pollutants or unknown pollutants through whole effluent toxicity testing and limits, and to control pollutants for which there are no chemical-specific criteria available. EPA has consistently maintained that prevention of nuisance conditions (e.g., materials that will settle to form objectionable deposits, floating debris, oil, scum, foam and other matter, toxic conditions, etc.), through the application of narrative criteria, apply to all waters, at all times, including mixing zones. Despite this long-standing policy, EPA is unaware if, in practice, States and Tribes have had any difficulty ensuring the maintenance of these narrative criteria within mixing zones. EPA is interested in comment which might identify any instances where the application of narrative criteria has created difficulties for States and Tribes implementing these provisions in mixing zones.

In addition, EPA has traditionally interpreted these narrative ''free froms'' as including a prohibition against lethality in all waters, including within mixing zones. However, lethality is a non-conservative endpoint for measuring toxicity. Section 101(a)(3) of the CWA establishes a goal of prohibiting ''the discharge of toxic pollutants in toxic amounts'' which could be interpreted as applying to chronic as well as acute toxicity. EPA guidance on appropriate water quality within mixing zones also recommends that ''the total time-toxicity exposure history must not cause deleterious effects in exposed populations of important species, including post-exposure effects'' (EPA, 1973). EPA is considering how such an interpretation (i.e., applying chronic toxicity endpoints to water quality within a mixing zone) could be implemented in the context of the application of narrative criteria within a mixing zone.

Guidance developed by EPA in 1985 (TSD) established a rationale for allowing zones-of-initial-dilution (ZIDs) or acute mixing zones. That guidance limited the use of ZIDs to extremely small areas of the receiving water under limited conditions and to discharges using rapid diffusers which produce effluent discharge velocities exceeding 10 feet per second. That guidance was premised on the rationale that organisms would be *physically* precluded from maintaining a position within the ZID, thus preventing lethal exposures. Benthic and sessile organisms were also protected where ZID placement was controlled and directed away from such critical areas (e.g., near shore, shallows, etc.). In addition, EPA reasoned, high rate diffusers achieve compliance with both acute and chronic criteria within a smaller area, utilizing less receiving water volume for dilution than other discharge designs. Consequently, high rate diffusers are believed to provide greater protection of water quality by their rapid dispersion of effluent within a smaller volume of surface water. Where acute criteria are not applied at the end-of-pipe, current EPA guidance provides for a number of alternative means of protecting against lethality in a mixing zone, even in situations that do not rely on high rate diffusers. Alternatives to requiring compliance with acute criteria at the end-of-pipe or employing a high-rate diffuser to ensure compliance ''within a very short distance from the outfall'' require a significant amount of site-specific data. Such site-specific data could be requested of NPDES permit applicants. It is EPA's experience that the collection of this kind of data does not occur on a routine basis. EPA is interested in public comment on the relationship between ZIDs or acute mixing zones and narrative criteria prohibitions against lethality and States' and Tribes' experiences with the application of acute mixing zones under varying site-specific and discharge-specific conditions. EPA is also interested in comments on whether the water quality benefits of using high rate diffusers justify potentially detrimental effects on stream bed or shore line habitat.

7. Mixing Zones for Bioaccumulative Pollutants

States and Tribes should exercise caution when evaluating whether a mixing zone is appropriate in cases where bioaccumulative pollutants are present. The impacts of bioaccumulative compounds may extend beyond the boundaries of a given mixing zone with resulting impairment of a water body's designated uses, particularly where stationary species (e.g. shellfish) are present, where uncertainties exist regarding the assimilative capacity of a water body or where bioaccumulation in the food chain is known to be a problem. Sediment contamination has also become a major concern in both flowing and non-flowing water bodies. Concerns about sediment contamination require additional attention since typical mixing zone evaluations focus only on water column toxicity. The effects of persistent and bioaccumulative pollutants may not be detected for some distance from the point of discharge, well outside the mixing zone, or possibly not in the water column at all. Some members of the public have expressed concern regarding the use of mixing zones in situations where bioaccumulative pollutants are present in a discharge and have urged EPA to develop specific regulatory requirements prohibiting the use of mixing zones where these pollutants are present.

Mixing zone policies are developed to address complete and incomplete mixing conditions associated with point source discharges. These policies identify whether mixing zones are allowed and define how a State or Tribe will limit the amount of surface water allocated to mixing under a variety of circumstances. These circumstances include considerations specific to the effluent and pollutants discharged (e.g., toxicity, solubility) and to the water body receiving the waste (e.g., shallow, flowing or non-flowing, high flow or low flow, critical habitat). The potential for bioaccumulation problems can depend on a number of site-specific factors and the use of mixing zones for bioaccumulative pollutants may be best dealt with on a site- or basin-specific basis. EPA's mixing zone guidance emphasizes that the determination by a State or Tribe that a mixing zone is appropriate must be preceded by a separate determination that there is available assimilative capacity in the receiving water. Localized water quality concerns are to be balanced with the larger scale issue of overall pollutant loading to the entire water body or segment. Perhaps concerns about the fate and transport of bioaccumulative pollutants are more effectively addressed under total maximum daily load (TMDL) development and determinations of assimilative capacity which incorporate information on water

column, sediment and tissue contamination. EPA is considering the appropriateness of using mixing zones when controlling for bioaccumulative pollutants.

As discussed in more detail in Section C of this Notice, EPA has recently developed methodologies for deriving sediment quality criteria for non-ionic organics and metals and has proposed sediment quality criteria for five organics. In addition, EPA is working on implementation procedures or a ''user's guide'' for these sediment criteria which will address risk management decisions such as the application of mixing zones.

The regulatory impact of special restrictions on mixing zones for a particular family of pollutants is largely determined by how that family of pollutants is defined within the regulation. The issue of definition of bioaccumulative pollutants is also addressed in the discussion of water quality criteria in Section C of this notice.

In its Great Lakes Guidance, EPA established a twelve year phase out of mixing zones for existing discharges of bioaccumulative chemicals of concern (BCCs) in the Great Lakes Basin and a ban on such mixing zones for new discharges (effective March 1997). The Great Lakes Guidance also allowed States and Tribes to establish limited exceptions to the mixing zone phase-out for existing discharges based on water conservation or economic and technical considerations. The general prohibition on mixing zones for BCCs was established largely because of the persistent and toxic nature of even minute amounts of BCCs in the environment; an effect amplified in the Great Lakes by the tendency of the Lakes to act as ''sinks'' for pollutants discharged to the Great Lakes Basin. In addition, there are documented problems with effects of BCCs in Great Lakes waters (e.g., contamination of Great Lakes salmonid sport fisheries with PCBs and Basin-wide mercury contamination). The Great Lakes Guidance provision phasing out mixing zones for BCCs reflected the Agency's thinking that, in general, mixing zone allowances for BCCs are not appropriate.

On June 6, 1997, the United States Court of Appeals for the District of Columbia Circuit issued its decision in *American Iron and Steel Institute, et al.* v. *EPA, 115 F.3d 979 (D.C. Cir. 1997).* The Court's decision upheld the Great Lakes Guidance on all but three issues. One of these three issues was the phase out of on mixing zones for BCCs. Specifically, the Court vacated the final Guidance insofar as it would eliminate mixing zones for bioaccumulative chemicals of concern (BCCs). While the Court acknowledged the possibility of environmental benefit of the mixing zone provisions, the Court found that EPA failed to show that the provisions were justified in light of the costs. EPA continues to support elimination of mixing zones for BCCs within the Great Lakes Basin wherever it is technically and economically feasible to do so. Thus, EPA intends to propose reinstating this provision in the near future.

8. Stream Design Flow Policies

States and Tribes typically identify, within their water quality standards, stream design flow conditions to implement numeric water quality criteria. The stream flow conditions are typically expressed as predictable low flow conditions below which numeric water quality criteria do not apply. Examples of commonly used stream design flows include: the lowest seven consecutive day average stream flow that has the annual probability of occurring once in ten years (7Q10); the lowest single day stream flow that has the annual probability of occurring once in ten years (1Q10); and the harmonic mean stream flow. The stream design flows typically employed with aquatic life criteria (i.e., 7Q10 and 1Q10), sometimes referred to as critical low flows or drought flows, are intended to define stream flow conditions at and above which the designated uses are presumed to exist and applicable numeric water quality criteria must be met in order for those uses to be attained. The underlying concept is that these low flow events are a part of the dynamic hydrologic character of all flowing water bodies. Low flow conditions present special challenges to the integrity of the aquatic community. Even under these low flow conditions, however, the long-term beneficial use could be maintained unless toxic conditions stress the aquatic community beyond its ability to tolerate and recover.

In practice, stream design flows serve several purposes in addition to defining the minimum stream flows below which numeric water quality criteria do not apply. Many States and Tribes have used the stream design flows, or fractions thereof, to define the amount of stream flow that can be assumed to always be available to dilute effluent. Under rapid and complete mixing conditions, the entire stream design flow is used as the basis for determining permit limits. That is, no mixing zone is necessary. Under slow or incomplete mixing conditions, where a mixing zone is necessary, fractions of stream design flow are used to calculate assimilative capacity on which permit limits can be based; in other words, to crudely define the mixing zone. Often this default approach is used by regulatory agencies in response to limited resources, lack of site-specific information and the time pressures of permit reissuance. This default approach to defining the mixing zone is, in EPA's view, acceptable as long as the mixing of the effluent in the receiving water occurs away from critical areas and the amount of dilution provided is conservative for a broad range of possible effluent/receiving water dilution scenarios. However, where a complete mixing assumption does not hold true, such as where an effluent plume does not disperse quickly, and too much of the receiving water is allocated for dilution, this default assumption approach will not ensure attainment of water quality standards because numeric water quality criteria will be exceeded in a larger area than anticipated (outside the regulatory mixing zone). The default use of fractions of stream design flows instead of more exacting mixing zone determinations is not always appropriate. In some instances, the effluent plume may never fully mix with the specified amount of receiving water, resulting in plumes where criteria are exceeded extending far beyond what may be considered protective of designated uses or allowed under standards. EPA has recommended that site-specific information on the mixing characteristics of a discharge be collected to verify the level of protection assumed to be provided to a water body using default mixing zone provisions.

EPA believes it is important for individual States and Tribes to make consistent dilution allowance decisions from one site to the next. Requiring States and Tribes, as part of their water quality standards, to specify how dilution allowances under complete and incomplete mix situations will be established may be an appropriate way to ensure consistent decision-making.

To best define dilution allowances for implementing water quality standards, it is useful to define both stream design flows and effluent design flows. In particular, a distinction should be made between the stream design flows to be used for different ambient water quality criteria (e.g., aquatic life acute, aquatic life chronic, human health carcinogen). In addition, effluent design flows may vary in some cases based upon seasonal changes or production cycles. Stream design flows may be applied as a maximum dilution allowance or adjusted in individual cases based on

any stream-specific or pollutant-specific considerations. Stream design flows, if they are used, must correspond to the duration and frequency components of the ambient water quality criteria contained in the State or Tribal water quality standards. Currently, States and Tribes must justify the scientific validity of their stream design flow policies where they differ from EPA's recommendations. States and Tribes may also establish specific guidelines for restricting dilution allowances in individual cases (e.g., States and Tribes may adopt special restrictions on dilution allowances for human health criteria where a discharge is within 2 miles of a drinking water intake).

EPA's Great Lakes Guidance and its Technical Support Document for Water Quality-Based Toxics Control identify acute and chronic stream design flows to be utilized in drafting permit limits. The Guidance establishes a 7Q10 or 4-day, 3-year biologically-based stream design flow for implementation of the aquatic life criterion continuous concentration (chronic criteria); a 1Q10 for the implementation of the aquatic life criterion maximum concentration (acute criteria); harmonic mean flow for implementation of human health criteria; and a 90Q10 for the implementation of wildlife criteria.

In cases where complete and rapid mixing of effluent with receiving water does not occur, site-specific mixing determinations must be made. Although the selection of fractions of stream design flows for the assignment of available dilution for point source discharges does affect the size of the regulatory mixing zone, such default assignments are not hydrologically linked to the actual behavior of the effluent plume in the receiving water, may not protect swimming and drifting organisms or sessile or benthic organisms and are not equivalent to a mixing analysis. There may be other instances where the reliance on a fixed percentage of flow or cross-sectional area of the receiving stream in lieu of an actual mixing analysis may not reflect the mixing behavior of an effluent. In some high dilution situations, there may be more rapid dilution occurring than is assumed in dilution calculations.

If complete and instantaneous mixing actually occurs, using less than 100% of the design flow can be a means of accounting for situations where the actual assimilative capacity of the water body is unknown. States and Tribes typically determine water body assimilative capacity based on ambient background concentration of a pollutant, when data on such concentrations is available. The assimilative capacity is the difference between the background level of a pollutant and the highest level that would comply with the water quality criterion. Where information on all sources of a given contaminant to a specific water body is incomplete, or where the State or Tribe wishes to reserve assimilative capacity for the future, States and Tribes should allocate less than 100% of the assimilative capacity of that water body at design flow by utilizing less than 100% of the design flow for dilution. EPA is interested in comment addressing the use of these stream design flows or fractions of stream design flows in setting mixing zones and in reserving assimilative capacity in a water body.

The Great Lakes Guidance allows States and Tribes to use default assumptions for available dilution in the absence of site-specific mixing data. The default dilution assumption for open waters (e.g., lakes) provides for ten-to-one dilution. The Guidance also allows for a demonstration to determine actual mixing zone water quality, size, placement and behavior. Under the Guidance, for open waters, in no case can mixing zone size exceed that area in which discharge-induced mixing occurs. As a default, the Guidance restricts the mixing zone for protection of aquatic life from acute effects (i.e., the dilution allowed in calculating limits based on an acute aquatic life criterion or CMC) to 2 parts receiving water to 1 part effluent, at water body design flow or volume.

As a default for implementing criteria for the protection of aquatic life from chronic effects (CCC) in flowing waters (e.g., rivers and streams), the Great Lakes Guidance allows States and Tribes to use up to 25% of the design flow for dilution. If a site-specific mixing analysis is performed, a larger mixing zone may be established. Mixing zones for acute aquatic life criteria in flowing waters are limited to the final acute value or FAV (2× the acute criterion) just as in open waters. EPA is interested in comment on whether this FAV default ''cap'' approach is appropriate for waters outside the Great Lakes Basin.

As stated above, the Great Lakes Guidance allows increases above the default mixing zone allowances when site-specific mixing zone analyses are conducted. These demonstrations compile data on the mixing behavior of the effluent at a particular site (e.g., the size, shape and location of the mixing zone). The Guidance also required that mixing zones maintain existing and designated uses and comply with narrative water quality criteria (e.g., ''free froms'').

The Great Lakes Guidance also specifies that mixing zones may not jeopardize the existence of threatened or endangered species or their critical habitat.

EPA advocates the watershed approach to water quality protection. For the water quality standards program, the emphasis has been toward refinement of designated uses and incorporation of new and emerging sophisticated and integrated analytical tools as a means to better characterize the ecological condition of water resources and more effectively protect designated uses (see section I(A) ''General Purpose and Vision'' of this document). The development and implementation of mixing zone policies by States and Tribes constitutes risk management at the sub-watershed level. EPA has consistently emphasized the need to ensure that State and Tribal mixing zone provisions protect the designated uses of receiving waters. Site-specific data collected through a mixing zone analysis will ensure that designated uses will be protected the loss of ecological integrity from the discharge of effluents will be prevented. An emphasis on the protection of designated uses and maintenance of ecological integrity is essential to the watershed approach. The watershed approach requires increased site-specific information on local aquatic systems and an assessment of the impact of all discharges to local ecosystems. The watershed approach also depends upon the meaningful involvement of local communities in risk management decision-making. Explicit, clear implementation policies provide the public with the information necessary to understand decisions being made by regulators and the impact of those decisions on local resources.

Request for Comments on Mixing Zone Policies and Implementation Procedures

EPA requests comment on the following questions:

1. Should the regulation be changed to expressly require States and Tribes to include a statement in their water quality standards indicating whether mixing zones are allowed?

2. Should the regulation be changed to expressly require States and Tribes to specify procedures by which mixing zone decisions for individual discharges would be made?

3. Should the regulation be modified to identify the minimum requirements or elements for State and Tribal mixing zone policies (including size, location, and methodologies)?

4. Consistent with current EPA policy, should the regulation explicitly require narrative criteria to apply in mixing zones?

5. Should the regulation require States and Tribes to identify in their mixing zone provisions what minimum water quality conditions are required within mixing zones?

6. Are there any circumstances, types of pollutants or water body types (e.g., wet weather discharges) where mixing zones should be restricted or prohibited?

7. Should mixing zones for bioaccumulative pollutants be prohibited? If so, under what circumstances? Should such prohibitions be addressed on a water body- or basin-specific basis? Should EPA allow exceptions to any such prohibitions?

8. Should the regulation require States and Tribes to specify procedures and decision criteria for evaluating complete and incomplete mixing?

9. Should the regulation require different mixing zone/dilution procedures for complete and incompletely mixed situations?

10. Should an assumption of rapid and complete mixing within State and Tribal implementation procedures be prohibited except where a defensible technical rationale is included in each site-specific determination?

11. Should the regulation explicitly allow the use of default mixing zone assumptions based on fractions of stream design flow in the absence of site-specific data?

12. Should the regulation be clarified, consistent with current EPA policy, to require States and Tribes to identify the water body design flows or volumes upon which their water quality standards are based?

F. Wetlands as Waters of the United States

The current water quality standards regulation contains no definition of ''waters of the United States,'' although this term is used in the definition of ''water quality standards.'' The phrase ''waters of the United States'' has been defined elsewhere in Federal regulations, including regulations governing the National Pollutant Discharge Elimination System (NPDES). That definition at 40 CFR 122.2 includes wetlands whose use, degradation or destruction could affect interstate commerce and wetlands adjacent to other waters of the U.S. However, because this definition does not appear in 40 CFR 131, some have questioned whether Part 131 applies to wetlands. EPA's position is that the Part 131 regulations do apply to wetlands. EPA is considering including the definition for ''waters of the United States'' under the standards regulation as well, or, at a minimum, cross-referencing the definition at 40 CFR 122.2 as a means of clarifying that the existing regulation applies to wetlands that fall within the definition of waters of the United States. Currently, EPA plans no review or revision of the existing definition of ''waters of the United States'' as part of any revision of the water quality standards regulation. Therefore, under the ANPRM, EPA is interested in comment limited to whether the existing definition should be included within the standards regulation in some form.

EPA believes that some States or Tribes may not be providing the same protection to wetlands that they provide to other surface waters, including designation of attainable uses consistent with the CWA and assignment of protective water quality criteria. Therefore, EPA wishes to emphasize that wetlands require the same protection under water quality standards as other waters of the U.S. Section 303 of the CWA requires the protection of all ''waters of the U.S.'' under standards. Addition of the definition of ''waters of the U.S.'' under a revision of the regulations would not constitute an expansion of authority or application, but merely a clarification of those requirements already contained within the CWA. Treatment of jurisdictional issues would not be affected by such a revision, including treatment of waters constructed as waste treatment systems (e.g., wetlands constructed for wastewater treatment). Notwithstanding protection of wetlands under other provisions of the CWA (e.g., Section 404), Section 303 clearly establishes a baseline level of protection applicable to all waters. Further, it is this treatment under water quality standards which provides for protection of wetlands as applied under Section 404.

Necessary components of water quality standards for wetlands are designated uses and criteria, as defined in 40 CFR 131.6. EPA recognizes that uses and criteria should reflect the unique physical, chemical and biological characteristics of wetlands. States and Tribes are encouraged to develop and adopt appropriate classification systems which provide protection of beneficial uses of wetlands through the application of physical, chemical and biological criteria. EPA also recognizes that certain parameters, conditions or even pollutants may be most appropriately addressed by criteria which specifically reflect differences between wetlands and other surface waters.

Request for Comments on Wetlands

EPA requests public comment on the following questions:

1. Should ''waters of the United States'' be defined in the water quality standards regulation?

2. Should EPA provide explicit reference in the regulation to the applicability of water quality standards to wetlands?

3. Do the current regulation and existing guidance provide the necessary regulatory clarity, technical tools, and incentives for States and Tribes to develop appropriate standards for wetlands?

4. Are specific programmatic changes needed to facilitate the development of water quality standards for wetlands?

G. Independent Application Policy

1. Introduction

Section 101(a) of the Clean Water Act states: ''The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' To this end, States and Tribes designate single or multiple uses for their waters including aquatic life protection. For the purposes of assessing the extent to which aquatic life is protected and whether actions to protect aquatic life are needed, the CWA requires that States and Tribes adopt water quality criteria necessary to support designated uses. For waters where aquatic life protection is an applicable designated use, the extension of the CWA requires States and Tribes to adopt criteria protective of aquatic life. Taken together, chemical, physical, and biological integrity define the overall ecological integrity of an aquatic ecosystem. Over the years, EPA, States and Tribes have developed various tools to assess the extent to which water quality attains this objective. These tools have been developed to build on and support the capabilities of each other and provide a comprehensive set of elements necessary for implementing water quality standards and achieving the objective of the CWA. EPA policy and guidance recommends that States and Tribes use chemical-specific, toxicity, and biological criteria to monitor and protect designated uses. In 1991, EPA established its policy on independent application (U.S. EPA, transmittal memorandum of final policy on biological assessment and criteria from Tudor Davies to Regions, June 19, 1991). EPA's independent application policy speaks to how assessments based

on these three kinds of criteria are to be integrated into all forms of water quality management decision-making. EPA's independent application policy and the ensuing discussion here address the issue of how the three different kinds of assessments are interpreted only in the context of protection of aquatic life and aquatic life uses and not in the context of protection of human health or wildlife.

With the advent of different ways of assessing the health of aquatic systems comes the possibility of conflicting results. To address such conflicts, EPA developed the policy of independent application. Independent application states that where different types of monitoring data are available for assessment of whether a water body is attaining aquatic life uses or for identifying the potential of pollution sources to cause or contribute to non attainment of aquatic life uses, any one assessment is sufficient to identify an existing or potential impact/impairment, and no one assessment can be used to override a finding of existing or potential impact or impairment based on another assessment. The independent application policy takes into account that each assessment provides unique insights into the integrity and health of an aquatic system. In addition, each assessment approach has differing strengths and limitations, and assesses different stressors and their effects, or potential effects, on aquatic systems. For example, while biological assessments can provide information in determining the cumulative effect of past or current impacts from multiple stressors, these assessments may be limited in their ability to predict, and therefore prevent, impacts. While chemical-specific assessments are useful to evaluate and predict ecosystem impacts from single pollutants, chemical-specific methods are unable to assess the combined interactions of pollutants (e.g., additivity). Similar to biological assessments, toxicity testing provides a means of evaluating the aggregate toxic effects of pollutants, and like chemical assessments, can also be used when testing effluent to predict single chemical impacts. One of the limitations of toxicity testing, however, is that the identification of pollutants causing toxicity is not always possible or cost-effective. Each of these three assessment approaches relies on different kinds of water quality data, measures different endpoints and, in practice, will be interpreted in the context of implementing a water quality management program that includes assessment and pollution control. EPA's policy on independent application is based on the premise that any valid, representative data indicating an actual or projected water quality impairment must not be ignored when determining the appropriate action to be taken. Independent application recognizes the strengths and limitations of all three assessment approaches.

The next three sections briefly describe three assessment approaches (biological, toxicological and chemical) one could likely be evaluating when using independent application. Those three sections are then followed by two parallel discussions on different uses of water quality data. One use relates to the NPDES permits program to determine whether a permit must contain water quality-based chemical or toxicity limits, and what those numeric limits should be. The other relates to the use of such data to evaluate the quality, or condition, of waters under the CWA section 305(b) and 303(d) programs. At the core of both of these contexts is the question ''are the present applicable water quality criteria complete and appropriate for the water body, and how are we to measure attainment of the present or future criteria that apply to any water body in question?'' Thus, in its most basic sense, independent application remains a water quality standards question. Any changes to or clarifications of the policy on independent application must therefore be considered first under the rubric of water quality standards and then in the separate contexts of permitting and water quality evaluation which are based on water quality standards.

States and Tribes routinely determine whether water bodies are attaining their designated uses and whether existing pollution controls adequately protect those uses. Some States and Tribes have recommended to EPA that it modify the independent application policy. Currently, EPA's policy of independent application is the same for both NPDES permitting and water quality assessment programs. However, EPA recognizes that each of the programs has somewhat different data needs and attributes. Therefore, today's notice separates the two distinct uses of independent application to better focus the discussion.

a. Biological Assessments. Biological assessments are based on quantifying differences between expected biological community attributes such as structure, function and condition (known as a reference condition) and the biological community attributes found at a specific site being evaluated. The extent to which the community at the site deviates from the reference conditions is indicative of the degree of impairment at the specific site. The strength of biological assessments is their ability to provide a direct measure of the health of aquatic ecosystems. Biological assessments are also able to detect non-chemical impacts (e.g., habitat loss, sedimentation, temperature effects) in addition to chemical toxicity problems.

States and Tribes that use biological assessments, use them primarily to evaluate the ecological condition of water bodies and to determine whether a water body is healthy, threatened, or impaired (i.e., aquatic life use attainment decisions). In some instances, States and Tribes have used biological assessments to establish monitoring requirements in an NPDES permit, but generally, most use bioassessments to make non-regulatory, general, water resource management decisions. Data from a biological assessment can be compared to a gradient that shows the reference (expected) conditions without impairment on one end and the worst situation on the other. States and Tribes generally use the results to determine whether additional measures are needed to protect the water segment, or determine how close to attainment an impaired system is. Biological assessments can also play a role in linking impairment to causative agents. This link is often not definitive, but can be very useful in helping to identify the causes and sources of many impairments. Some States and Tribes have used indicator species or groups to distinguish effects of toxicity from effects of organic enrichment. For example, one State documented that a midgefly larvae is found to be predominant in areas contaminated by electroplating or metal wastes. Although biological assessments cannot be used to predict conditions in a mathematical modeling sense, over time they can be used to indicate the direction of change, and the degree of that change, in the condition at a particular site. This information, where it is based on enough data using relatively sensitive appropriate metrics, can be very valuable in deciding whether the current condition is likely to be maintained under similar conditions in the future, or whether there are early warning signs of biological impacts giving reason to believe that additional regulatory actions may be needed to prevent water quality standards impairment. Regulatory actions that are a response to measured change in biological condition will tend to be restorative more than preventative (i.e.,

once biological impact is measured, by definition, that impact was not prevented). Although, slight changes that are not sufficient to render a water in non-attainment of its aquatic life use, can provide early warning of potentially more significant future changes. In contrast, as noted above, regulatory actions based on impairment predicted, for example via a chemical-specific modeling analysis, tend to be preventative. To the extent that conditions in a water body do change (e.g., flow), biological assessments do not reveal potential future impacts under other exposure conditions (e.g., low-flow conditions). Programmatically, there are concerns regarding quality assurance and quality control for various biological assessment techniques since they have yet to be promulgated, or standardized, in any EPA programs. This is mainly due to the site-specific nature of biological assessments. Implementation of biological criteria is also discussed in section (B) of this notice.

b. Toxicological Assessments. Toxicological assessments are conducted by exposing aquatic organisms to effluent or ambient water samples or sediment samples in a laboratory and determining the effects on the exposed organisms. Because toxicity assessments evaluate the overall effects of the entire suite of constituents in a sample, they are ideal for identifying interactions between chemicals that can alter the expected effects of individual chemicals on exposed organisms. Toxicity assessments also capture the toxic effects of chemical compounds not commonly monitored for or for which chemical-specific criteria are lacking. In addition, because it can be manipulated in the laboratory, toxicity testing can predict the likelihood of ecological impacts before they occur. This allows safeguards to be put into place before an actual ecological impact occurs.

Toxicity assessments are usually limited by the variety of species that can be cultured in the laboratory. While numerous test species can be used to evaluate the toxicity of individual samples, typically only two or three species are used for such tests. By comparison, eight different families are required to develop chemical-specific criteria. For some toxicants, the broader sensitivity range provided by testing eight different families is particularly important, for example, where the mode of toxicity action is specific (e.g., pesticides). Identifying the cause of toxicity can, in some situations, be a difficult, expensive, and lengthy process. Another consideration is that toxicity testing does not detect habitat perturbations which can greatly limit a water resources aquatic life use. Finally, toxicity assessments are only valid for as long as all the sample testing conditions remain the same. Ambient conditions affecting toxicity may change over time necessitating additional testing.

c. Chemical Assessments. Chemical assessments measure individual chemical constituents (e.g., copper, lead) or chemical conditions (e.g., pH, temperature, hardness, organic content) in a medium. Chemical assessments may be performed on effluent or ambient water samples or sediment samples. Chemical analyses are usually simpler to conduct and generally less expensive than toxicity assessments or bioassessments, particularly if there are only a few chemicals of concern, but the information from these tests may provide limited insight into the ecological condition of the water body. If information is available on pollutant persistence and degradation, modeling can be used to predict pollutant fate and transport under a variety of exposure scenarios. Further, chemical-specific assessments are ideal for predicting the likelihood of ecological impacts where they may not yet have occurred either because a proposed activity affecting water quality has not been implemented or critical exposure conditions have not yet been experienced by the aquatic community. For these reasons, regulatory actions based on chemical-specific assessment can be preventative as well as restorative.

Basing regulatory and management decisions on chemical assessment of water quality is an important and proven aspect of water quality assessment and protection. However, as an indirect measure of aquatic health, one of the principal limitations to chemical assessments is dependence upon chemical-specific benchmarks (such as chemical water quality criteria) for determining whether water quality is suitable or unsuitable for attaining and maintaining aquatic life uses. As noted elsewhere in this notice, stressors other than specific chemicals in a water body are often a significant or even predominant cause of nonattainment of aquatic life uses. EPA's current thinking is that complete reliance on chemical-specific assessments of water quality is too narrow of a focus and fails to provide information on other important ecosystem stressors. In addition, as noted elsewhere in this notice, there are currently water quality criteria for the protection of aquatic life for 31 chemicals. There are tens of thousands of chemicals discharged into surface waters. (Note, however, that the chemicals for which there are criteria tend to be the most frequently discharged). Thus there is the added problem of too few criteria and too many chemicals, making it inappropriate to rely *exclusively* on the chemical-specific approach. Another substantial limitation of chemical-specific benchmarks is that for a given site, the benchmarks that are used, may not be the best that are available to reflect the level of protection applicable at the site. For example, site-specific aquatic life criteria are generally different (higher or lower) than the national recommendations for the same chemical. And yet absent site-specific criteria, the national recommendations are often used.

2. Independent Application and Water Quality Assessments

a. Independent Application. States and Tribes often collect or have access to monitoring data that measure the concentration of specific chemicals in an effluent or water body, the level of toxicity present in ambient water or discharges to a water body and/or the biological community composition within a water body. These data are then interpreted by comparing them to reference conditions or criteria to determine whether or not aquatic life uses are attained. EPA's 1991 policy on independent application was explicit about the use of independent application in water quality programs: ''This policy, therefore, states that appropriate action should be taken when any one of the three types of assessment determines that the standard is not attained. States and Tribes are encouraged to implement and integrate all three approaches into their water quality programs and apply them in combination or independently as site-specific conditions and assessment objectives dictate.'' In implementing this policy, EPA recommends that data from the three assessment approaches be applied independently in water quality programs since each method provides unique and distinct information on the characteristics of the water body. In other words, EPA recommends that differences in assessment results be resolved in one of two ways: either presume an adverse impact when any one source of data indicates an adverse impact, or reevaluate the complete data set and modify the applicable criteria to account for the new site-specific information. Given EPA's mission to protect the environment and absent definitive data to demonstrate that an assessment is in error or otherwise biased, EPA presumes

where an assessment indicates impairment, that assessment is valid.

In the context of applying the independent application policy to the assessment of water bodies, there are two distinct CWA provisions to consider: (1) section 305(b), which requires States and Tribes to report to EPA and EPA to report to Congress a description of the quality of the Nation's waters; and (2) section 303(d), which relates to identification of waters where technology-based limitations and other required controls are not stringent enough to ensure that applicable water quality standards will be attained and maintained. With respect to the section 305(b) Report, the CWA broadly calls for States and Tribes to assess water quality conditions in a biennial report. EPA transmits these reports to Congress, together with an analysis of the reports describing water quality conditions. Because these are water quality assessment reports that States and Tribes submit to EPA, and not specific regulatory decisions, there may be sufficient flexibility in the interpretation of data to allow a more integrated approach to evaluating limitations and inconsistencies in the interpretation of data produced under various approaches. For example, direct assessments of the condition of the waters (e.g., biological assessment) could be weighted more heavily than indirect measurements (e.g., chemical and toxicity).

With respect to section 303(d), the CWA and EPA's implementing regulations require States and Tribes to identify those waters for which technology-based limitations and other required controls are not stringent enough to achieve water quality standards applicable to such waters. *See* 303(d)(1)(A), 40 CFR 130.7(b)(1). When identifying waters pursuant to 303(d), the methods used to determine non-attainment of standards for water quality reporting under 305(b) should also be used. However, water bodies are eliminated from 303(d) list consideration if technology-based controls or other required Federal, State, Tribal or local requirements will result in the attainment of applicable water quality standards. TMDLS developed to secure restoration of designated uses are largely dependent upon chemical criteria and assessment to define acceptable pollutant loadings.

The question arises as to whether States and Tribes have the flexibility to exclude a water body from 305(b) reports and 303(d), i.e., conclude that the designated use was protected, even in the face of data indicating one or more excursions of the applicable chemical-specific water quality criteria. EPA would like to consider possible mechanisms under the existing CWA and the legal theories supporting them to address these questions.

As with determining the need for regulatory controls (permit limits), similar data evaluation issues face States, Tribes and EPA in performing water body assessments for purposes of sections 303(d) and 305(b) of the CWA. With respect to such assessments, EPA's goals for States and Tribes are twofold: (1) to encourage the use of chemical, toxicological, physical and biological data in making water body assessments; and, (2) to ensure that the data are interpreted and reported in a consistent and scientifically defensible manner so that documents such as the 305(b) report to Congress provide valid and useful information on the status of the Nation's waters as a whole, irrespective of State or Tribal boundaries.

EPA recognizes that there may be instances where these goals appear to be in conflict. It is possible that as States and Tribes implement biological assessment programs, they may identify new areas of impact that were previously undetected using other assessment techniques and that this may lead to a reluctance on the part of States and Tribes to develop the expertise necessary to conduct biological assessments. Although this tendency is contrary to the goals and objectives of the CWA, the fact is that addressing new and previously unaddressed threats to surface water quality places additional strain on already limited State and Tribal resources. Some also feel that adherence to a strict independent application policy for assessment purposes discourages the use of more data than minimally needed to make an aquatic life use assessment. In most cases, the minimal amount of data would be a chemical grab sample for a few water quality characteristics such as temperature, pH, BOD, or dissolved oxygen. Collecting minimal data for assessment reporting is much easier and less resource intensive for States and Tribes that are required to increase their reporting coverage, and these States and Tribes would not have to deal with differing interpretation of assessment results.

However, EPA believes that placement of waters on section 303(d) and section 305(b) lists should be based on broad thorough assessment data, not on limited and narrow data. The former will help ensure that targeted water quality controls and management actions are appropriate and will result in water quality standards attainment; the latter can result in significant outlays of State and Tribal resources targeted on waters where water quality problems are not well understood. EPA is considering how best to obtain accurate, high-quality assessment data and how to reconcile differences between assessments conducted using different techniques in a manner that fosters consistency and remains scientifically defensible.

b. Alternatives to Independent Application.

There is considerable sentiment among various stakeholder groups that there is a need to better incorporate more comprehensive data, particularly biological data, into the water quality assessment framework described above and that doing so will facilitate collection and use of more integrated and insightful water quality data. EPA shares this view. Some have used the term ''weight-of-evidence'' to describe an alternative to the present EPA policy of independent application that could facilitate integration of chemical, physical, toxicological and biological data into the assessment program. However, EPA recognizes that individuals' views about the meaning of the term ''weight of evidence'' vary considerably and this variation should be addressed. The term ''weight-of-evidence'' has been interpreted by some to mean that one approach to assessment, e.g., biological, could routinely be used to override conclusions drawn using another assessment technique, e.g., chemical. EPA believes that approach is hierarchical, not a weight-of-evidence approach. EPA's position is that each approach, chemical, toxicological, physical and biological has inherent strengths and limitations and that all valid water quality assessment data generated under any of these approaches should be used in assessing the health of aquatic ecosystems, in ways that adequately take into account the strengths and limitations of each approach.

EPA's current thinking is that as forms of water quality assessment data have become broader (chemical, physical, biological and toxicological), and as the amount of such data increases, the water quality standards and assessment programs need to facilitate continued collection and use of such data, and that doing so will lead to more thorough water quality assessments, more insightful water quality criteria, and better descriptions of aquatic life designated uses. EPA would not support an approach that could lead to collecting fewer and narrower water quality data by States, Tribes and dischargers. On the contrary,

EPA's current thinking is that to employ a weight-of-evidence approach, a State or Tribe (or EPA) would need to have a comprehensive set of water quality data to evaluate the chemical, physical, toxicological and biological conditions in a water and to conduct ecological impact assessment to determine the precise causes of impacts (chemical, physical, biological, and toxicological) and how best to address them. EPA's current thinking is that the most appropriate context for using a weight-of-evidence approach would be in establishing criteria. In addition, as discussed below, EPA is interested in evaluating the use of a weight-of-evidence approach for assessment and reporting under section 305(b) of the CWA. However, once the criteria are established for a water body, the assessment for purposes of listing under section 303(d) of the CWA and permitting under NPDES, must be based on all applicable water quality criteria.

EPA's 305(b) reporting guidelines interpret the independent application policy to apply to aquatic life use assessments for State 305(b) reports, not just to permitting for protecting waters due to reasonable potential to violate water quality standards. This policy helps protect against dismissing valuable information when evaluating aquatic life use attainment, particularly in detecting impairment. This approach is most protective when there is limited data available and when there is no documentation on the rigor of the assessment. EPA is concerned that lack of information can provide false confidence about the health of the nation's water bodies. However, EPA is now developing a comprehensive approach for conducting aquatic life use assessments which integrates chemical, toxicological, physical and biological data, and includes consideration of the strengths and limitations of the assessment methods and the data. This shift toward more integrated assessments is reflected in EPA's most recent guidance to the States and Tribes on conducting 305(b) assessments, particularly in determining nonattainment (EPA's Guidelines for Preparation of the 1996 State Water Quality Assessments (305(b)) reports, EPA 841 B–95–001) and is the primary focus of the Office of Water's Criteria and Standards program Plan. The 1996 305(b) guidelines are consistent with the Policy on Independent Application while incorporating a weight-of-evidence approach in determining the degree of impairment (partial or nonsupport). The 1996 guidelines do not allow for a finding of full support, or attainment, of aquatic life use when there are differences in assessment results. Under certain circumstances, however, the guidelines allow for the possibility of a finding of partial support, even where results of different assessments are not fully consistent. Generally, *in assessing severity of impairment,* assessments based on data with high levels of information, or rigor, should be weighted more heavily than those based on data with low levels of information, and, rigorous biological data should be weighted more heavily than other data types. EPA recommends that the results of biological assessments, especially those with high levels of information, be the basis for the overall aquatic life use support (ALUS) determination if the data indicate impairment. This is because rigorous biological data provide a direct measure of the status of the aquatic biota and detect the cumulative impact of multiple stressors on the aquatic community, including new or previously undetected stressors.

Determining the level of information or rigor for each assessment is a critical component of the 305(b) guidelines on making an ALUS determination. The levels of information allow characterization of the quality and the temporal and spatial coverage of the data States and Tribes utilize to conduct their use assessments. Levels of information are identified for assessments based on biological, physical, chemical and toxicological data. For example, measures of the condition of the aquatic community using indices incorporating multiple assemblages of aquatic organisms based on a regional reference approach would rate higher than a measure of a single organism or single metric or annual fixed station monitoring for chemical contaminants. Likewise, three years of bi-monthly fixed station monitoring for chemical contaminants would rate higher than annual fixed station monitoring for the same chemicals or a biological measure of a single organism or metric. Understanding the breadth and robustness of the assessment methods used in evaluating whether a water body is attaining its designated aquatic life use is important information for EPA, the States, and the public.

In the future, EPA will be evaluating possible scenarios where a finding of full support could be justified despite differences in assessment results. For example, a finding of full support based on rigorous biological data may be justified despite differences with chemical specific assessment results *depending* on the magnitude and frequency of the chemical exceedances and the applicability of the chemical benchmark to the site. It will be important for EPA to carefully evaluate such potential scenarios and to define the adequate data requirements and level of rigor necessary to support a determination of full support despite differences in assessment results. Equally important, EPA will need to carefully consider the ramifications of such determinations on other parts of its water program.

Another permutation of the weight-of-evidence approach to aquatic life use assessment is to establish a hierarchy in which the results of one method could always override the other methods should there be difference in assessment results. Most frequently, it has been argued that biological assessments could always override chemical assessments in determining whether the designated aquatic life uses are being attained. Some prefer this approach because a rigorous biological assessment provides a direct measure of existing ecosystem health and have expressed concern that the policy of independent application oversimplifies the relationship among different data sets used to assess current water quality conditions. Proponents of this approach contend that biological assessment is an integrated assessment that incorporates the information that would be provided through either chemical or toxicological assessments into a single, comprehensive measure of aquatic ecosystem health. Some advocate the acceptance of rigorous biological data as the ultimate arbiter of aquatic life use attainment. They also suggest that, at least with respect to current aquatic life condition assessments, chemical, toxicological, and biological assessments are not independent; each measures the same assessment endpoint, but from different stressors. These proponents say that biological assessment is the only assessment approach available to integrate and reflect current effects from chemical, toxicological, physical, and nonpoint source stressors. Because of this they suggest that rigorous data based on biological assessments and criteria should automatically supersede data from other sources when determining aquatic life use attainment. Some contend that if biological data demonstrate that biological criteria are attained, then the water body is attaining its designated use, even if other monitoring data such as toxicological or chemical data demonstrate an excursion, or potential for an excursion, above a water quality criterion.

Some also contend that rigorous biological assessments should be used

to supersede assessments based on predicted impacts such as water quality modeling and wasteload allocations in decision making for aquatic life use assessments. One concern with this perspective is that non-rigorous biological assessments could be used in such situations, though EPA has 305(b) reporting guidance which suggest minimum quality of biological assessments that could also be used for these situations. In this guidance, EPA recommends using more than one assemblage (fish and/or macro invertebrates/and or algae), several index values or metrics (multiple metrics), an index period for sampling, and ecoregional or other biogeographic regional calibration.

EPA agrees that rigorous biological assessment based on adequate site-specific data is a direct assessment of aquatic ecosystem health, unlike chemical and toxicity assessments. However, biological assessments are less well suited for use in preventing water quality impacts and will only reflect impacts once they have occurred. Though this may be less of a concern in waters with a relatively constant level of discharge where there has been ongoing biological assessment. A second objective of water quality assessment under the CWA, beyond assessing when the aquatic life use is impaired, is assessing when stressors, if left unchecked, will cause impairment. As discussed above, the chemical-specific approach is especially strong for use in identifying and predicting impacts before they happen.

EPA is concerned that the use of a hierarchical approach may ignore or undermine valuable information, whether that information is biological, physical, chemical, or toxicological, and not trigger the appropriate action to address the inconsistency (e.g., evaluation of existing criteria and development of site-specific criteria). Therefore, EPA does not support such an approach. EPA has a number of concerns with any approach wherein data from certain assessment techniques may be automatically superseded by those from others. A primary concern is the failure of such a system to make use of all valuable information. In all cases, criteria, whether chemical-specific, toxicological, physical or biological, are derived with the intent of identifying a threshold beyond which unacceptable impacts to aquatic ecosystems are expected to occur. In most cases, it is expected that when different assessment techniques (i.e., chemical and biological) are used for determining attainment of aquatic life uses, the techniques will yield similar results if all are done rigorously. In addition, it is expected to be rare for chemical assessments to indicate nonattainment where biological assessment indicate attainment; analyses conducted by the State of Ohio confirm this. (See Yoder, C., ''Answering Some Concerns about Biological Criteria Based on Experiences in Ohio.''). However, it is also expected that in certain cases, different assessment techniques will result in different determinations of aquatic life use attainment due to the fact that each technique evaluates aquatic life use attainment differently, and some take into account safety factors for ensuring future attainment while others focus on the current status of the condition. When different assessment techniques that are intended to measure similar environmental endpoints and yield comparable results fail to do so, it may be an indication that assumptions underlying the criteria are not valid for a particular site, or that the data were not rigorous.

While in some cases it may be appropriate to weigh one set of data more heavily than another in making a use attainment determination, in others it may be preferable to take advantage of such circumstances as opportunities to validate and cross-check criteria, making adjustments as indicated by the data. This could result, for example, in an adjustment to a specific chemical criterion in a particular water if rigorous biological assessment indicated that such an adjustment is appropriate. Such information is also useful to EPA in improving national criteria development methodologies.

Lack of comparability in assessments is also a concern for either a weight-of-evidence or a hierarchical approach to aquatic life use assessments. Therefore, it is important that there be a common understanding between States, Tribes and EPA as to how conflicts in data interpretation will be resolved in evaluating and reporting water quality. Developing comparable methods to handle data conflicts will make comparisons between States and Tribes more useful, such as in 305(b) reports. Without a consistent approach to resolving data conflicts, assessments of water quality data at the national level becomes problematic. EPA's policy of independent application is one way of providing a consistent and defensible framework for data evaluation in order to minimize this problem.

Request for Comments on integration of data in water quality assessments

EPA is interested in comment on how chemical, physical, toxicological, and biological assessments can be effectively incorporated and implemented in State and Tribal water quality standards programs to achieve the goals of the CWA.

EPA requests comments on the following questions:

1. How can conflicting interpretations of water quality assessment data be reconciled in a scientifically defensible manner? Should each kind of water quality information stand alone as a scientific measure of current water quality conditions and ecosystem health? Alternatively, are there situations where one type of data should be given more weight than another in determining use attainment?

2. How should States and Tribes evaluate water quality information generated using chemical, toxicological, physical, and biological methods when determining use attainment status?

3. When interpretation of water quality data indicate inconsistent results, what factors (i.e., data richness), if any, should EPA consider relevant to determining ''appropriate actions''?

4. Should EPA explicitly address in the water quality standards regulation the evaluation assessments using chemical, toxicological, physical and biological assessment methods?

5. Should an approach be instituted where independent application may be relaxed for water quality assessment strategies and decisions when a State or Tribe has established a comprehensive monitoring and assessment program including biological monitoring and assessment? What guidelines should be used to evaluate a State or Tribal biological monitoring and assessment program?

6. How should the policy of independent application address the distinction between situations where adequate rigorous data are available for each assessment technique and situations where available data for one or more of the assessment techniques are limited in quantity or quality? Specifically, should the policy be modified to more explicitly encourage or require, where feasible, additional monitoring, particularly where limited data are to be used as a basis for regulatory action?

3. Independent Application and NPDES Permitting

a. Independent Application. Clean Water Act section 101(a) states that ''[t]he objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' In the context of implementing water quality-based pollution controls under the NPDES program, EPA has maintained that independent

application of all forms of water quality assessment data (i.e., chemical, physical, toxicological and biological) is clearly consistent with this objective. In addition to restoring impaired surface waters, water quality-based pollution controls are often implemented to prevent water quality standards impairment that projections indicate will occur in the absence of the water quality-based controls. Thus, predictive assessment tools are necessary and have proven effective in the NPDES water quality-based program.

An important question in NPDES permitting that EPA's policy of independent application was specifically developed to address is: how should differences in interpretation of water quality data produced using different water quality assessment techniques for aquatic life uses be reconciled? Upon examination of this question, EPA determined that differences in data interpretation do not necessarily equate to contradictory results. Different assessment results may be complementary since the different approaches can measure different aspects of water quality. For aquatic life uses, all three data types (chemical, toxicological, and biological) provide useful information and should be used to protect designated uses. Because the different types of assessments often focus on different aspects of aquatic community health and each has different strengths and limitations, it is possible that any one type of assessment may fail to detect impairments, or potential impairments of the designated use. For that reason, EPA's current interpretation of the CWA and its implementing regulations is that all three types of data (chemical, toxicological, and biological) should be used when evaluating the reasonable potential for a discharge to cause or contribute to an excursion above a water quality criterion and, if one approach indicates that water quality is, or will be, impacted, the results from the other methods could not be used to refute that finding. Under this approach, where ''reasonable potential'' is found, the NPDES permitting authorities must take appropriate ''actions;'' that is, implement water quality-based effluent limits that are derived from and comply with the applicable water quality criteria. These ''actions'' may also include additional monitoring to determine whether a problem exists, or to derive site-specific criteria if a particular criterion is found to be inaccurate for a site. The policy on independent application is presented in further detail in Chapter 1 of EPA's 1991 Technical Support Document for Water Quality-based Toxics Control (TSD) and in chapter 1 of EPA's Water Quality Standards Handbook—Second Edition, September 1994 (Handbook) (both documents cited above).

In the Great Lakes Guidance, EPA maintained its policy of independent application with respect to determining the need for water quality-based effluent limits, making it an explicit implementation requirement in the Great Lakes States. The Guidance, in Appendix F, Procedure 5, section F ''Other Applicable Conditions,'' states ''When determining whether WQBELs are necessary, information from chemical-specific, whole effluent toxicity and biological assessments shall be considered independently.'' (40 CFR Part 132, Appendix F, Procedure 5, Section F.3.).

In the permitting context, EPA's independent application policy reflects language in sections 301(b)(1)(C) and 303 of the CWA and permit regulations implementing these statutory provisions at 40 CFR 122.44(d). Pursuant to section 303 of the CWA, States and Tribes adopt chemical-specific numeric criteria and toxicity criteria as part of their water quality standards. Section 303(c)(2)(B) of the CWA further requires States and Tribes to adopt, as part of their water quality standards, numeric criteria for toxic pollutants for which EPA has published guidance under section 304(a), and whose discharge or presence in State or Tribal waters could reasonably be expected to interfere with the designated uses adopted by the State or Tribe for those waters. (As discussed elsewhere in this document, all States and Tribes have narrative water quality criteria as well.)

Section 301(b)(1)(C) of the CWA requires effluent limitations in NPDES permits that are ''necessary to meet water quality standards'' or necessary to ''implement any applicable water quality standard.'' Consistent with this provision, EPA's permitting regulations at 40 CFR 122.44(d) require that effluent limits be imposed where the discharge has the ''reasonable potential'' to cause or contribute to an excursion above water quality criteria and specifically describe how those limits are to be expressed (e.g., chemical-specific versus WET limits). Therefore, once a numeric (or narrative) water quality criterion becomes part of a State's or Tribe's water quality standards, and a permitting authority determines that a discharge of a pollutant would have a reasonable potential to cause or contribute to an excursion above the applicable numeric or narrative criterion, the regulation requires that a limit for that pollutant be established as necessary to meet the water quality criterion. Although the CWA specifies that permit limits must meet water quality standards, it is the permitting regulations that specify the factors that must be considered when determining whether or not there is reasonable potential to cause or contribute to an excursion above a State or Tribal water quality standard, and specifically describe how such limits are to be expressed.

EPA regulations at 40 CFR 122.44(d)(1)(iii)–(v) describe the conditions under which water quality-based effluent limits for specific chemicals and for whole effluent toxicity are required in NPDES permits. While these regulations do not specifically use the term ''independent application,'' the concept is expressly laid out. These regulations require chemical-specific limits when the permitting authority determines there is a reasonable potential for the discharge to cause or contribute to the excursion above the chemical-specific criterion. Likewise, the regulations require limits for whole effluent toxicity if the permitting authority determines there is a reasonable potential for the discharge to cause or contribute to the excursion above the numeric criterion for toxicity or narrative criterion for water quality. Except under limited circumstances (where the State or Tribe lacks a chemical-specific criterion for a pollutant of concern), these regulations do not allow a permitting authority to forgo one type of limit, e.g. a chemical limit, where another type of data, e.g., toxicity, indicate no toxicity. Instead, the two types of data are required to be considered independently.

The independent application policy provides a consistent and coherent protocol for resolving conflicts in interpreting monitoring data when determining ''reasonable potential.'' Where such conflicts exist and cannot be reconciled, independent application directs States and Tribes to presume that the data that indicate a current or potential impact are valid and to take appropriate steps to prevent or remediate the impact. The reconciliation phase allows a State or Tribe to gather additional or more detailed data prior to taking regulatory action. Data interpretation conflicts may be best addressed by identifying the cause of the conflict and recalibrating the models and criteria to better reflect the newly acquired site-specific information. However, if the causes of the data interpretation conflicts cannot be resolved, under independent application, the State or Tribe must take

action based on the data indicating impairment or the reasonable potential for impairment of the water body.

EPA believes this procedure for addressing conflicting interpretations of monitoring data is appropriate for a number of reasons. First, as stated earlier, each of the different assessment techniques monitors aquatic ecosystem health from a slightly different perspective. Consequently, it is entirely plausible that only one of the assessment techniques would detect a real or potential impact. Second, assuming that the data generated by the different techniques are of comparable quality and relevance, an indication of a water quality problem using any of the techniques is sufficient reason to implement controls. That being the case, EPA believes the independent application of water quality data in determining when water quality-based effluent limits are necessary for individual dischargers is consistent with the CWA.

Reconciliation of data interpretation conflicts allows flexible evaluation of data. Once a permit application is received from a discharger, States and Tribes frequently engage in discussions with the discharger over the quality and representativeness of the data. This period of data review and evaluation is also an ideal time for addressing any data interpretation conflicts in order to ensure that permitting decisions are defensible and the permit limits that are imposed are necessary to protect designated uses. States and Tribes, together with permittees, may obtain additional data to verify earlier data or conduct timely studies to support the development of site-specific criteria. Ultimately, these site-specific criteria may serve as the basis for a permit limit, or a decision that it is not necessary to limit a pollutant in a particular discharge. All of the actions above are consistent with the independent application policy and the CWA.

Critics of EPA's policy believe either that data from certain types of water quality assessments have inherently greater value than data obtained by other means or that, in a sense, data quality and ecological significance should be averaged, such that if data obtained from two different assessment methods agree and data from a third disagree with the other two, the two could ''outweigh'' the one. In either case, all of the available data would be considered together, under the assumption that each assessment technique measures a similar endpoint. Under such an approach to data evaluation, limits on effluent toxicity would be appropriate and acceptable as surrogates for chemical-specific limits. Similarly, biological assessment data that do not indicate unacceptable levels of impact on the biological community could serve as the basis for a decision not to include either chemical-specific or effluent toxicity limits designed to support an aquatic life use in a facility's discharge permit. Proponents of this view argue that independent application forces them to take inappropriate regulatory actions when faced with conflicting assessment data. EPA does not agree in principle with this view.

b. Alternatives to Independent Application. States, Tribes, municipalities, and dischargers have expressed concerns that the policy of independent application results in more protection than is necessary to attain and maintain aquatic life designated uses. Many express a preference for an approach which invests data obtained using certain assessment techniques with greater credibility than those obtained in other ways. Such an approach, as discussed above, is sometimes referred to as a weight-of-evidence approach. Under such an alternative approach, assuming a high level of confidence in all the available data, one form of data—usually it is argued biological data— would be the ultimate arbiter of whether water quality-based effluent limits are needed in a discharger's permit. To determine, for example, whether a water quality-based effluent limit is needed for a particular chemical pollutant, the risk of adverse impact on the aquatic community would be determined based on all of the available data relying more heavily on high quality, thorough biological data and on the judgment of the individual conducting the evaluation. Several States and members of the regulated community have advanced this approach as preferable to EPA's independent application policy, arguing that such flexibility to exercise judgment is appropriate.

EPA's current thinking is that it should not promote an alternative approach to making ''reasonable potential'' decisions that places greater emphasis on biological data. Instead, EPA's current thinking is that such an evaluation of water quality and ecosystem health to determine the appropriate and applicable criteria against which discharges will be evaluated is most appropriately done during the setting of the applicable criteria for a water body. In that arena, it may be feasible to use biological assessment as a basis for determining the appropriate criteria for a given water body. However, once the criteria are set, EPA believes that the current regulation requires ''reasonable potential'' evaluations against all the applicable criteria, and that the policy of independent application in this context is appropriate.

If biological data indicate that designated uses are being attained in spite of projected or actual chemical-specific criteria exceedances, then additional site-specific analysis should be done to ensure that controls are developed that are necessary to adequately protect the water body from use impairment. Site-specific approaches could include mixing zone studies, more refined water quality modeling to support wasteload allocation, or the development of site-specific criteria. In any case, chemical-specific and toxicity criteria are proven and necessary bases of water quality-based effluent limits. In ''reasonable potential'' analysis, chemical-specific monitoring is usually focused on pollutant concentrations in the effluent and the projected ambient result of those concentrations being discharged. Thus, this type of analysis commonly yields projected rather than measured water quality impacts. Where biological impact is not detected using biological assessment methods, it is possible that impairment that is projected and plausible, may simply have not yet occurred. However, where discharges to a stream have been relatively constant over time and there has been ongoing biological assessment, this would be less of a concern. EPA's view is that it would be inappropriate to ignore projected impairment simply because the impairment has not yet been observed in the environment.

An additional argument in favor of retaining the independent application policy for ''reasonable potential'' determinations has to do with the suitability of certain types of data and the unsuitability of others for certain applications within the water pollution control program. For example, biological data are not amenable in the same way as chemical-specific data for use in waste load allocations, load allocations, total maximum daily load calculations or antidegradation reviews. An approach that would allow biological data to negate a finding of ''reasonable potential'' would suggest possible site-specific inadequacies of particular criteria without providing the information needed to determine definitively whether or not the criteria are appropriate or what any alternative criteria should be. As a consequence, a void would be created in the implementation of State or Tribal water quality standards which would render them unable to perform all of their

intended functions. Proponents of independent application contend that instead of discarding data and invalidating criteria where conflicting interpretations exist, an effort should be made to determine why the interpretations conflict and to refine the applicable criteria to better reflect the conditions found at the site. Taking this step would ensure that, over time, a full suite of appropriate criteria would be developed for every site and that all appropriate and necessary pollution controls are implemented. In addition, such an approach is consistent with the CWA. Some States and Tribes may be concerned, however, that revising water quality standards, especially where such revision is to deal with a single permitting decision, may be so resource intensive that it is not a realistic option.

As discussed above, if numeric water quality criteria exist and are applicable to a water body, permits for dischargers to the water body must ensure that those criteria are met under section 301(b)(1)(C) and the implementing regulations at 40 CFR 122.44(d). On occasion, States, Tribes and dischargers have asserted that biological and toxicity data from specific waters conflict with chemical data. EPA's current thinking is that instances of clear disagreement between biological and toxicity data and chemical data are infrequent. Based on this belief, EPA would not support a radical shift away from chemical criteria and limits or toxicity criteria and limits. Those tools are simply too important as proven tools for assessing potential impacts to surface waters and improving water quality. EPA's current thinking also suggests that it is important for there to be flexibility to resolve instances of disagreement between different forms of data and that perhaps mechanisms for such flexibility can be clarified or improved. EPA's current thinking is that through collection of broader and more thorough water quality data, EPA, States and Tribes will be able to develop more complete profiles of water body conditions and stressors and that through such evaluation the ''necessary actions'' (e.g., water quality-based effluent limits for one or more pollutants, listing of the water body as not attaining its aquatic life designated use, or best management practices to address nonpoint sources of pollution) to improve water quality in a given water will become more obvious.

Disagreement between biological, toxicity and chemical data for the same water is cited by some States and dischargers as a potential situation in which independent application would force unnecessary and burdensome requirements on dischargers. Those opposed to independent application of criteria would like to see States and Tribes given greater latitude to determine when limits based on a given criterion are necessary. They suggest that this could be achieved if States and Tribes were to include, in the chemical-specific criteria or toxicity criteria portions of their water quality standards, statements explaining circumstances under which the otherwise applicable criteria would not apply at a particular site or would have to undergo some review and revision, while assuring the designated use of the water body would be maintained. Such circumstances could include where the form of the pollutant in the effluent or receiving water is not the form addressed by the chemical criterion in the State or Tribe's standards; or, where a substantial amount of biological and or toxicity data indicate that discharges of the pollutant at levels that would exceed the chemical criteria are not causing the aquatic life use in a particular water body or segment of the water to be impaired. If these conditions could be met, permitting authorities would have the flexibility to determine that a numeric water quality-based effluent limit for the pollutant in question is not required, or that an alternate limit should apply. This type of flexibility, to rely on biological evaluations *in the criteria setting phase*, where data are sufficient to support such flexibility, could be a strong incentive for States and Tribes to develop stronger biological criteria and assessment programs including monitoring reference areas and complete chemical and toxicity monitoring programs, including site-specific data on most sensitive species to chemical(s) for which flexibility is being sought. EPA approval of water quality standards implementing such an option requires acceptance of an interpretation that sections 301(b)(1)(C) and 303(c)(2)(B) of the CWA allow States and Tribes to identify, within their water quality standards, conditions or circumstances which would render specific numeric criteria not applicable to certain waters in specific instances, or alternatively in need of refinement.

EPA has significant technical questions about how such an option could be implemented within the context of a State's or Tribe's water quality standards. EPA is especially interested in detailed technical comments describing how such an option would be included in a State's or Tribe's water quality standards, how such an option would ensure protection of designated uses in water bodies where criteria are deemed not applicable. In addition, EPA is soliciting comment on specific procedures that could be used by a State or Tribe to arrive at a decision that a criterion is not applicable at a specific site. In particular, EPA is interested in technical evaluations of what types of data would be necessary to support such a decision, the quantity and quality of the data and how the data would be evaluated. Finally, EPA seeks detailed technical comments indicating how other elements of the water quality standards program would function in situations where chemical or toxicological water quality criteria were adjusted based on biological assessments. For example, if a State or Tribe were to employ the option discussed above, it is not apparent how critical water quality program elements such as determining the need for permit limits or whether or not a new discharge could be allowed to a stream segment could occur absent chemical-specific or toxicity-based criteria applicable to the water body. To be workable, this option may need to be paired with a scientifically defensible mechanism for making decisions about activities such as permit limits and load increases. Since chemical criteria and chemical-specific interpretations of narrative criteria currently are the principal benchmark used for these functions, would pursuing the option discussed above be workable, or would it introduce a level of complexity into State and Tribal water quality standards that could result in slowed or suspended water pollution control programs, and expose aquatic ecosystems to greater risk because of the lack of an identified threshold of impact?

EPA's current thinking is that significant flexibility already exists within the current regulatory framework to account for available biological and toxicity data. For example, numeric criteria, once adopted, may be modified to better reflect conditions at a specific site. Bioassessment and toxicity data can play a valuable role in identifying sites where conditions differ sufficiently from those assumed in the calculation of the national or State or Tribe-wide criteria to warrant site-specific modification of the criteria. Bioassessment and toxicity data can also provide useful information in identifying instances where a given constituent in an effluent is toxicologically distinct from a similar substance for which a criterion is available, indicating the need for a separate criterion for the constituent in

question. Establishing site-specific criteria would provide relief similar to that contemplated in the option proposed above.

Lastly, public participation is a basic tenet of the water quality standards development process. Public participation is also sought in the context of issuing NPDES permits. During standards development, public input is sought to assist the regulatory agency in identifying the appropriate water quality goals for the waters under the jurisdiction of a State or Tribe. During NPDES permit issuance, public input is again sought to verify that the permit proposed to be issued is consistent with the water quality goals. Some assert that these two public participation steps seek input on different questions and are not interchangeable. Does the weight-of-evidence option discussed above reduce the opportunity for meaningful public participation in the standards setting process by making it more difficult for the public to determine which water quality criteria will apply to which water bodies, and, as a result, what the water quality goals for an individual water body are? EPA is considering how a weight-of-evidence approach might be implemented in a manner that does not restrict the opportunities for meaningful public participation in the water quality goal setting process.

Request for Comments on Independent Application

EPA requests comment on the following questions:

1. What is the rationale for modifying the independent application policy as it pertains to NPDES permitting? Under what circumstances could it be justified?

2. If there are circumstances where an approach other than independent application is acceptable, should any one type of water quality data receive greater weight and why?

3. How should States and Tribes evaluate effluent data generated using chemical, toxicity and biological methods in determining reasonable potential to cause or contribute to an impairment?

4. Would checks or oversight mechanisms be necessary to ensure that where decisions about reasonable potential are based on chemical, toxicity and biological methods, such decisions are made with integrity? For example, EPA or public oversight?

5. Are there any cases which indicate that either chemical-specific, whole effluent toxicity or biological approaches do not legitimately represent some aspect of use attainment?

6. Should EPA explicitly incorporate into the water quality standards regulation the independent application policy?

7. Should independent application be addressed the same or differently for permitting than for assessment and use attainment decisions under 305(b) reporting and 303(d) listing?

8. If EPA were to separate the use of independent application in determining the use attainment status of a water body from the use of independent application when determining reasonable potential for an effluent, what approach, independent application, weight-of-evidence, or hierarchical, should be used for use attainment decisions? NPDES permitting? What would the implications be if the programs used two different policies?

9. Would a policy allowing numeric criteria to not apply to all waters where supported by scientifically defensible data be workable? Would it unnecessarily complicate the regulatory program, for example by delaying the issuance of permits? Are existing mechanisms of criteria setting and permit issuance sufficiently flexible?

IV. Summary and Potential Program and Regulation Changes

EPA believes that the water quality standards program and decisions it yields will continue to be the focus of growing pressure and scrutiny as solutions to remaining surface water quality problems in this country are found to be increasingly elusive, difficult, and/or expensive. The task set forth by the Clean Water Act is to improve water quality even where it is difficult to do so. To accomplish this task, EPA envisions a national water quality standards program in which: the best possible information on whether designated uses are being attained and how to attain and maintain them is available and used; water quality criteria are selected from a wide-ranging menu of scientifically sound criteria and tailored to each watershed; and national norms of consistency and flexibility in State and Tribal water quality standards are clear.

With this vision in mind, EPA, through this ANPRM, begins a review of the water quality standards regulation in a public forum in an attempt to identify possible amendments to the regulation and new guidance or policy that may be needed to address three distinct objectives: (1) eliminate any barriers to, and otherwise enhance State and Tribal implementation of, watershed-based water quality planning and management; (2) facilitate use of new, more integrated water quality assessment and criteria science in water quality standards programs, and; (3) improve the regulation so that it can be implemented more efficiently and effectively (including cost-effectively).

The preceding pages of this ANPRM outline current regulatory provisions, accompanying guidance and policy, and current practices in the core areas of the water quality standards program. Each section of the ANPRM identifies issues that have been raised to EPA that come out of the collective experiences of States, Tribes, cities, industry and environmental advocates, as well as EPA's experience. The issue discussions are followed by specific questions that are intended to elicit focused comments. It is important for commenters to focus on these specific questions as a vehicle for developing comments. It is equally important for commenters to develop ideas that address the three objectives above in a more general sense and to identify the five to seven highest priority issues the commenter believes EPA should address in a follow-on regulatory proposal. EPA welcomes ideas on how the water quality standards regulation, policy and or guidance can be revised to facilitate water quality management on a watershed basis. In requesting comment on eliminating barriers to and facilitating implementation of watershed-based water quality planning and management, EPA directs commenters' attention primarily to the sections on designated uses, criteria, antidegradation, mixing zones and independent application. In requesting comment on how to facilitate use of new, more integrated water quality assessment and criteria science in water quality standards, EPA directs commenters' attention primarily to the sections on biological criteria, and independent application. In requesting comment on how to improve the efficiency and effectiveness (including cost-effectiveness) of the water quality standards program, all sections of the ANPRM are relevant for review.

EPA seeks a water quality standards program that protects the nation's waters as envisioned in the CWA, that establishes requirements that are necessary to attain and maintain healthy and sustainable ecosystems, and that is flexible enough for States and Tribes to protect water quality and at the same time avoid costly requirements that have little or no environmental benefit.

Below is a brief summary outline of the potential changes to the water quality standards program and

regulation that are discussed and considered in this ANPRM. The list of potential changes includes the potential changes to the program and regulation on which EPA is specifically requesting comment. Each area of potential change is discussed in detail in the specified section of the ANPRM. It is possible that EPA will ultimately propose some of the changes outlined below. It is also possible that EPA will conclude based on the public comments it receives that some or all of the issues presented in the ANPRM can be best addressed through non-regulatory mechanisms such as guidance or policy.

A. Uses

1. Refinement of use designations to achieve increased specificity in aquatic life and recreation uses being protected.

2. Minimum elements of a use attainability analysis (UAA).

3. When is UAA required/not required?

a. UAAs whenever an aquatic life use is designated (beyond fishable/swimmable) to see if the use reflects the highest potential for the water body.

b. Periodic review of marginal or limited aquatic life use designations.

c. When is a use considered attainable?

d. Conditions under which refinements in designated uses may be considered actions not requiring analysis to support use removal and alternatively the conditions under which such action is considered a use removal requiring justification under § 131.10(g).

e. Circumstances under which UAA is required and circumstances under which UAA must be reviewed.

4. Removal of designated uses.

a. Minimum aquatic life uses for all waters, because even degraded water bodies support some form of aquatic life.

b. Evaluate use removal provision at § 131.1(10)(g) allowing removal of a use due to the existence/operation of a dam.

c. Clarify whether the physical factors reason for removing a use includes removal of a recreational use due to poor physical access to the water. Alternatively, the removal of a use for physical factors could be limited to aquatic life uses only.

d. Clarify in § 131.10 that at least one of the six use removal criteria must be met to remove any use, not just aquatic life and recreation uses.

5. Alternatives to use downgrade such as variances, temporary standards and ambient-based criteria.

a. Recognize site-specific criteria set to natural background levels as a permissible alternative to use downgrade.

b. Recognize site-specific criteria set to irreversible anthropogenic background levels as a permissible alternative to use downgrade.

B. Criteria

1. Ambient Water Quality criteria for Aquatic Life Protection.

a. Examination and possible interim revisions to EPA recommendations on the duration and frequency of criteria excursions to account for organism response model and population response model.

2. Site-specific criteria and procedures.

a. Specify that States and Tribes must have regulatory procedures for establishing site-specific criteria.

b. Minimum requirements for development of site-specific criteria.

3. Narrative criteria and interpretation procedures.

a. Identify additional methods for implementation of narrative criteria.

b. Clarify that States and Tribes are required to adopt narrative criteria for all waters. (all States already have).

4. Codification of CWA requirement to adopt numeric toxics criteria.

a. Define ''reasonable expectation'' under 303(c)(2)(B). (''States and Tribes may adopt numeric chemical-specific criteria for those stream segments where the State or Tribe determines that the priority toxic pollutants for which EPA has issued CWA section 304(a) criteria guidance are present and can reasonably be expected to interfere with designated uses.'' emphasis added)

5. Chemical criteria beyond priority pollutants.

a. Develop and recommend or require criteria for certain non-priority pollutants.

6. Numeric values in the absence of criteria or data sufficient for criteria.

a. States and Tribes develop method for derivation of alternative values where minimum data requirements for criteria not satisfied. Specific EPA derivation procedure or guidelines.

7. Require or recommend that State and Tribes adopt numeric toxicity criteria.

8. Sediment quality criteria.

a. Require or recommend that States and Tribes adopt sediment criteria (narrative or numeric).

b. Specify in regulation that States and Tribes have the flexibility to adopt sediment quality criteria.

9. Biological criteria.

a. Require or recommend that States and Tribes adopt biological criteria (narrative or numeric).

b. Specify in regulation that States and Tribes have the flexibility to adopt biological criteria.

c. Specify linkage between biological criteria and stressor identification.

10. Wildlife Criteria.

a. Recognize in regulatory text that wildlife criteria are valid forms of water quality criteria.

b. Recognize in regulatory text that wildlife criteria endpoints other than bioaccumulation endpoints are valid bases for wildlife criteria.

11. Physical criteria: Existing and potential future role of.

a. Identify physical criteria such as habitat (including clean sediment) and hydrologic balance criteria in 40 CFR 131 as valid forms of criteria that States and Tribes can adopt in their water quality standards.

12. Human Health Criteria.

a. Higher fish consumption assumptions for site-specific or regional situations when subpopulations that are highly exposed have been identified.

b. Clarification of the use of MCLs and MCLGs in State and Tribal water quality standards.

C. Antidegradation

1. Minimum elements of State and Tribal antidegradation implementation procedures.

a. Revise regulation to include the minimum elements of a State and Tribal antidegradation implementation method.

b. Revise the regulation to explicitly say that State and Tribal antidegradation implementation procedures (in addition to just the policy) must be submitted in triennial review package and are reviewable by EPA.

2. Tier 1 protection (protection of existing uses).

a. Define or clarify what constitutes loss of an existing in-stream water use.

b. Specify that a clear approach to maintaining and protecting existing uses that may not be adequately protected by strict application of water quality criteria is a required element of an antidegradation implementation procedure.

3. Waters covered by tier 2 level protection.

a. Clarify waters subject to tier 2 level protection.

b. Clarify tier 2 provision requiring all cost effective and reasonable best management practices for nonpoint sources prior to allowing a lowering of water quality.

c. Clarify that States and Tribes are to consider the 303(d) listing status of a water body, and the information supporting that status, when determining whether a proposed activity that is expected to degrade water quality in that water body can be authorized under tier 2 of the State's or Tribe's antidegradation provisions.

4. Outstanding national resource water (ONRW) classification, level of protection, and public role in nominating.

a. Public nomination of ONRWs.

b. Level of protection afforded to ONRWs.

5. Creation of Antidegradation tier 2.5.

a. Revise the regulation to explicitly recognize tier 2.5 protection.

D. Mixing Zone Policy and Implementation Procedures

1. Specify that, to use mixing zones, States and Tribes must indicate in their water quality standards whether they allow mixing zones, conditions under which mixing zones are allowed, minimum requirements for mixing zones.

2. Procedures and decision criteria used in addressing complete and incomplete mixing.

3. Site-specific technical justification for rapid and complete mix assumption.

4. State and Tribe policies and procedures to address rate of mixing.

5. Clarify in regulation that narrative criteria apply in mixing zones.

6. Restrict Mixing zones for bioaccumulative chemicals of concern.

E. Applicability of Water Quality Standards to Wetlands

1. Clarify in 40 CFR Part 131 that wetlands with interstate commerce connection are waters of the U.S. requiring water quality standards.

F. Evaluation of EPA Policy of Independent Application (IA)

1. Increase use of chemical, toxicological, physical and biological data in making water body assessments in a consistent and scientifically defensible manner.

2. Specify how, and the circumstances under which, different forms of assessments (chemical, toxicological, physical and biological) can be used together to determine:

a. When a designated aquatic life use is or is not attained,

b. The type and value of criteria that should apply to a water, and

c. When water quality-based effluent limits are required in a permit.

3. Specify the adequate data base and level of rigor necessary in biological assessments to support a determination of full use support despite differences in assessment results.

In addition to the potential program and regulation changes outlined above, EPA is also requesting comment on the costs and benefits and potential reporting and record keeping requirements that might be associated with these changes. These issues are discussed more fully in the next section.

V. Regulatory Assessment Requirements

A. Executive Order (E.O.) 12866, Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

While this advance notice of proposed rule making establishes no regulatory requirements it could ultimately result in a rule that would satisfy one or more of the above criteria. It has therefore been determined that this action is a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866. As such this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

Under the terms of E.O. 12866, EPA is to prepare for any significant regulatory action an assessment of its potential costs and benefits. If that action satisfies the first of the criteria listed above, this assessment must include, to the extent feasible, a quantification of these costs and benefits, the underlying analyses supporting such quantification, and an assessment of the costs and benefits of reasonably feasible alternatives to the planned regulation. Because the purpose of this notice is to initiate a structured national debate on a broad set of issues rather than to propose specific regulatory changes, it is not feasible to quantify the costs and benefits of any resulting regulations at this time. The Agency is aware, however, that this notice could lead to a regulatory action for which the preparation of a quantitative assessment of costs and benefits would be appropriate. The Agency is thus requesting comment on the costs and benefits of any of the possible regulatory changes discussed in this notice, as well as on appropriate methodologies for assessing them. The Agency would be particularly interested to hear from States and Tribes that may already have experience implementing some of the measures discussed in this Notice and may already have prepared analyses of the costs and/or benefits of such measures. Other members of the public are also encouraged to submit any data they may have on the costs and benefits of specific measures (e.g., conducting biological assessments).

B. The Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

Under the RFA, (5 U.S.C. 601 *et seq.*), as amended by SBREFA, for proposed rules, EPA generally is required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if the Administrator for the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an IRFA. The requirement applies to proposed rules only and as this notice is an ANPRM, these requirements do not apply to this notice.

C. Paperwork Reduction Act

Under the implementing regulations for the Paperwork Reduction Act, an agency is required to certify that any agency-sponsored collection of information from the public is necessary for the proper performance of its functions, has practical utility, is not unnecessarily duplicative of information otherwise reasonably accessible to the agency, and reduces to the extent practicable and appropriate the burden on those required to provide the information (5 CFR 1320.9). Any proposed collection of information must be submitted, along with this certification, to the Office of Management and Budget for approval before it goes into effect. Most of the potential regulatory changes discussed in this Notice could entail new reporting and record keeping requirements for States and Tribes and/or members of the regulated public. EPA

is interested in comments on any and all aspects of these potential paperwork requirements, and in particular on how they should be structured to fulfill the requirements that they have practical utility, are not unnecessarily duplicative of other available information, and are the least burdensome necessary to satisfy the purposes of the Water Quality Standards Program.

Dated: June 25, 1998.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 98–17513 Filed 7–6–98; 8:45 am]

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Federal Register

Tuesday
July 7, 1998

Part III

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards for Rehabilitation Research and Training Centers Fiscal Year (FY) 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards for Rehabilitation Research and Training Centers for Fiscal Year (FY) 1998

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On June 23, 1998 a notice inviting applications for new awards for Rehabilitation Research and Training Centers (RRTCs) for FY 1998 was published in the **Federal Register** (63 FR 34233). This notice corrects the maximum award amount per year for three of the RRTCs as indicated in the following table:

APPLICATION NOTICE FOR FISCAL YEAR 1998 REHABILITATION RESEARCH AND TRAINING CENTERS, CFDA NO. 84–133B

Funding priority	Maximum award amount (per year)*
Disability and Employment Policy	$900,000

APPLICATION NOTICE FOR FISCAL YEAR 1998 REHABILITATION RESEARCH AND TRAINING CENTERS, CFDA NO. 84–133B—Continued

Funding priority	Maximum award amount (per year)*
State Service Systems	700,000
Workplace Supports	700,000

***Note:** The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, Room 3423, Switzer Building, 600 Maryland Avenue, SW, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna__Nangle@ed.gov

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Authority: 29 U.S.C. 760–762.

Dated: June 30, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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Part IV

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Available Cyanide; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–6121–5]

RIN 2040–AC76

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Available Cyanide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed regulation would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under Section 304(h) of the Clean Water Act by adding Method OIA–1677: Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry. Method OIA–1677 employs flow injection analysis (FIA) to measure ''available cyanide.'' Method OIA–1677 is being proposed as an additional test procedure for measuring the same cyanide species as are measured by currently approved methods for cyanide amenable to chlorination (CATC). In some matrices, CATC methods are subject to significant test interferences. In contrast, Method OIA–1677 demonstrates greater specificity for cyanide for matrices in which interferences have been encountered using CATC methods. In addition, Method OIA–1677 measures cyanide at lower concentrations and offers improved precision and accuracy over currently approved CATC methods. Method OIA–1677 also offers improved laboratory safety and reduces laboratory waste compared to currently approved CATC methods. This significantly reduces the generation of hazardous waste by the laboratory. Cyanide analysis by Method OIA–1677 is also more rapid than by currently approved methods.

DATES: Comments on this proposal must be submitted on or before September 8, 1998.

ADDRESSES: Send written comments on the proposed rule to ''Method OIA–1677'' Comment Clerk (Docket #W–98–08); Water Docket (4101); Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460. Commenters are requested to submit any references cited in their comments. Commenters are also requested to submit an original and 3 copies of their written comments and enclosures. Commenters that want receipt of their comments acknowledged should include a self addressed, stamped envelope. All comments must be postmarked or delivered by hand. No facsimiles (faxes) will be accepted.

Data available: A copy of the supporting documents cited in this proposal is available for review at EPA's Water Docket; 401 M Street, SW, East Tower Basement, Washington, DC 20460. For access to docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. An electronic version of Method OIA–1677 will be available via the Internet at http://www.epa.gov/OST/Tools.

FOR FURTHER INFORMATION CONTACT: Dr. Maria Gomez-Taylor, Engineering and Analysis Division (4303), USEPA Office of Science and Technology, 401 M Street, SW, Washington, DC 20460, or call (202) 260–1639.

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, the NPDES permitting authority, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has ''approved'' standardized testing procedures (i.e., promulgated through rulemaking) for a given pollutant, the NPDES permit must include one of the approved testing procedures or an approved alternate test procedure. Therefore, entities with NPDES permits could be affected by the standardization of testing procedures in this rulemaking. These entities may be affected because NPDES permits may incorporate one of the standardized testing procedures in today's rulemaking. In addition, when a State, Territory, or authorized Tribe provides certification of federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the standardized testing procedures. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
State and Territorial Governments and Indian Tribes	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401; Governmental NPDES permittees.
Industry	Industrial NPDES permittees.
Municipalities	Publicly-owned treatment works with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. 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.

I. Authority

Today's proposal is pursuant to the authority of sections 301, 304(h), and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1314(h), 1361(a) (the ''Act''). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act.'' Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his function under this Act.'' The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, § 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, §§ 403.10 and 402.12).

II. Background

A. Cyanide

Cyanides are, as a class, one of the toxic pollutants pursuant to section 307(a)(1) of CWA (see the list of toxic pollutants at 40 CFR 401.15). Total cyanide is a priority pollutant as derived from the toxic pollutant list (see 40 CFR Part 423, Appendix A).

In the context of analytical methods, cyanide or cyanides refers to the group of simple and complex chemical compounds that can be determined as cyanide ion (CN^-). Cyanides are of the form $A(CN)_X$, where A is an alkali such as sodium or potassium, or a metal such as calcium, and x is the number of CN groups attached to A. Cyanides are present in aqueous solutions as CN^- and as hydrocyanic acid (HCN or hydrogen cyanide). The proportion of CN^- and HCN in solution is dependent on the pH and the dissociation constant for HCN. At low pH, the cyanide exits as HCN; at high pH, it exists as CN^-. At the near-neutral or slightly acidic pH of most natural waters, nearly all cyanide is present as HCN. Most of the metal cyanides are insoluble or only slightly soluble in water but may form a variety of soluble cyanide complexes when a cyanide such as potassium or sodium cyanide is present.

Hydrogen cyanide is the cyanide species most toxic to aquatic life. The toxicity of the other cyanides is attributable to the degree of their dissociation and conversion to HCN. Some cyano-metal complexes, such as those of zinc and cadmium, dissociate almost totally (i.e., a knowledge of the complex can be used to determine the amount of cyanide). Other cyano-metal complexes, such as those of iron, dissociate little. For these complexes, a large amount can be present without cyanide being detected. Still, other complexes, such as mercury, nickel, and silver, dissociate partially and only under certain conditions. For complexes that release some, but not all, of the cyanide ion, the amount of dissociation must be known to determine the amount of cyanide. This total, partial, or near lack of dissociation presents a difficulty in the determination of cyanides, as explained below.

B. Need for Improved Methods for Cyanide

Methods proposed in Guidelines Establishing Test Procedures for the Analysis of Pollutants under section 304(h) of the Clean Water Act are listed at Title 40 of the Code of Federal Regulations, § 136.3. EPA had received numerous letters and comments regarding interference problems when the currently approved methods were used to test certain sample matrices and was therefore aware of the need for a cyanide method that reduced or eliminated these interferences. A method for measuring available cyanide by flow injection analysis (FIA) had been developed by ALPKEM in cooperation with the University of Nevada at Reno, Mackay School of Mines in 1995. Besides overcoming most matrix effect problems, Method OIA–1677 uses amperometry as an innovative technology to improve the detection of available cyanide. Method OIA–1677 is faster, more accurate and precise, and allows determination of available cyanide at lower concentrations than currently approved methods. Method OIA–1677 is also safer because it requires a smaller amount of a potentially hazardous sample, requires less manual operations where accidents could lead to exposure, and uses less hazardous substances in the sample preparation and determinative steps.

C. Methods for Determination of Cyanide

Methods presently approved at 40 CFR Part 136 measure cyanide in two ways: as ''total cyanide'' and ''cyanide amenable to chlorination'' (CATC). A third way is as ''weak-acid dissociable'' (WAD) cyanide but there is presently no approved method for WAD cyanide in 40 CFR Part 136. Methods for determination of total cyanide attempt to measure all cyanide species that may dissociate in the environment over time and when exposed to natural forces (e.g., heat, light, water of varying hardness, pH) but ultimately fail to do so because many species cannot be dissociated completely under normal laboratory conditions. The CATC and WAD methods, and Method OIA–1677, which employs ligand exchange, all attempt to measure ''available'' cyanide, i.e., cyanide species that dissociate in the presence of chlorine and/or acid. The species of cyanide measured by these methods are cyanide ion (CN^-), hydrogen cyanide (HCN), and the cyano-complexes of zinc, copper, cadmium, mercury, nickel, and silver. The net result is that the WAD, CATC, and OIA–1677 methods all measure nearly the same species of cyanide. The term ''available cyanide'' is used in Method OIA–1677 because the chlorination reaction used in the CATC methods is not employed, although the cyanides determined are the same.

Methods for total cyanide employ reflux distillation in the presence of sulfuric acid and magnesium chloride to dissociate CN_- from cyanide-metal complexes. This process is more vigorous than the dissociation processes used in the WAD, CATC, and ligand-exchange methods, and a greater number of cyanide species are dissociated in the distillation process. The HCN liberated during the distillation is captured in an aqueous solution of sodium hydroxide and the cyanide in the solution is determined spectrophotometrically or titrimetrically.

Cyanide amenable to chlorination (CATC) is determined by chlorinating the available cyanide in the sample using calcium hypochlorite ($Ca(OCl)_2$), measuring the HCN using the total procedure, and finding the CATC concentration by difference between the total cyanide measured before and after the chlorination.

Available cyanide is determined in Method OIA–1677 by flow injection, ligand exchange, and amperometric detection. The ligand-exchange reagents displace cyanide from cyano-metal complexes. Further details of Method OIA–1677 are given in a description of the method below.

As stated above, no method measures all species of cyanides because several species (such as cobalt and gold cyanides) are so stable that they are either not dissociated or are only slightly dissociated in the reflux distillation or chlorination processes. Method OIA–1677 and CATC methods measure easily dissociable and partially dissociable species. Most notable among the partially dissociable species are the certain cyanides of nickel, mercury, and silver when these cyanides are present at high concentrations (ca 2 mg/L). These cyanides are recovered in the range of 55—85 percent in the CATC methods. In contrast, these species are recovered completely in Method OIA–1677, and this is the significant difference between the performance of Method OIA–1677 and approved methods for CATC. As a result, if a sample contains high concentrations of certain cyanides of nickel, mercury, or silver, the result will be somewhat higher when Method OIA–1677 is used, provided no interferences are present. At concentrations below approximately 0.2 mg/L, the recoveries of these cyanides from CATC methods and Method OIA–1677 are all approximately equivalent and near 100 percent.

D. Effect of Interferences on Cyanide Methods

The CATC determination is highly susceptible to interferences, as many substances other than cyanides can react in the chlorination process. For an overview of the nature and magnitude of these interferences, see the paper

presented by Goldberg, et. al. at the Seventeenth Annual EPA Conference on Analysis of Pollutants in the Environment, May 3–5, 1994 (available from the EPA Sample Control Center, 300 N. Lee Street, Alexandria, VA 22314 (703–519–1140). Interferences in the CATC determination may be by thiocyanate (SCN^-), sulfide (S^{2-}), carbonates (HCO_3^-, CO_3^{2-}), nitrite (NO_2^-), oxidants (ClO_4^-, O_3, H_2O_2), bisulfite (HSO_3^-), formaldehyde (HCHO), surfactants, and metals. Method OIA–1677 is either not susceptible to these interferences or contains procedures that eliminate these interferences or mitigate their effects. The reason that this method is much less susceptible to interferences than the approved CATC methods is that the chlorination reaction is not employed. Rather, the aqueous sample passes a gas diffusion membrane through which the HCN diffuses, as explained in greater detail in the later section of this preamble that describes Method OIA–1677. With approval of Method OIA–1677, EPA believes that most of the reported interference problems in the determination of cyanide would be overcome.

Interferences in the CATC methods normally produce an inflated result for cyanide and, in many instances, the measured level exceeds the concentration for total cyanide, potentially providing a more controversial result in some regulatory contexts. Because Method OIA–1677 is nearly immune to the interferences that inflate results from CATC methods, the result of an analysis using Method OIA–1677 will nearly always be lower, and therefore closer to the true value for cyanide than a result from an analysis using a CATC method. The only exception may be for an analysis in which interferences are not present but certain cyanides of nickel, mercury, or silver are present at high concentrations, as described above. Therefore, the tradeoff in use of Method OIA–1677 versus presently approved CATC methods is that, with Method OIA–1677, there is a reduced susceptibility to interferences, whereas with approved CATC methods, there is a somewhat decreased result if certain cyanides of nickel, mercury, or silver are present at high concentrations. EPA believes that the tradeoff heavily favors use of Method OIA–1677 based on the expected susceptibility of CATC methods to interferences combined with the small probability that a cyanide of nickel, mercury, and silver will be present at a high concentration and be the dominant cyanide in a given discharge. Dominance is important because if a cyanide of nickel, mercury, or silver is present at a concentration that is small in comparison to another cyanide present, the effect on the measured cyanide concentration will be diminished in proportion to the concentration relative to the other cyanide.

Because the lowest result for a given cyanide determination can be produced by either Method OIA–1677 or by a presently approved CATC method, dischargers will likely choose the method that produces the lowest result. The adverse environmental impact to choosing presently approved CATC methods is that not all of the nickel, mercury, or silver cyanide will be recovered (and measured), if any of these cyanides are present.

E. Regulatory Effects of Use of Different Methods

A regulatory problem may occur when a sample of a given discharge is split and a discharger chooses Method OIA–1677 and a regulatory authority chooses an approved CATC method (or vice versa) and one result shows a violation of a permit limit and the other does not. EPA believes that the difference can be worked out in technical discussions between the discharger and the regulatory authority based on the data produced. If these data show that an interference was present, Method OIA–1677 will likely produce the lower result and this result should be relied upon. On the other hand, if the discharger knows that nickel, mercury or silver cyanide is present in the discharge in high concentration and is dominant, the result from the CATC method would be appropriate because it is most consistent with the method used for permit development. Further, it is unlikely that a discharger would select Method OIA–1677 if it knew that a cyanide of nickel, mercury, or silver was present at high concentration, unless interferences were so large that they overwhelmed the effect of the greater recovery. The concern would then be that the regulatory authority employed Method OIA–1677, not knowing that a cyanide of nickel, mercury, or silver was present at a high concentration and dominant in the discharge. However, the discharger could inform the regulatory authority of this presence and may rely upon the text in this preamble and in the technical literature to convince the regulatory authority that the violation is a result of the regulatory authority's use of Method OIA–1677. Finally, EPA believes that occurrences of this problem will be rare and it is more likely that use of Method OIA–1677 will produce a lower result because it is nearly interference free.

F. Analysis Time

The reflux distillation procedure required by CATC methods, including setup and measurement, takes approximately two hours to perform. Therefore, determination of CATC takes approximately four hours of analysis time. In contrast, Method OIA–1677 takes approximately two minutes to perform. This difference will be especially significant for laboratories performing many CATC analyses.

III. Summary of Proposed Rule

A. Introduction

This proposed rule would make available at part 136 an additional test procedure for measurement of available cyanide. Currently approved methods for measurement of available cyanide are based on sample chlorination. Method OIA–1677 as proposed today uses a flow injection/ligand exchange technique to measure available cyanide. Although Method OIA–1677 and chlorination methods both measure available cyanide, it is possible that the results produced by the two techniques will vary slightly, as detailed above. EPA offers Method OIA–1677 as another testing procedure for a variety of purposes including: permit applications and compliance monitoring under the National Pollutant Discharge Elimination System (NPDES) under CWA Section 402; ambient water quality monitoring; CWA Section 401 certifications; development of new effluent limitations guidelines, pretreatment standards, and new source performance standards in EPA's water programs; and for general laboratory use. This rulemaking does not propose to repeal any of the currently approved methods that test for available cyanide. For NPDES permits, the permitting authority should decide which method is appropriate for the specific NPDES permit based on the circumstances of the particular effluent measured. If the permitting authority does not specify the method to be used for the determination of available cyanide, a discharger would be able to use Method OIA–1677 or any of the presently approved CATC methods.

B. Summary of Proposed Method OIA–1677

Method OIA–1677 is divided into two parts: sample pretreatment and cyanide quantification via amperometric detection. In the sample pretreatment step, ligand-exchange reagents are

added to a 100–mL sample. The ligand-exchange reagents displace cyanide ions (CN^-) from weak and intermediate strength metallo-cyanide complexes.

In the flow-injection analysis system, a 200–µL aliquot of the pretreated sample is injected into the flow injection manifold. The addition of hydrochloric acid converts cyanide ion to hydrogen cyanide (HCN). The hydrogen cyanide diffuses through a membrane into an alkaline receiving solution where it is converted back to cyanide ion (CN^-). The amount of cyanide ion in the alkaline receiving solution is measured amperometrically with a silver working electrode, silver/silver chloride reference electrode, and platinum counter electrode at an applied potential of zero volt. The current generated in the cell is proportional to the concentration of cyanide in the original sample, as determined by calibration.

C. Comparison of Method OIA–1677 to Current Methods

Methods currently approved for determination of available cyanide all test for CATC. Although they represent the best methods available to date, these methods are prone to matrix interference problems. EPA considers Method OIA–1677 to be a significant addition to the suite of analytical testing procedures for available cyanide because it (1) has greater specificity for cyanide in matrices where interferences have been encountered using currently approved methods, (2) has improved precision and accuracy compared to currently approved CATC cyanide methods, (3) measures available cyanide at lower concentrations, (4) offers improved analyst safety, (5) shortens sample analysis time, and (6) reduces laboratory waste.

Method OIA–1677 is not subject to interferences from organic species. The flow-injection technique of Method OIA–1677 excludes all interferences, except sulfide. Sulfide is eliminated by treating the sample with lead carbonate and removing the insoluble lead sulfide by filtration prior to introduction of the sample to the amperometric cell used for cyanide detection.

Method OIA–1677 was tested against two existing cyanide methods: Method 335.1, an EPA-approved CATC method, and Standard Method (SM) 4500 CN^- I, a weak-acid dissociable (WAD) cyanide method. Comparative recovery and precision data were generated from simple metallo-cyanide species in reagent water. Recovery and precision of each method was comparable for the easily dissociable cyanide species. Method OIA–1677 showed superior precision and recoveries of mercury cyanide complexes.

While Method 335.1 does not specify a method detection limit, colorimetric detection is ''sensitive'' to approximately 5 µg/L. The method detection limit (MDL; described at 40 CFR part 136, Appendix B) is 0.5 µg/L for Method OIA–1677, as determined in a multi-laboratory study.

Method OIA–1677 offers improved analyst safety for two reasons. The first reason centers on the generation of hydrogen cyanide gas, a highly toxic compound. Although the proposed flow-injection analysis (FIA) method and currently approved CATC methods all generate HCN, the currently approved methods generate a larger quantity of gas during distillation in an open distillation system. As such, extra care must be taken to prevent accidental release of HCN into the laboratory atmosphere. Method OIA–1677, because it tests a much smaller sample, generates significantly less HCN. In addition, the gas is contained in a closed system with little possibility for release. The second reason for improved safety centers on the use of hazardous substances. Currently approved CATC methods require use of hazardous substances in the distillation and color developing processes. These hazardous substances include hydrochloric acid, pyridine, barbituric acid, chloramine-T, and pyrazolone. Method OIA–1677 requires only hydrochloric acid at a much lower concentration than is used in CATC procedures.

Method OIA–1677 offers a reduced analysis time which should increase sample throughput in the laboratory. Method OIA–1677 uses an automated mixing of the sample with hydrochloric acid and exposure to the gas diffusion membrane in order for the sample concentration to be determined. This process takes approximately two minutes per sample. As a comparison, Method 335.1 requires a one-hour distillation procedure plus the time necessary to add and develop the sample color to determine the presence of cyanide.

Less laboratory waste is generated in Method 1667 because it requires a much smaller sample size for testing. Method 335.1 requires handling a sample size of 500 mL for distillation. Method OIA–1677 requires the addition of the ligand exchange reagents to 100 mL of sample, from which 40–250 µL is used for analysis. This reduces the amount of both hazardous sample and toxic reagents that must be handled and subsequently disposed.

D. Quality Control

The quality control (QC) in Method OIA–1677 is more extensive than the QC in currently approved methods for CATC. Method OIA–1677 contains all of the standardized QC tests proposed in EPA's streamlining initiative (62 FR 14976) and used in the 40 CFR part 136, Appendix A methods. An initial demonstration of laboratory capability is required and consists of: (1) An MDL study to demonstrate that the laboratory is able to achieve the MDL and minimum level of quantification (ML) specified in Method OIA–1677; and (2) an initial precision and recovery (IPR) test, consisting of the analysis of four reagent water samples spiked with the reference standard, to demonstrate the laboratory's ability to generate acceptable precision and recovery. An important component of these and other QC tests required in Method OIA–1677 is the use of mercuric cyanide ($Hg(CN)_2$) as the reference standard for spiking. Mercuric cyanide was chosen because it is fully recovered in Method OIA–1677 and weak-acid dissociable (WAD) methods, whereas mercuric cyanide is only partially recovered in the CATC method. Therefore, mercuric cyanide demonstrates the ability of the ligand-exchange reagents to liberate cyanide from moderately strong metal-cyano complexes. Method OIA–1677 requires the use of standards of known composition and purity, which facilitates more accurate determination of recovery and precision and minimizes variability that may be introduced from spiking substances of unknown or indeterminate purity.

Ongoing QC consists of the following tests that would need to accompany each analytical batch, i.e., a set of 10 samples or less pretreated at the same time:

- Verification of calibration of the flow injection analysis/amperometric detection system, to verify that instrument response has not deviated significantly from that obtained during calibration.
- Analysis of a matrix spike (MS) and matrix spike duplicate (MSD) to demonstrate method accuracy and precision and to monitor matrix interferences. $Hg(CN)_2$ is the reference standard used for spiking.
- Analysis of a laboratory blank to demonstrate freedom from contamination.
- Analysis of a laboratory control sample to demonstrate that the method remains under control.

Method OIA–1677 contains QC acceptance criteria for all QC tests. Compliance with these criteria allows a

data user to evaluate the quality of the results. This increases the reliability of results and provides a means for laboratories and data users to monitor analytical performance, thereby providing a basis for sound, defensible data.

E. Performance-based Measurement System

On October 6, 1997, EPA published a Notice of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all of its programs to the extent feasible (62 FR 52098). The Agency is currently determining the specific steps necessary to implement PBMS in its programs and preparing an implementation plan. Final decisions have not yet been made concerning the implementation of PBMS in water programs. However, EPA is currently evaluating what relevant performance characteristics should be specified for monitoring methods used in the water programs under a PBMS approach to ensure adequate data quality. EPA would then specify performance requirements in its regulations to ensure that any method used for determination of a regulated analyte is at least equivalent to the performance achieved by other currently approved methods. Our expectation is that EPA will publish its PBMS implementation strategy for water programs in the **Federal Register** by the end of calendar year 1998.

Under PBMS, the analyst would have flexibility to modify Method OIA–1677 or to use another method for the determination of available cyanide provided the analyst demonstrates that the performance achieved is at least equivalent to the approved method(s). Since inter-laboratory performance data exists for Method OIA–1677, EPA is proposing that these data be used to specify what performance characteristics would be required for measurement of available cyanide under PBMS. EPA is considering the following performance requirements for the use of modified or alternative methods for the measurement of available cyanide: (1) it measures the same cyanide species; (2) it achieves an MDL that is equal or less than the MDL in Method OIA–1677, or one-third the regulatory compliance level, whichever is greater; and (3) it meets all the performance criteria specified in Table 1 of Method OIA–1677 (initial precision and recovery, on-going precision and recovery, calibration verification, and matrix spike/matrix spike duplicate). The process for demonstrating acceptable performance is specified in Section 9 of the method.

Once EPA has made its final determinations regarding implementation of PBMS in programs under the Clean Water Act, EPA would incorporate specific provisions of PBMS into its regulations, which may include specification of the performance characteristics for measurement of available cyanide and for other regulated pollutants in the water program regulations.

EPA requests public comments on whether the performance characteristics identified above (see Method OIA–1677 for performance criteria) would be relevant performance characteristics under PBMS, and whether there are other performance requirements that the Agency should consider under PBMS for the measurement of available cyanide.

IV. Validation of the Method OIA–1677

ALPKEM developed the version of Method OIA–1677 proposed today according to procedures set forth in EPA's *Guide to Method Flexibility and Approval of EPA Water Methods* (EPA–821–D–96–004, December 1996) which is available from the EPA's Water Resource Center (phone: 202–260–7786). The version of Method OIA–1677 proposed today responds to comments from users of earlier versions, results of the intra- and interlaboratory studies, as well as results from several single-laboratory MDL studies.

A. Intralaboratory Validation Study Results

Prior to interlaboratory testing, ALPKEM conducted a single-laboratory validation study both to refine the method and to demonstrate the method's specificity and selectivity. Those study results, described briefly here, are detailed in the *Report of the Draft Method OIA–1677 Single Laboratory Validation Study* that is included in the docket for this proposed rule.

The single-laboratory study consisted of three sets of tests to establish (1) the ability of Method OIA–1677 to identify the various species of ''free'' metallo-cyanide complexes, (2) the ability of Method OIA–1677 to identify cyanide in the presence of interferences, and (3) the recovery and precision of Method OIA–1677 compared to EPA Method 335.1 and SM 4500 CN–I. To determine Method OIA–1677's identification of ''free'' metallo-cyanide complexes, two different concentrations of 11 different metallo-cyanide complexes were each analyzed individually in triplicate, for a total of 66 analyses. Method OIA–1677 yielded recoveries ranging from 97 to 104 percent for six of the eleven complexes (cadmium, copper, mercury, nickel, silver, and zinc). However, as with the currently approved methods for available cyanide, Method OIA–1677 did not determine cyanide in iron, gold, and cobalt cyanide complexes.

To test the ability of Method OIA–1677's to identify cyanide in the presence of other species, two different concentrations of 11 interferents were analyzed in triplicate for a single cyanide test solution, resulting in a second set of 66 analyses. Even in the presence of these interferents, cyanide recoveries ranged from 99 to 103 percent.

To compare the performance of Method OIA–1677 to the performance of approved methods, 2 different concentrations of the same 11 ''free'' metallo-cyanide complexes given above were analyzed individually in triplicate by the EPA-approved CATC Method 335.1, SM 4500 CN–I, and Method OIA–1677. This resulted in a third set of 66 data points. These results show improved recoveries and reduced relative standard deviations for Method OIA–1677 compared to both the SM 4500 CN–I and the CATC methods for selected analytes. For the mercury cyanide complexes, recovery improved from 59 percent for SM 4500 CN–I to 99 percent for Method OIA–1677. High levels of interferences in the nickel and silver determinations showed similar improvements over the CATC method. However, data for zinc, cadmium, copper were comparable among the three cyanide procedures. There was no recovery and thus no method improvement for cobalt, gold, or iron cyanide complexes.

B. Interlaboratory Validation Study Results

In association with the Analytical Methods Staff (AMS) in EPA's Office of Water, ALPKEM conducted an interlaboratory validation study. Those study results, briefly described here, are detailed in a report titled, *The Interlaboratory Validation of Method OIA–1677,* and are included in the docket for this proposed rule.

The purpose of the interlaboratory study was (1) to confirm the performance of Method OIA–1677 in multiple laboratories, (2) to assess Method OIA–1677 interlaboratory data variability, and (3) to develop Method OIA–1677 QC acceptance criteria.

Nine laboratories participated in the interlaboratory method validation study, working cooperatively as the WAD Cyanide Round Robin Group. Each laboratory analyzed an identical set of nine field samples using Method OIA–1677. These field samples were

collected from nine different effluents ranging from a publicly owned treatment works (POTW) to an industry likely to contain cyanide in its effluent. Each sample was analyzed in triplicate using the FIA procedure for a total of 243 analyses (9 laboratories × 9 samples in triplicate).

Along with the analysis of the field samples, each laboratory performed all required QC analyses, including initial calibration, calibration verification, determination of initial precision and recovery, blank analysis, determination of ongoing precision and recovery (OPR), determination of matrix spike recovery and matrix spike duplicate recovery (MS/MSD) in each sample type, assessment of recovery of cyanide as $Hg(CN)_2$ spiked into samples (ligand-exchange reagent performance check or LERPC). In addition, each laboratory performed an MDL study.

The relative standard deviation (RSD) of results across all laboratories and all samples was 12 percent. The mean sample recoveries across all effluent types tested was 96 percent, and the MS and MSD mean recoveries were 99 percent across all effluent types tested. These results exceed generally accepted norms for analytical chemistry results.

Prior to collection of interlaboratory data, one study participant submitted comments that focused on the difficulty in addition of the proper amounts of WAD A & WAD B ligand-exchange reagents to a sample. The difficulty occurred because of the variability of drop size. The method was modified to designate a specific volume of ligand-exchange reagent rather than a certain number of drops. The modified method was distributed to interlaboratory study participants prior to testing.

C. Development of Quality Control Acceptance Criteria

Data from the interlaboratory study were used to develop QC acceptance criteria for Method OIA–1677. Laboratory procedures and QC calculations are fully described in the interlaboratory study report. Criteria were developed for initial precision and recovery (IPR), ongoing precision and recovery (OPR), and recovery of cyanide as $Hg(CN)_2$ spiked into reagent water samples (ligand-exchange reagent performance check, LERPC). QC acceptance criteria for the IPR, OPR, matrix spike (MS), matrix spike duplicate (MSD), and relative percent difference (RPD) for the MS and MSD were calculated using procedures described in EPA's Streamlining Guide. In addition to those procedures, QC acceptance criteria also were developed for $Hg(CN)_2$ at the upper level of the analytical range. Criteria for this LERPC test were developed according to the same procedure as for the IPR test.

D. Method Detection Limit Studies

Nine single-laboratory MDL studies were performed as part of the effort to determine MDLs and minimum levels (MLs). The MDL is defined as the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero. To determine the MDL, the laboratories were required to follow the procedure in Appendix B to 40 CFR part 136.

In the Appendix B procedure, seven aliquots of reagent water are spiked with the analyte or analytes of interest and analyzed by the proposed method. For the MDL studies, KCN was used as the spiking material. Spike levels were in the range of one to five times the estimated detection limit. Following addition of KCN, cyanide levels in each of the seven aliquots was determined. The MDL was determined to be 0.5 µg/L CN^-.

The minimum level of quantitation (ML) is defined as the level at which the entire analytical system produces a recognizable signal and an acceptable calibration point. The ML is determined by multiplying the MDL by 3.18 and rounding the resulting value to the number nearest to (1, 2, or 5) x 10^n, where n is an integer. The ML for Method OIA–1677 was calculated to be 1.0 µg/L CN^-. However, because this calculated value was below the lowest calibration standard used in the MDL study, the ML was set at the level of that standard, 2.0 µg/L CN^-. Results of the MDL studies, along with the relevant calculations, are detailed in the interlaboratory study report.

V. Status of Currently Approved Methods

This action proposes to make Method OIA–1677 available for measurement of available cyanide. The previously approved methods for analysis of available cyanide, EPA Method 335.1, SM 4500–CN G, and ASTM D2036–91(B), would not be withdrawn or otherwise affected by this regulation. EPA specifically invites comment on this aspect of the proposal, including the possible consequences and solutions if EPA were to withdraw any such methods.

VI. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

This regulation is not significant because it approves a testing procedure for use in compliance monitoring and data gathering but does not require its use. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small

governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or Tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or Tribal governments or the private sector. This rule proposes alternative analytical tests procedures which merely standardize the procedures when testing is otherwise required by a regulatory agency. Therefore, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA invites comment on its conclusions regarding whether alternate test procedures constitute a federal mandate.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this proposed rule is not subject to the requirements of section 203 of UMRA. This proposed rule would simply approve an additional test procedure for measurements that may be required under the CWA.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulation simply approves an additional testing procedure for the measurement of available cyanide which may be required in the implementation of the CWA.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit an information collection request covering information collection requirements in proposed rules to the Office of Management and Budget (OMB) for review and approval. This rule contains no information collection requirements. Therefore, preparation of an information collection request to accompany this rule is unnecessary.

E. National Technology Transfer and Advancement Act of 1995

Under § 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., material specifications, test methods, sampling procedures, business practice, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget (OMB), an explanation for the reasons for not using such standards.

Proposal of Method OIA–1677 is the result of a collaborative effort between OI Analytical, a private sector vendor, and EPA. Method OIA–1677 applies the innovative technologies of ligand exchange, flow injection analysis (FIA), and amperometric detection to the determination of available cyanide, a pollutant regulated under the Clean Water Act. Approval of Method OIA–1677 would allow use of these technologies to overcome interference problems commonly encountered in the determination of available cyanide and would thereby provide more reliable results for compliance determinations.

EPA's search of the technical literature revealed that there are no consensus methods for determination of ''available cyanide by flow injection/ligand exchange/amperometry,'' although ASTM is in the balloting process for approval of such a method. The ASTM method may differ slightly from Method OIA–1677. If ASTM approves such a method prior to final action on today's proposal and EPA determines that the ASTM method is suitable for compliance monitoring and other purposes, EPA may take final action to promulgate the ASTM method (without additional invitation for public comment in the **Federal Register**) when the Agency takes final action to promulgate Method OIA–1677 if the ASTM method ultimately developed does not differ significantly from Method OIA–1677. EPA invites public comments on the Agency's proposed method as well as on any other existing, potentially applicable voluntary consensus standards which the Agency should consider for the determination of available cyanide or cyanide amenable to chlorination by flow injection/ligand exchange/amperometry.

F. Executive Order 13045

The Executive Order, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets the E.O. 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not involve decisions regarding environmental health or safety risks.

VII. Request for Comments

EPA requests public comments and information on this proposed rule. Specifically, EPA invites comment on the appropriateness Method OIA–1677 for cyanide analysis, the utility of Method OIA–1677 for monitoring, the QC acceptance criteria in Method OIA–1677, and the comparability of results with CATC methods and results produced by Method OIA-1677, and EPA's proposed decision not to withdraw other, existing approved methods for determination of available cyanide by CATC.

List of Subjects in 40 CFR Part 136

Environmental protection, Analytical methods, Monitoring, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control.

Dated: June 29, 1998.

Carol M. Browner,

Administrator.

In consideration of the preceding, USEPA proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 136—[AMENDED]

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972

as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), 33 U.S.C. 1314 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 92–217; Stat. 7, Pub. L. 100–4 (The ''Act'').

2. Section 136.3, paragraph (a), Table IB is amended by revising entry 24 and adding a new footnote 42 to read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter units and method	Reference (method number or page)				
	EPA[1,35]	Standard methods 18th ed.	ASTM	USGS[2]	Other
* *	*	*	*	*	*
24. Available Cyanide, mg/L Cyanide amenable to chlorination (CATC), Manual distillation with $MgCl_2$ followed by titrimetry or spectrophotometry.	.....	335.14500–CN G ..	D2036–91(B)	.....	
Available, Flow injection and ligand exchange, followed by amperometry.	.....	.....	.....	.....	OIA–1677.[42]
* *	*	*	*	*	*

Table IB Notes:

[1] ''Methods for Chemical Analysis of Water and Wastes'', Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–C1), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., et al, ''Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments,'' U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

* * * * * * *

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of the part titled, ''Precision and Recovery Statements for Methods for Measuring Metals''.

* * * * * * *

[42] Cyanide, Available, Method OIA–1677 (Flow Injection Analysis/Ligand Exchange), ALPKEM, a division of OI Analytical, Box 648, Wilsonville, OR 97070.

* * * * * * *

3. In part 136, appendix A is amended by adding Method OIA–1677 following Method 1625 to read as follows:

Appendix A to part 136—Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater

* * * * *

Method OIA–1677, November 1997—Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry

1.0 Scope and Application

1.1 This method is for determination of available cyanide in water and wastewater by flow injection, ligand exchange, and amperometric titration. The method is for use in EPA's data gathering and monitoring programs associated with the Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, and Safe Drinking Water Act.

1.2 Cyanide ion (CN^-), hydrogen cyanide in water (HCN_{aq}), and the cyano-complexes of zinc, copper, cadmium, mercury, nickel, and silver may be determined by this method (see Section 17.2.1).

1.3 The presence of polysulfides and colloidal material may prove intractable for application of this method.

1.4 The method detection limit (MDL) is 0.5 µg/L and the minimum level (ML) is 2.0 µg/L. The dynamic range is approximately 2.0 µg/L (ppb) to 5.0 mg/L (ppm) cyanide ion using a 200 µL sample loop volume. Higher concentrations can be determined by dilution of the original sample or by reducing volume of the sample loop.

1.5 This method is for use by analysts experienced with flow injection equipment or under close supervision of such qualified persons.

1.6 The laboratory is permitted to modify the method to overcome interferences or to lower the cost of measurements, provided that all performance criteria in this method are met. Requirements for establishing method equivalency are given in Section 9.1.2.

2.0 Summary of Method

2.1 The analytical procedure employed for determination of available cyanide is divided into two parts: sample pretreatment and cyanide detection. In the pretreatment step, ligand-exchange reagents are added at room temperature to 100 mL of a cyanide-containing sample. The ligand-exchange reagents form thermodynamically stable complexes with the transition metal ions listed in Section 1.2, resulting in the release of cyanide ion from the metal-cyano complexes. Cyanide detection is accomplished using a flow-injection analysis (FIA) system (Reference 15.6). A 200-µL aliquot of the pre-treated sample is injected into the flow injection manifold of the system. The addition of hydrochloric acid converts cyanide ion to hydrogen cyanide (HCN) that passes under a gas diffusion membrane. The HCN diffuses through the membrane into an alkaline receiving solution where it is converted back to cyanide ion. The cyanide ion is monitored amperometrically with a silver working electrode, silver/silver chloride reference electrode, and platinum/stainless steel counter electrode, at an applied potential of zero volt. The current generated is proportional to the cyanide concentration present in the original sample. Total analysis time is approximately two minutes.

2.2 The quality of the analysis is assured through reproducible calibration and testing of the FIA system.

2.3 A flow diagram of the FIA system is shown in Figure 1.

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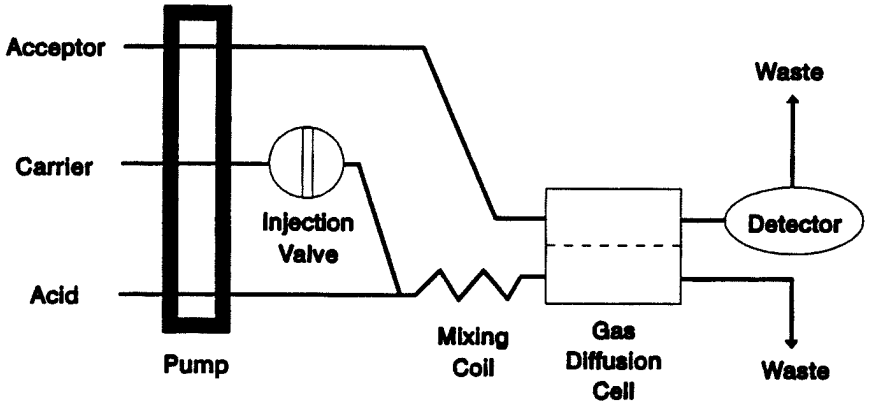

Figure 1. Flow injection Manifold used in the quantification of cyanide in the pretreated sample. Carrier (0.1 M HCl); Acid (0.1 M HCl); Acceptor (0.1 M NaOH).

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3.0 Definitions.

Definitions for terms used in this method are given in the glossary at the end of the method.

4.0 Interferences.

4.1 Solvents, reagents, glassware, and other sample-processing hardware may yield artifacts that affect results. Specific selection of reagents or purification of these reagents may be required.

4.2 All materials used in the analysis shall be demonstrated to be free from interferences under the conditions of analysis by running laboratory blanks as described in Section 9.4.

4.3 Glassware is cleaned by washing in hot water containing detergent, rinsing with tap and reagent water, and drying in an area free from interferences.

4.4 Interferences extracted from samples will vary considerably from source to source, depending upon the diversity of the site being sampled.

4.5 Sulfide is a positive interferent in this method (References 15.3 and 15.4), because an acidified sample containing sulfide liberates hydrogen sulfide that is passed through the membrane and produces a signal at the silver electrode. In addition, sulfide ion reacts with cyanide ion in solution to reduce its concentration over time. To overcome this interference, the sulfide ion must be precipitated with lead ion immediately upon sample collection. Sulfide ion and lead sulfide react with cyanide ion to form thiocyanate which is not detected in the analytical system. Tests have shown (Reference 15.7) that if lead carbonate is used for sulfide precipitation, the supernate containing cyanide must be filtered immediately to avoid loss of cyanide through reaction with precipitated lead sulfide (Section 8.2.1).

4.6 Though not interferences, substances that react with cyanide should also be removed from samples at time of collection. These substances include water soluble aldehydes that form cyanohydrins and oxidants such as hypochlorite and sulfite. Water soluble aldehydes react with cyanide to form cyanohydrins that are not detected by the analytical system; hypochlorite and sulfite oxidize cyanide to non-volatile forms. Procedures for the removal of these substances are provided in Sections 8.2.2 and 8.2.3.

4.7 Tests conducted using samples containing large amounts of colloids indicate that cyanide losses are rapid when colloids are present. Filtration can be used to remove colloids, but may have an adverse effect on measured cyanide levels. This method should not be applied to samples with large amounts of colloids unless the laboratory is able to demonstrate that cyanide concentration measurements in a sample are not affected by filtration.

5.0 Safety.

5.1 The toxicity or carcinogenicity of each compound or reagent used in this method has not been precisely determined; however, each chemical compound should be treated as a potential health hazard. Exposure to these compounds should be reduced to the lowest possible level.

5.2 Cyanides and cyanide solutions.

WARNING: The cyanide ion, hydrocyanic acid, all cyanide salts, and most metal-cyanide complexes are extremely dangerous. As a contact poison, cyanide need not be ingested to produce toxicity. Also, cyanide solutions produce fatally toxic hydrogen cyanide gas when acidified. For these reasons, it is mandatory that work with cyanide be carried out in a well-ventilated hood by properly trained personnel wearing adequate protective equipment.

5.3 Sodium hydroxide solutions.

CAUTION: Considerable heat is generated upon dissolution of sodium hydroxide in water. It may be advisable to cool the container in an ice bath when preparing sodium hydroxide solutions.

5.4 Unknown samples may contain high concentrations of volatile toxic compounds. Sample containers should be opened in a hood and handled with gloves to prevent exposure.

5.5 This method does not address all safety issues associated with its use. The laboratory is responsible for maintaining a safe work environment and a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) should be available to all personnel involved in these analyses. Additional information on laboratory safety can be found in References 15.8 and 15.9.

6.0 Equipment and Supplies

Note: Brand names, suppliers, and part numbers are for illustrative purposes only. No endorsement is implied. Equivalent performance may be achieved using apparatus and materials other than those specified here, but demonstration of equivalent performance that meets the requirements of this method is the responsibility of the laboratory.

6.1 Flow injection analysis (FIA) system—ALPKEM Model 3202 (Reference 15.5), or equivalent, consisting of the following:

6.1.1 Injection valve capable of injecting 40 to 300 µL samples.

6.1.2 Gas diffusion manifold with a microporous Teflon® or polypropylene membrane.

6.1.3 Amperometric detection system with:

6.1.3.1 Silver working electrode.

6.1.3.2 Ag/AgCl reference electrode.

6.1.3.3 Pt/stainless steel counter electrode.

6.1.3.4 Applied potential of 0.0 volt.

6.2 Sampling equipment—Sample bottle, amber glass, 1.1-L, with polytetrafluoroethylene (PTFE)-lined cap. Clean by washing with detergent and water, rinsing with two aliquots of reagent water, and drying by baking at 110–150 °C for one hour minimum.

6.3 Standard laboratory equipment including volumetric flasks, pipettes, syringes, etc. all cleaned, rinsed and dried per bottle cleaning procedure in Section 6.2.

7.0 Reagents and Standards.

7.1 Reagent water—Water in which cyanide and potentially interfering substances are not detected at the MDL of this method. It may be generated by any one of the methods listed below. Reagent water generated by these methods shall be tested for purity utilizing the procedure in Section 11.

7.1.1 Activated carbon—Pass distilled or deionized water through an activated carbon bed (Calgon Filtrasorb-300 or equivalent).

7.1.2 Water purifier—Pass distilled or deionized water through a purifier (Millipore Super Q, or equivalent).

7.2 Sodium hydroxide—ACS reagent grade.

7.3 Potassium cyanide—ACS reagent grade.

7.4 Mercury (II) cyanide, ≥99% purity—Aldrich Chemical Company Catalog No. 20,814–0, or equivalent.

7.5 Silver nitrate—ACS reagent grade. Aldrich Chemical Company Catalog No. 20,913–9, or equivalent.

7.6 Hydrochloric acid—approximately 37%, ACS reagent grade.

7.7 Preparation of stock solutions. Observe the warning in Section 5.2.

7.7.1 Silver nitrate solution, 0.0192 N—Weigh 3.27 g of $AgNO_3$ into a 1-L volumetric flask and bring to the mark with reagent water.

7.7.2 Rhodanine solution, 0.2 mg/mL in acetone—Weigh 20 mg of p-dimethylaminobenzal rhodanine (Aldrich Chemical Co. Catalog No. 11,458–8, or equivalent) in a 100-mL volumetric flask and dilute to the mark with acetone.

7.7.3 Potassium cyanide stock solution, 1000 mg/L

7.7.3.1 Dissolve approximately 2 g (approximately 20 pellets) of sodium hydroxide in approximately 500 mL of reagent water contained in a 1-liter volumetric flask. Observe the caution in Section 5.3. Add 2.51 g of potassium cyanide (Aldrich Chemical Co. Catalog No. 20,781–0, or equivalent), dilute to one liter with reagent water, and mix well. Store KCN solution in an amber glass container at 0–4°C.

7.7.3.2 Standardize the KCN solution (Section 7.7.3.1) by adding 0.5 mL of rhodanine solution (Section 7.7.2) to 25 mL of KCN solution and titrating with $AgNO_3$ solution (Section 7.7.1) until the color changes from canary yellow to a salmon hue. Based on the determined KCN concentration, dilute the KCN solution to an appropriate volume so the final concentration is 1.00 g/L, using the following equation:

Equation 1

$$x \times v = 1g/L \times 1L$$

Where:

x=concentration of KCN solution determined from titrations

v=volume of KCN solution needed to prepare 1 L of 1 g/L KCN solution

If the concentration is not 1.00 g/L, correct the intermediate and working calibration concentrations accordingly.

7.7.4 1M sodium hydroxide—Dissolve 40 g of sodium hydroxide pellets in approximately 500 mL of reagent water in a 1-liter volumetric flask, observing the caution in Section 5.3. Dilute to one liter with reagent water. Store in an amber bottle at room temperature.

7.8 Secondary standards.

7.8.1 Cyanide, 100 mg/L—Dilute 100.0 mL of cyanide stock solution (Section 7.7.3.2) and 10 mL of 1M sodium hydroxide (Section 7.7.4) to one liter with reagent water (Section 7.1). Store in an amber glass bottle at 0–4°C.

7.8.2 Cyanide, 10 mg/L—Dilute 10.0 mL of cyanide stock solution and 10 mL of 1M sodium hydroxide to one liter with reagent water. Store in an amber glass bottle at 0–4°C.

7.8.3 Cyanide, 1 mg/L—Dilute 1.0 mL of cyanide stock solution and 1 mL of 1M sodium hydroxide to one liter with reagent water. Store in an amber glass bottle at 0–4°C.

7.8.4 Cyanide working calibration standard solutions (2—5000 µg/L as cyanide)—Working calibration standards may be prepared to cover the desired calibration range by adding the appropriate volumes of secondary standards (Sections 7.8.1, 7.8.2, 7.8.3) to 100 mL volumetric flasks that contain 40 mL of reagent water 7.1) and 1 mL of 1M sodium hydroxide (Section 7.7.4). Dilute the solutions to 100 mL with reagent water. Prepare working calibration standards daily. The following table provides the quantity of secondary standard necessary to prepare working standards of the specified concentration.

Working calibration standard concentration (µg/L)	Secondary standard solution volume		
	Secondary standard concentration (section 7.8.3) 1 mg/L	Secondary standard concentration (section 7.8.2) 10 mg/L	Secondary standard concentration (section 7.8.1) 100 mg/L
0.000	.....	.....	.....
2.0	0.200	.....	.....
5.0	0.500	0.050	.....
10.0	1.00	0.100	.....
50.0	5.00	0.500	0.050
100	10.0	1.00	0.100
200	20.0	2.00	0.200
500	50.0	5.00	0.500
1000	.....	10.0	1.00
3000	.....	30.0	3.00
5000	.....	50.0	5.00

If desired, the laboratory may extend the analytical working range by using standards that cover more than one calibration range, so long as the requirements of Section 10.3 are met.

7.9 Sample Preservation Reagents.

7.9.1 The presence of sulfide may result in the conversion of cyanide to thiocyanate. While lead acetate test paper has been recommended for determining the presence of sulfide in samples, the test is generally unreliable and is typically not usable for sulfide concentrations below approximately 1 ppm. The use of lead carbonate (Aldrich Chemical Co. Catalog No. 33,637–8, or equivalent), followed by immediate filtration of the sample is required whenever sulfide ion is present. If the presence of sulfide is suspected but not verifiable from the use of lead acetate test paper, two samples may be collected, one without lead carbonate addition and another with lead carbonate addition followed by immediate filtration. Analyze both samples. If sulfide is present, the preserved sample should contain higher levels of cyanide than the unpreserved sample. Lead acetate test paper may be used, but should be tested for minimum level of sulfide detection by spiking reagent water aliquots with decreasing levels of sulfide and determining the lowest level of sulfide detection attainable. The spiked samples are tested with lead acetate test paper moistened with acetate buffer solution. The buffer solution is prepared by dissolving 146 g anhydrous sodium acetate, or 243 g sodium acetate trihydrate in 400 mL of reagent water, followed by addition of 480 g concentrated acetic acid. Dilute the solution to 1 L with reagent water. Each new batch of test paper and/or acetate buffer should be tested to determine the lowest level of sulfide ion detection prior to use.

7.9.2 Ethylenediamine solution—In a 100 mL volumetric flask, dilute 3.5 mL pharmaceutical-grade anhydrous ethylenediamine (Aldrich Chemical Co. Catalog No. 24,072–9, or equivalent) with reagent water.

7.9.3 Ascorbic acid—Crystals—Aldrich Chemical Co. Catalog No. 26,855–0, or equivalent.

7.10 FIA Reagents.

7.10.1 Carrier and acid reagent (0.1M hydrochloric acid)—Dilute 8 mL of concentrated hydrochloric acid to one liter with reagent water.

7.10.2 Acceptor stock solution (5M sodium hydroxide)—Dissolve 200 grams of sodium hydroxide in 700 mL of reagent water with stirring, observing the caution in Section 5.3. Dilute to one liter with reagent water.

7.10.3 Acceptor reagent (0.1M sodium hydroxide)—Dilute 20 mL of sodium hydroxide solution (Section 7.7.4) to 1000 mL with reagent water.

7.10.4 Ligand-exchange reagent A–ALPKEM part number A001416, or equivalent.

7.10.5 Ligand-exchange reagent B–ALPKEM part number A001417, or equivalent.

7.11 Quality control solutions.

7.11.1 Mercury (II) cyanide stock solution (1000 mg/L as cyanide)—Weigh 0.486 g of mercury (II) cyanide (Section 7.4) in a 100-mL volumetric flask. Add 10–20 mL of reagent water and 1 mL of 1M sodium hydroxide solution (Section 7.7.4). Swirl to mix. Dilute to the mark with reagent water.

7.11.2 Laboratory control sample (LCS)—Place 2.00 mL of the mercury (II) cyanide stock solution (Section 7.11.1) in a 100-mL volumetric flask and dilute to the mark with reagent water to provide a final cyanide concentration of 2.00 mg/L.

8.0 Sample Collection, Preservation, and Storage.

8.1 Sample collection and preservation—Samples are collected using manual (grab) techniques and are preserved immediately upon collection.

8.1.1 Grab sampling—Collect samples in amber glass bottles with PTFE-lined caps cleaned according to the procedure in Section 6.2. Immediately after collection, preserve the sample using any or all of the preservation techniques (Section 8.2), followed by adjustment of the sample pH to ≥12 by addition of 1M sodium hydroxide and refrigeration at 0–4°C.

8.1.2 Compositing—Compositing is performed by combining aliquots of grab samples only. Automated compositing equipment may not be used because cyanide may react or degrade during the sampling period. Preserve and refrigerate each grab sample immediately after collection (Sections 8.1.1 and 8.2) until compositing.

8.1.3 Shipment—If the sample will be shipped by common carrier or mail, limit the pH to a range of 12.0–12.3. (See the footnote to 40 CFR 136.3(e), Table II, for the column headed ''Preservation.'')

8.2 Preservation techniques.

8.2.1 Samples containing sulfide ion—Test samples with lead acetate test paper (Section 7.9.1) to determine the presence or absence of sulfide ion. If sulfide ion is present, treat the sample with sufficient solid lead carbonate (Section 7.9.1) to remove sulfide (as evidenced by lead acetate test paper) and immediately filter into another sample bottle to remove precipitated lead sulfide. If sulfide ion is suspected to be present, but its presence is not detected by this test, two samples should be collected. One is treated for the presence of sulfide and immediately filtered, while the second sample is not treated for sulfide. Both samples must be analyzed by the laboratory. (Tests conducted prior to the interlaboratory validation of this method showed significant and rapid losses of cyanides when lead sulfide was allowed to remain in contact with the sample during holding times of three days and less. As a result, the immediate filtration of samples preserved with lead carbonate is essential (Reference 15.6).

8.2.2 Samples containing water soluble aldehydes—Treat samples containing or suspected to contain formaldehyde, acetaldehyde, or other water soluble aldehydes with 20 mL of 3.5% ethylenediamine solution (Section 7.9.2) per liter of sample.

8.2.3 Samples known or suspected to contain chlorine, hypochlorite, and/or sulfite—Treat with 0.6 g of ascorbic acid (Section 7.9.3) per liter of sample. EPA Method 330.4 or 330.5 may be used for the measurement of residual chlorine (Reference 15.1).

8.3 Sample holding time—Maximum holding time for samples preserved as above is 14 days. Unpreserved samples must be analyzed within 24 hours, or sooner if a change in cyanide concentration will occur. (See the footnotes to Table II at 40 CFR 136.3(e).)

9.0 Quality Control.

9.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 15.9). The minimum requirements of this program consist of an initial demonstration of laboratory capability, and the periodic analysis of LCSs and MS/MSDs as a continuing check on performance. Laboratory performance is compared to established performance criteria to determine if the results of the analyses meet the performance characteristics of the method.

9.1.1 The laboratory shall make an initial demonstration of the ability to generate acceptable precision and accuracy with this method. This ability is established as described in Section 9.2.

9.1.2 In recognition of advances that are occurring in analytical technology, and to allow the laboratory to overcome sample matrix interferences, the laboratory is permitted certain options to improve performance or lower the costs of measurements. Alternate determinative techniques, such as the substitution of spectroscopic or immuno-assay techniques, and changes that degrade method performance, are not allowed. If an analytical technique other than the techniques specified in this method is used, that technique must have a specificity equal to or better than the specificity of the techniques in this method for the analytes of interest.

9.1.2.1 Each time a modification is made to this method, the laboratory is required to repeat the procedure in Section 9.2. If the detection limit of the method will be affected by the change, the laboratory must demonstrate that the MDL is equal to or less than the MDL in Section 1.4 or one-third the regulatory compliance level, whichever is greater. If calibration will be affected by the change, the laboratory must recalibrate the instrument per Section 10.3.

9.1.2.2 The laboratory is required to maintain records of modifications made to this method. These records include the information in this subsection, at a minimum.

9.1.2.2.1 The names, titles, addresses, and telephone numbers of the analyst(s) who performed the analyses and modification, and of the quality control officer who witnessed and will verify the analyses and modification.

9.1.2.2.2 A narrative stating the reason(s) for the modification.

9.1.2.2.3 Results from all quality control (QC) tests comparing the modified method to this method including:

(a) calibration (Section 10.3)

(b) calibration verification (Section 9.5)

(c) initial precision and recovery (Section 9.2)

(d) analysis of blanks (Section 9.4)

(e) laboratory control sample (Section 9.6)

(f) matrix spike and matrix spike duplicate (Section 9.3)

(g) MDL (Section 1.4)

9.1.2.2.4 Data that will allow an independent reviewer to validate each determination by tracing the instrument output (peak height, area, or other signal) to the final result. These data are to include:

(a) sample numbers and other identifiers

(b) analysis dates and times

(c) analysis sequence/run chronology

(d) sample weight or volume

(e) sample volume prior to each cleanup step, if applicable

(f) sample volume after each cleanup step, if applicable

(g) final sample volume prior to injection (Sections 10 and 11)

(h) injection volume (Sections 10 and 11)

(i) dilution data, differentiating between dilution of a sample or modified sample (Sections 10 and 11)

(j) instrument and operating conditions

(k) other operating conditions (temperature, flow rates, etc.)

(l) detector (operating condition, etc.)

(m) printer tapes, disks, and other recording of raw data

(n) quantitation reports, data system outputs, and other data necessary to link raw data to the results reported

9.1.3 Analyses of matrix spike and matrix spike duplicate samples are required to demonstrate method accuracy and precision and to monitor matrix interferences (interferences caused by the sample matrix). The procedure and QC criteria for spiking are described in Section 9.3.

9.1.4 Analyses of blanks are required to demonstrate freedom from contamination and that the compounds of interest and interfering compounds have not been carried over from a previous analysis. The procedures and criteria for analysis of a blank are described in Section 9.4.

9.1.5 The laboratory shall, on an ongoing basis, demonstrate through the analysis of the LCS (Section 7.11.2) that the analysis system is in control. This procedure is described in Section 9.6.

9.1.6 The laboratory should maintain records to define the quality of data that is

generated. Development of accuracy statements is described in Sections 9.3.8 and 9.6.3.

9.1.7 Accompanying QC for the determination of cyanide is required per analytical batch. An analytical batch is a set of samples analyzed at the same time, to a maximum of 10 samples. Each analytical batch of 10 or fewer samples must be accompanied by a laboratory blank (Section 9.4), an LCS (Section 9.6), and a matrix spike and matrix spike duplicate (MS/MSD, Section 9.3), resulting in a minimum of five analyses (1 sample, 1 blank, 1 LCS, 1 MS, and 1 MSD) and a maximum of 14 analyses (10 samples, 1 blank, 1 LCS, 1 MS, and 1 MSD) in the batch. If greater than 10 samples are analyzed at one time, the samples must be separated into analytical batches of 10 or fewer samples.

9.2 Initial demonstration of laboratory capability

9.2.1 Method Detection Limit (MDL)—To establish the ability to detect cyanide at low levels, the laboratory shall determine the MDL per the procedure in 40 CFR 136, Appendix B (Reference 15.4) using the apparatus, reagents, and standards that will be used in the practice of this method. An MDL less than or equal to the MDL listed in Section 1.4 must be achieved prior to practice of this method.

9.2.2 Initial Precision and Recovery (IPR)—To establish the ability to generate acceptable precision and accuracy, the laboratory shall perform the following operations:

9.2.2.1 Analyze four samples of the LCS (Section 7.11.2) according to the procedure beginning in Section 10.

9.2.2.2 Using the results of the set of four analyses, compute the average percent recovery (X) and the standard deviation of the percent recovery (s) for cyanide. Use Equation 2 for calculation of the standard deviation of the percent recovery.

Equation 2

$$s = \sqrt{\frac{\sum x^2 - \frac{\left(\sum x\right)^2}{n}}{n-1}}$$

Where:

n = Number of samples

x = Percent recovery in each sample

9.2.3 Compare s and X with the acceptance criteria specified in Table 1. If s exceeds the precision limit or X falls outside the range for recovery, system performance is unacceptable and the problem must be found and corrected before analyses can begin.

9.3 Matrix spike/matrix spike duplicate (MS/MSD)—The laboratory shall spike, in duplicate, a minimum of 10 percent of all samples (one sample in duplicate in each batch of ten samples) from a given discharge.

9.3.1 The concentration of the spike in the sample shall be determined as follows:

9.3.1.1 If, as in compliance monitoring, the concentration of cyanide in the sample is being checked against a regulatory concentration limit, the spiking level shall be at that limit or at 1 to 5 times higher than the background concentration of the sample (determined in Section 9.3.2), whichever concentration is higher.

9.3.1.2 If the concentration of cyanide in a sample is not being checked against a limit, the spike shall be at the concentration of the LCS or at 1 to 5 times higher than the background concentration, whichever concentration is higher.

9.3.2 Analyze one sample aliquot out of each set of ten samples from each discharge according to the procedure beginning in Section 11 to determine the background concentration (B) of cyanide.

9.3.2.1 Spike this sample with the amount of mercury (II) cyanide stock solution (Section 7.11.1) necessary to produce a cyanide concentration in the sample of 2 mg/L. If necessary, prepare another stock solution appropriate to produce a level in the sample at the regulatory compliance limit or at 1 to 5 times the background concentration (per Section 9.3.1).

9.3.2.2 Spike two additional sample aliquots with the spiking solution and analyze these aliquots to determine the concentration after spiking (A).

9.3.3 Calculate the percent recovery of cyanide in each aliquot using Equation 3.

Equation 3

$$p = \frac{100\ (A - B)}{T}$$

Where:

P = Percent recovery

A = Measured concentration of cyanide after spiking

B = Measured background concentration of cyanide

T = True concentration of the spike

9.3.4 Compare the recovery to the QC acceptance criteria in Table 1. If recovery is outside of the acceptance criteria, and the recovery of the LCS in the ongoing precision and recovery test (Section 9.6) for the analytical batch is within the acceptance criteria, an interference is present. In this case, the result may not be reported for regulatory compliance purposes.

9.3.5 If the results of both the MS/MSD and the LCS test fail the acceptance criteria, the analytical system is judged to be out of control. In this case, the problem shall be identified and corrected, and the analytical batch reanalyzed.

9.3.6 Calculate the relative percent difference (RPD) between the two spiked sample results (Section 9.3, not between the two percent recoveries) using Equation 4.

Equation 4

$$RPD = \frac{\left|D_1 - D_2\right|}{\left(D_1 + D_2\right)/2} \times 100SC$$

Where:

RPD = Relative percent difference

D_1 = Concentration of cyanide in the spiked sample

D_2 = Concentration of cyanide in the spiked duplicate sample

9.3.7 Compare the precision to the RPD criteria in Table 1. If the RPD is greater than the acceptance criteria, the analytical system is judged to be out of control, and the problem must be immediately identified and corrected, and the analytical batch reanalyzed.

9.3.8 As part of the QC program for the laboratory, method precision and accuracy for samples should be assessed and records should be maintained. After the analysis of five spiked samples in which the recovery passes the test in Section 9.3.4, compute the average percent recovery (P_a) and the standard deviation of the percent recovery (s_p). Express the accuracy assessment as a percent recovery interval from $P_a - 2s_p$ to $P_a + 2s_p$. For example, if $P_a = 90\%$ and $s_p = 10\%$ for five analyses, the accuracy interval is expressed as 70—110%. Update the accuracy assessment on a regular basis (e.g., after each five to ten new accuracy measurements).

9.4 Laboratory blanks—Laboratory reagent water blanks are analyzed to demonstrate freedom from contamination.

9.4.1 Analyze a reagent water blank initially (i.e., with the tests in Section 9.2) and with each analytical batch. The blank must be subjected to the same procedural steps as a sample.

9.4.2 If cyanide is detected in the blank at a concentration greater than the ML, analysis of samples is halted until the source of contamination is eliminated and a blank shows no evidence of contamination.

9.5 Calibration verification—Verify calibration of the analytical equipment before and after each analytical batch of 14 or fewer measurements. (The 14 measurements will normally be 10 samples, 1 reagent blank, 1 LCS, 1 MS, and 1 MSD). Verification is accomplished by analyzing the mid-range calibration standard and verifying that it is within the QC acceptance criteria for recovery in Table 1. (The concentration of the calibration verification depends on the calibration range being used.) Failure to verify calibration within the acceptance criteria requires recalibration of the analysis system.

9.6 Laboratory control sample (LCS)—To demonstrate that the analytical system is in control, and acceptable precision and accuracy is being maintained with each analytical batch, the laboratory shall perform the following operations.

9.6.1 Analyze a LCS (Section 7.11.2) with each analytical batch according to the procedure in Section 10.

9.6.2 If the results for the LCS are within the acceptance criteria specified in Table 1, analysis of the batch may continue. If, however, the concentration is not within this range, the analytical process is not in control. In this event, correct the problem, repeat the LCS test, and reanalyze the batch.

9.6.3 The laboratory should add results that pass the specification in Section 9.6.2 to IPR and previous LCS data and update QC charts to form a graphic representation of continued laboratory performance. The laboratory should also develop a statement of laboratory data quality for cyanide by calculating the average percent recovery (R) and the standard deviation of the percent recovery (S_r). Express the accuracy as a recovery interval from $R - 2s_r$ to $R + 2s_r$. For example, if $R = 95\%$ and $s_r = 5\%$, the accuracy is 85% to 105%.

9.7 Reference Sample—To demonstrate that the analytical system is in control, the

laboratory should periodically test an external reference sample, such as a Standard Reference Material (SRM) if an SRM is available from the National Institutes of Standards and Technology (NIST). The reference sample should be analyzed quarterly, at a minimum. Corrective action should be taken if the measured concentration significantly differs from the stated concentration.

10.0 Calibration and Standardization.

This section describes the procedure to calibrate and standardize the FIA system prior to cyanide determination.

10.1 Instrument setup.

10.1.1 Set up the FIA system and establish initial operating conditions necessary for determination of cyanide. If the FIA system is computerized, establish a method for multi-point calibration and for determining the cyanide concentration in each sample.

10.1.2 Verify that the reagents are flowing smoothly through the FIA system and that the flow cell is purged of air bubbles.

10.2 Instrument Stabilization

10.2.1 Load a 10 mg/L KCN standard (Section 7.8.2) into the sampling valve and inject into the FIA system.

10.2.2 Continue to inject 10 mg/L KCN standards until 3 successive peak height or area results are within 2% RSD, indicating that the electrode system is stabilized.

10.2.3 Following stabilization, inject the highest concentration calibration standard until 3 successive peak height or area results are within 2% RSD indicating stabilization at the top of the calibration range.

10.3 External standard calibration.

10.3.1 Inject each of a minimum of 3 calibration standards. One of the standards should be at the minimum level (ML) unless measurements are to be made at higher levels. The other concentrations should correspond to the expected range of concentrations found in samples or should define the working range of the FIA system.

10.3.2 Using injections of a constant volume, analyze each calibration standard according to Section 11 and record peak height or area responses against the concentration. The results can be used to prepare a calibration curve. Alternatively, if the ratio of response to amount injected (calibration factor) is constant over the working range (<10% RSD), linearity through the origin can be assumed and the averaged calibration factor (area/concentration) can be used in place of a calibration curve.

11.0 Procedure.

This section describes the procedure for determination of available cyanide using the FIA system.

11.1 Analysis of standards, samples, and blanks.

11.1.1 Ligand-exchange reagent treatment of standards, samples, and blanks.

11.1.2 To 100-mL of cyanide-containing sample (or standard or blank) at pH of approximately 12, add 100 µL of ligand-exchange reagent Part B (Section 7.10.5), 50 µL of ligand-exchange reagent Part A (Section 7.10.4), and mix thoroughly. Load the sample, standard, or blank into the sample loop.

Note: The ligand-exchange reagents, when added to 100 mL of sample at the specified volume, will liberate cyanide from metal complexes of intermediate stability up to 5 mg/L cyanide ion. If higher concentrations are anticipated, add additional ligand-exchange reagent, as appropriate, or dilute the sample.

11.1.3 Inject the sample and begin data collection. When data collection is complete, analyze the next sample, standard or blank in the batch until analyses of all samples in the batch are completed.

12.0 Data Analysis and Calculations.

12.1 Calculate the concentration of material in the sample, standard or blank from the peak height or area using the calibration curve or calibration factor determined in Section 10.3.

12.2 Reporting.

12.2.1 Samples—Report results to three significant figures for cyanide concentrations found above the ML (Section 1.4) in all samples. Report results below the ML as <5 mg/L, or as required by the permitting authority or permit.

12.2.2 Blanks—Report results to three significant figures for cyanide concentrations found above the MDL (Section 1.3). Do not report results below the MDL unless required by the permitting authority or in the permit.

13.0 Method Performance.

13.1 Method detection limit (MDL)—MDLs from nine laboratories were pooled to develop the MDL of 0.5 µg/L given in Section 1.4 (Reference 15.12).

13.2 Data obtained from single laboratory testing of the method are summarized in Table 2 and show recoveries and reproducibility for ''free'' forms of cyanide, including the recovery and reproducibility of silver, nickel, mercurous and mercuric cyanide species. Determination of these species tends to be problematic with other methods for the determination of available cyanide. As it is the case with other methods used for available cyanide, iron cyanide species were not recovered and recoveries for gold and cobalt species were zero or very low. The complete results from the single laboratory study are available in the *Report of the Draft OIA Method 1677 Single Laboratory Validation Study* (Reference 15.11).

13.3 Listed in Table 1 are the QC acceptance criteria developed from an interlaboratory validation study of this method. This study was conducted following procedures specified in the *Guide to Method Flexibility and Approval of EPA Water Methods* (Reference 15.10). In this study, a total of nine laboratories performed analyses for various water matrices. Table 3 shows a summary of the interlaboratory results which include the accuracy and precision data as % recoveries and relative standard deviations. In addition to spikes of easily dissociable cyanides, some samples contained known amounts of cyanides that are not recoverable (e.g., Pt and Fe complexes) and thiocyanate was spiked to one sample to investigate the potential for interference. The complete study results are available in the *Report of the Draft OIA Method 1677 Interlaboratory Validation Study* (Reference 15.12).

14.0 Pollution Prevention and Waste Management.

14.1 It is the laboratory's responsibility to comply with all federal, State, and local regulations governing waste management, particularly the hazardous waste identification rules and land-disposal restrictions. In addition, it is the laboratory's responsibility to protect air, water, and land resources by minimizing and controlling all releases from fume hoods and bench operations. Also, compliance is required with any sewage discharge permits and regulations.

14.2 Samples containing cyanide, certain metals, and acids at a pH of less than 2 are hazardous and must be treated before being poured down a drain or must be handled as hazardous waste.

14.3 For further information on waste management, consult *Less is Better: Laboratory Chemical Management for Waste Reduction,* Section 15.8.

15.0 References.

15.1 Environmental Monitoring Systems Laboratory. EPA Method 335.1. In: *Methods for the Chemical Analysis of Water and Wastes* (EPA/600/4–79–020). Environmental Protection Agency, Cincinnati, Ohio. Revised March 1983.

15.2 American Public Health Association, American Waterworks Association, Water Pollution Control Board. *Methods Section 4500–CN in Standard Methods for the Examination of Water and Wastewater,* 19th Edition. American Public Health Association, Washington, DC, 1995.

15.3 Ingersol, D.; Harris, W.R.; Bomberger, D.C.; Coulson, D.M. *Development and Evaluation Procedures for the Analysis of Simple Cyanides, Total Cyanides, and Thiocyanate in Water and Waste Water* (EPA–600/4–83–054), 1983.

15.4 *Code of Federal Regulations,* Title 40, Part 136, Appendix B. U.S. Government Printing Office, Washington, D.C., 1994.

15.5 ALPKEM CNSolution Model 3202 Manual. Available from ALPKEM, a division of OI Analytical, Box 648, Wilsonville, OR 97070.

15.6 Milosavljevic, E.B.; Solujic, L.; Hendrix, J.L. *Environmental Science and Technology,* Vol. 29, No. 2, 1995, pp 426–430.

15.7 Wilmont, J.C.; Solujic, L.; Milosavljevic, E. B.; Hendrix, J.L.; Reader, W.S. Analyst, June 1996, Vol. 121, pp 799–801. Formation of Thiocyanate During Removal of Sulfide as Lead Sulfide Prior to Cyanide Determination.

15.8 Less is Better: Laboratory Chemical Management for Waste Reduction. Available from the American Chemical Society, Department of Government Regulations and Science Policy, 1155 16th Street, NW, Washington, DC 20036.

15.9 Handbook for Analytical Quality Control in Water and Wastewater Laboratories (EPA–600/4–79–019), USEPA, NERL, Cincinnati, Ohio 45268 (March 1979).

15.10 Guide to Method Flexibility and Approval of EPA Water Methods, December, 1996, (EPA–821–D–96–004). Available from the National Technical Information Service (PB97–117766).

15.11 Report of the Draft OIA Method 1677 Single Laboratory Validation Study, November 1996. Available from ALPKEM, a division of OI Analytical, Box 648, Wilsonville, OR 97070.

15.12 Report of the Draft OIA Method 1677 Interlaboratory Validation Study, March 1997. Available from ALPKEM, a division of OI Analytical, Box 648, Wilsonville, OR 97070.

16.0 Tables

TABLE 1.—QUALITY CONTROL ACCEPTANCE CRITERIA

Criterion	Required recovery range (%)	Precision
Initial precision and recovery	92–122	<5.1% RSD
Ongoing precision and recovery (Laboratory control sample)	82–132	N/A
Calibration verification	86–118	N/A
Matrix spike/matrix spike duplicate	82–130	<11% RPD

TABLE 2.—Species-Dependent Cyanide Recoveries Using Draft Method 1677 [1]

Species	0.20 µg/mL CN^-	2.00 µg/mL CN^-
$[Zn(CN)_4]^{2-}$	97.4 (0.7)	98.5 (0.7)
$[Cd(CN)_4]^{2-}$	100.0 (0.8)	100.0 (0.2)
$[Cu(CN)_4]^{2-}$	100.9 (1.3)	99.0 (0.6)
$[Ag(CN)_4]^{3-}$	101.8 (0.9)	100.0 (0.5)
$[Ni(CN)_4]^{2-}$	104.3 (0.2)	103.0 (0.5)
$[Hg(CN)_4]^{2-}$	100.0 (0.6)	99.0 (0.3)
$Hg(CN)_2$	103.4 (0.4)	98.0 (0.3)
$[Fe(CN)_4]^{4-}$	0.0	0.0
$[Fe(CN)_6]^{3-}$	0.0	0.0
$[Au(CN)_2]^-$	[2] 1.3 (0.0)	0.0
$[Co(CN)_6]^{3-}$	[2] 2.9 (0.0)	[2] 2.0 (0.0)

[1] Values are % recoveries; numbers in parentheses are percent relative standard deviations.
[2] Commercial product contains some free cyanide.

TABLE 3.—CYANIDE RECOVERIES FROM VARIOUS AQUEOUS MATRICES

Sample	Sample CN concentration	Added CN^- [1] concentration	Average % recovery	% RSD
Reagent water w/0.01M NaOH	0 µg/L	100 µg/L as KCN	108	4.0
POTW secondary effluent	3.0 µg/L	100 µg/L as KCN; 2 mg/L as $[Pt(CN)_6]^{4-}$	102	7.0
Petroleum Refinery Secondary Effluent	9.9 µg/L	2 mg/L as KCN; 5 mg/L as $[Fe(CN)_6]^{4-}$	87	21
Coke Plant Secondary Effluent	14.0 µg/L	50 µg/L as KCN	95	4.0
Rolling Mill Direct Filter Effluent	4.0 µg/L	None	80	41
Metals Finishing Indirect Primary Effluent	1.0 µg/L	200 µg/L as KCN; 2 mg/L as KSCN	92	16
Reagent water w/0.01M NaOH	0 µg/L	200 µg/L as KCN	101	8.0
Reagent water w/0.01M NaOH	0 µg/L	10 mg/L as KCN; 10 mg/L as $[Pt(CN)_6]^{4-}$	103	2.0
Mining Tailing Pond Effluent	842 µg/L	4 mg/L as KCN	98	3.0

[1] Cyano-complexes of Pt and Fe were added to the POTW and petroleum refinery effluents, respectively; and thiocyanate was added to the metals finishing effluent to demonstrate that the FI/LE system does not determine these forms of cyanide.

17.0 Glossary of Definitions and Purposes.

The definitions and purposes are specific to this method but have been conformed to common usage as much as possible.

17.1 Units of weights and measures and their abbreviations

17.1.1 Symbols.

°C degrees Celsius
% percent
± plus or minus
≥ greater than or equal to

17.1.2 Alphabetical characters.

g gram
L liter
mg milligram
mg/L milligram per liter
µg microgram
µg/L microgram per liter
µmL milliliter
ppm parts per million
ppb parts per billion
M molar solution

17.2 Definitions.

17.2.1 Available cyanide consists of cyanide ion (CN^-), hydrogen cyanide in water (HCN_{aq}) and the cyano-complexes of zinc, copper, cadmium, mercury, nickel, and silver.

17.2.2 Calibration blank—A 100 mL volume of reagent water treated with the ligand-exchange reagents and analyzed using the FIA procedure.

17.2.3 Calibration standard (CAL)—A solution prepared from the dilution of stock standard solutions. A 100 mL aliquot of each of the CALs are subjected to the analysis procedure. The resulting observations are used to calibrate the instrument response with respect to the analyte concentration.

17.2.4 Discharge—Specific discharge (also known as ''matrix type'') means a sample medium with common characteristics across a given industrial category or industrial subcategory. Examples include: C-stage effluents from chlorine bleach mills in the Pulp, Paper, and Paperboard industrial category; effluent from the continuous casting subcategory of the Iron and Steel industrial category; publicly owned treatment work (POTW) sludge; and in-process streams in the Atlantic and Gulf Coast Hand-shucked Oyster Processing subcategory. Specific discharge also means a discharge with characteristics different from other discharges. Therefore, if there are multiple discharges from a facility all with the same characteristics, these are the same discharge for the purpose of demonstrating equivalency of a method modification. In this context, ''characteristics'' means that results of the matrix spike and matrix spike duplicate (MS/MSD) tests with the unmodified method meet the QC acceptance criteria for recovery and relative percent difference (RPD).

17.2.5 Initial precision and recovery (IPR)—Four aliquots of the LRB spiked with the analytes of interest and used to establish the ability to generate acceptable precision and accuracy. An IPR is performed the first time this method is used and any time the method or instrumentation is modified.

17.2.6 Laboratory control sample (LCS)—An aliquot of LRB to which a quantity of mercury (II) cyanide stock solution is added in the laboratory. The LCS is analyzed like a sample. Its purpose is to determine whether the methodology is in control and whether the laboratory is capable of making accurate and precise measurements.

17.2.7 Laboratory reagent blank (LRB)—An aliquot of reagent water that is treated like a sample including exposure to all glassware, equipment, and reagents that are used with other samples. The LRB is used to determine if the method analyte or other interferences are present in the laboratory environment, reagents, or apparatus.

17.2.8 Matrix spike/matrix spike duplicate (MS/MSD)—An aliquot of an environmental sample to which a quantity of the method analyte is added in the laboratory. MS/MSDs are analyzed like a sample. Their purpose is to determine whether the sample matrix contributes bias to the analytical results. The background concentration of the analyte in the sample matrix must be determined in a separate aliquot and the measured values in the MS/MSD corrected for the background concentration.

17.2.9 Minimum level (ML)—The level at which the entire analytical system shall give a recognizable signal and acceptable calibration point, taking into account method specific sample and injection volumes.

17.2.10 Ongoing Precision and Recovery (OPR)—See Laboratory control sample.

[FR Doc. 98–17963 Filed 7–6–98; 8:45 am]

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Federal Register

Tuesday
July 7, 1998

Part V

Department of Education

Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program; Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Combined Notice Inviting Applications for New Awards for Fiscal Year 1998; Notices

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities National Programs; Federal Activities Grants Program

AGENCY: Department of Education.

ACTION: Notice of final priorities and selection criteria for fiscal year 1998.

SUMMARY: The Secretary announces final priorities and selection criteria for fiscal year (FY) 1998 under the Safe and Drug-Free Schools and Communities (SDFSC) National Programs Federal Activities Grants Program. The Secretary takes this action to focus Federal financial assistance on identified national needs to promote the creation of safe and orderly learning environments for all students and to encourage the development of systems to collect data related to youth drug use and violent behavior.

EFFECTIVE DATE: These priorities take effect August 6, 1998.

FOR FURTHER INFORMATION CONTACT: For further information about the two priorities under the Safe and Drug-Free Schools and Communities National Programs Federal Activities Grants Program, contact the Safe and Drug-Free Schools Program, U.S. Department of Education, 600 Independence Avenue, SW., Room 603 Portals, Washington, D.C. 20202–6123. Telephone: (202) 260–3954. FAX (202) 260–3748. Internet: http://www.Patricia__Rattler@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under these competitions is published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: This notice contains two final priorities and related selection criteria for fiscal year 1998. Under absolute priority one (CFDA 84.184G, State and Local Educational Agency Drug and Violence Prevention Data Collection), the Secretary may make awards for up to 24 months. Under absolute priority number two (CFDA 84.184J), Model Demonstration Programs, the Secretary may award cooperative agreements for up to 60 months. Cooperative agreements funded through this priority will serve as national demonstration sites to test strategies, assess effectiveness, and make a major contribution to the development and dissemination of models and components of models that can be used by school districts and other youth-serving agencies nationwide.

On May 19, 1998, the Secretary published the proposed priorities for these competitions in a Notice of Request for Public Comments in the **Federal Register** (63 FR 27646). In response to comments received, the Secretary made no modifications, as noted in the following section—Analysis of Comments and Changes—of this notice of final priorities.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment on the proposed priorities, the Department received four responses. These included responses from local educational agencies, a State agency, and an individual. Comments that did not suggest changes in the priority language are not addressed. An analysis of the comments, organized by priority, follows.

Priority 1—State and Local Educational Agency Drug and Violence Prevention Data Collection

Comment: One commenter suggested strengthening the language in this priority concerning coordination with other existing data collection efforts by requiring applicants to document other existing data collection activities and how they will collaborate with them. The commenter suggested requiring letters from youth-serving agencies in other, non-educational domains as part of applications to help demonstrate collaboration.

Discussion: The language in the proposed priority requires applicants to describe how efforts proposed as part of the project have been coordinated with and will not duplicate existing data collection efforts. The proposed change in the priority would require a level of proof that is unnecessary in order to permit evaluation of a proposal.

Changes: None.

Priority 2—Model Demonstration Programs to Create Safe and Orderly Learning Environments in Schools

Comments: Two commenters proposed modifications to this priority that would limit the variety of program models that could be implemented with a grant under this priority.

Discussion: The existing language in the priority is specifically designed to include a wide range of possible program models that meet general criteria. The proposed limitations would significantly reduce the flexibility provided in the original language.

Changes: None.

Comment: One commenter suggested that language in the priority be revised to require that the entire model program proposed be based on research, not just specific components or strategies.

Discussion: The language in the proposed priority is intended to solicit applications that combine multiple strategies and programs into a model program that will comprehensively address the risk factors that predispose youth to drug use and violent behavior. Because research-based information about the effect of combined strategies and programs as a comprehensive model is limited, the proposed priority language allows applicants the flexibility to propose model programs that combine research-based programs and strategies in innovative or untested ways.

Changes: None.

Priorities: Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that meet one of these absolute priorities.

Absolute Priority 1 and Selection Criteria—State and Local Educational Agency Drug and Violence Prevention Data Collection (CFDA 84.184G)

Priority 1:

Under this priority, applicants must propose projects that—

(1) Develop, improve, expand, or enhance the collection of data related to youth drug use and violence; and

(2) Develop and implement processes to ensure that high-quality data are used to form policy, assess needs, select interventions, and assess the success of drug and violence prevention activities funded under the SDFSCA State Grants Program. Projects may be State-wide in scope or limited to an individual local educational agency, or a consortium of local educational agencies, with a student enrollment that exceeds 30,000.

Projects must address drug and violence prevention data for students in general, not just for a sub-set of the population (e.g., non-English speaking students or hearing-impaired students).

To be considered for funding under this competition, a project must include—

(1) Concrete plans, with time lines, that detail how the results of new or improved data collection efforts will be incorporated into State and local educational agency efforts to assess needs, select interventions, and assess success of drug and violence prevention efforts;

(2) Outcome-based performance indicators that will be used to judge the success of the project;

(3) A description of how efforts proposed as part of the project have been coordinated with and will not duplicate data collection efforts being implemented by other State or local agencies; and

(4) If the applicant is other than a State or local educational agency, evidence of commitment from the State educational agency (for State-wide projects) or from the superintendent of schools (for local projects).

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate proposals submitted under this priority.

The maximum score for all of the criteria in this section is 100 points.

The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.* —

1. *Need for project.* (15 points)

In determining need for the proposed project, the following factors are considered:

(a) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

2. *Significance.* (25 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The significance of the problem or issues to be addressed by the proposed project.

(b) The likelihood that the proposed project will result in system change or improvement.

(c) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

3. *Quality of the project design.* (25 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(b) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(c) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

4. *Adequacy of resources.* (15 points)

In determining the adequacy of resources for the proposed project, the following factors are considered:

(a) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(b) The potential for the incorporation of project purposes, activities or benefits into the ongoing program of the agency or organization at the end of Federal funding.

5. *Quality of the management plan* (10 points).

In determining the quality of the management plan for the proposed project, the following factor is considered: The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

6. *Quality of the project evaluation.* (10 points)

In determining the quality of the evaluation to be conducted for the proposed project, the following factor is considered: The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Absolute Priority 2 and Selection Criteria—Model Demonstration Programs to Create Safe and Orderly Learning Environments in Schools (CFDA 84.184J)

Priority 2:

Projects proposed under this priority are expected to comprehensively address multiple factors that predispose youth to drug use and violent behavior. Therefore, projects will not be funded for: (a) basic support of existing programs; (b) replication of a single program of demonstrated effectiveness, or (c) less than $500,000 or more than $1 million.

Projects supported under this priority will be funded for implementation in one site for three years and for replication in additional sites for two years. Projects will be reviewed during the third year to examine, among other factors, the degree to which the evaluation findings at the original site are promising, and the quality of the evaluation design proposed to test the model at other sites during years four and five. Projects that fail to demonstrate effectiveness at the original site will not be funded to test the model's replication in other sites.

Under this priority, applicants must propose projects that:

(1) Develop and implement a model with specific components or strategies that are based on theory, research, or evaluation data;

(2) Identify outcomes intended to result in behavioral change in youth served and other indicators of the effectiveness of the model (e.g., improved bonding to school and to the community, reductions in disciplinary referrals, absence of firearms and other weapons in schools, acquisition of pro-social skills, and reductions in alcohol, tobacco, and other drug use by the target population);

(3) Evaluate the model by using multiple measures to determine the effectiveness of the model and its components or strategies; and

(4) Produce detailed documentation of procedures and materials that would enable others to replicate the model as implemented at the original site.

Applicants must provide the following : (a) recent and historical data on drug use by youth; (b) data that describe patterns of violence and disruptive acts in schools; (c) rates of referral to juvenile justice authorities for bringing weapons to school, drug use or possession, and violent criminal acts; (d) evidence of gang and violence problems in the target community, and (e) demographic information for the geographic area in which the school is located.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate proposals submitted under this priority.

The maximum score for all of the criteria in this section is 100 points.

(2) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.* —

1. *Significance.* (30 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(b) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(c) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

2. *Quality of the project design.* (25 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(b) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(c) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(d) The quality of the proposed demonstration design and procedures for documenting project activities and results;

(e) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

3. *Adequacy of resources.* (10 points)

In determining the adequacy of resources for the proposed project, the following factors are considered:

(a) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(b) The extent to which the costs are reasonable in relation to the objectives, design and potential significance of the proposed project.

4. *Quality of the management plan.* (10 points)

In determining the quality of the management plan, the following factors will be considered:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

5. *Quality of the project evaluation.* (25 points)

In determining the quality of the evaluation, the following factors will be considered:

(a) The extent to which the methods of the evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the proposed project.

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Departments's specific plans and actions for this program.

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Note: The official version of this document is the document published in the **Federal Register**.

(Catalog of Federal Domestic Assistance Numbers 84.184G and 84.184J, Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program.)

Dated: July 2, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 98–18033 Filed 7–6–98; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.184G and 84.184J]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Combined Notice Inviting Applications for New Awards for Fiscal Year 1998

Purpose of Program: The National Programs portion of the SDFSCA supports the development of innovative programs that (1) provide models or proven effective practices that will assist schools and communities around the Nation to improve their programs funded under the State Grants portion of the SDFSCA; and (2) develop, implement, evaluate, and disseminate new or improved approaches to creating safe and orderly learning environments in schools.

Eligible Applicants: State and local educational agencies, institutions of higher education, other nonprofit agencies, organizations, and individuals, and any combination of these types of entities.

Applications Available: July 2, 1998.

Deadline for Receipt of Applications: August 6, 1998.

Note: All applications must be received on or before the deadline date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

Deadline for Intergovernmental Review: September 8, 1998.

CFDA No. and name	Range of awards	Estimated average size of awards	Estimated number of awards	Estimated available funds	Project period
84.184G State and Local Educational Agency Drug and Violence Prevention Data Collection.	$400,000 to $600,000 (estimated).	$500,000	6	$3,000,000	Up to 24 months.

CFDA No. and name	Range of awards	Estimated average size of awards	Estimated number of awards	Estimated available funds	Project period
84.184J Model Demonstration Programs to Create Safe and Orderly Learning Environments in Schools.	$500,000 to $1,000,000 (absolute).	750,000	8	5,000,000	Up to 60 months.[1]

[1] Initial award period for 36 months; after review of evaluation findings, project may be replicated at additional sites for 24 months.

Note: Range of awards, average size of awards, number of awards and available funding in this notice are estimates only. The Department is not bound by any estimate in this notice. Funding estimates cited for these programs represent single year support for a project period only. Funding for the second and third years of these projects is subject both to the availability of future years' funds and the approval of continuation (see 34 CFR 75.253).

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86 (note: The regulations in 34 CFR part 86 apply to institutions of higher education only); (b) 34 CFR parts 98 and 99; and (c) the notice of final priorities and selection criteria, as published elsewhere in this issue of the **Federal Register** applies to these competitions.

Federal Activities Grants Program Competitions (CFDA 84.184G and 84.184J)

Absolute Priority 1—State and Local Educational Agency Drug and Violence Prevention Data Collection (CFDA 84.184G)

Program Authority: 20 U.S.C. 7131.

Absolute Priority 2—Model Demonstration Projects to Create Safe and Orderly Learning Environments in Schools (CFDA 84.184J)

Program Authority: 20 U.S.C. 7131.

For Applications or Information Contact: Safe and Drug-Free Schools Programs, 600 Independence Avenue, SW., Suite 604 Portals, Washington, DC 20202–6123. Telephone: (202) 260–3954. By facsimile (202) 260–3748. Internet: http://www.ed.gov/offices/OESE/SDFS. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Service (at gopher://gcs.ed.gov). However the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

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Program Authority: 20 U.S.C. 7131.

Dated: July 2, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98–18034 Filed 7–6–98; 8:45 am]

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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.

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