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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 406 and 457

RIN 0563–AB65

Nursery Crop Insurance Regulations; and Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of nursery. The intended effect of this action is to provide policy changes to better meet the needs of nursery operators by adding new Nursery Crop Insurance Provisions to be effective for the 1999 and subsequent crop years, restricting the effectiveness of the current Nursery Crop Provisions and the Nursery Frost, Freeze, and Cold Damage Exclusion Option to the 1999 crop year only and adding a new Peak Inventory Endorsement.

EFFECTIVE DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Rob Cerda, Insurance Management Specialist, Research and Evaluation Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–6343.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This Office of Management and Budget (OMB) has determined this rule to be not significant and, therefore, has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through April 30, 2001.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

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

National Performance Review

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

Background

On Thursday, January 29, 1998, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 4399–4403, to revise 7 CFR 457.114, Nursery Crop Insurance Provisions, delete 7 CFR 457.115, Nursery Frost, Freeze and Cold Damage Exclusion Option and replace it with a new Peak Inventory Endorsement, and restrict the effect of the Nursery Crop Insurance Regulations (7 CFR part 406) to the 1995 and prior crop years. The revised provisions will be effective for the 1999 and succeeding crop years.

Since the nursery crop insurance program is already in its sales period, FCIC has elected to allow nursery producers the option of insuring their nursery crop under the existing Nursery Crop Insurance Provisions or these new Nursery Crop Insurance Provisions. As

a result, the existing Nursery Crop Insurance Provisions and the Nursery Frost, Freeze, and Cold Damage Exclusion Option will be restricted to the 1999 crop year only. These new Nursery Crop Insurance Provisions will be published at 7 CFR 457.162.

Following publication of the proposed rule, the public was afforded 45 days to submit written and verbal comments and opinions. A total of 55 verbal and 138 written comments were received from an insurance service organization, reinsured companies, agents, nursery associations, producers, insurance company supervisors and loss adjusters, and florists' associations. The comments received and FCIC's responses are as follows:

Comment: A producer asked whether the changes in the proposed nursery provisions are in effect or just proposed.

Response: The changes in the nursery provisions will not become effective until publication of the effective date of this final rule in the **Federal Register**.

Comment: A crop insurance agent asked whether insurable entities are the same with the proposed policy as the current policy.

Response: The insurable entities are the same.

Comment: Two producers asked when the policy would be available.

Response: Upon publication of the final rule.

Comment: A crop insurance agent asked whether all states will be covered under the proposed policy.

Response: FCIC will offer nursery insurance coverage in all states except Alaska for the 1999 crop year.

Comment: A producer asked what is a marketable plant.

Response: A marketable plant is a plant that the insurance provider determines may be offered for sale into the wholesale market. FCIC has added a definition of ''marketable.''

Comment: An insurance service organization, two insurance companies, two nursery associations, a florist organization, two crop insurance agents and a producer expressed concerns with the eligible plant list. The commenters stated that the coverage provided by the nursery policy depends on the accuracy of the eligible plant list, which should include, (1) plant genus, species, and cultivar; (2) the plant's maximum insured value; (3) winter protection required and the areas in which they apply; and (4) plant unit designation. Other commenters stated that all nursery plants and cultivars that are hardy in the zones in which they are produced should be eligible for crop insurance. A commenter stated that producers will need a copy of the plant listing in order to accurately submit their plant inventory report.

Response: The eligible plant list includes the genus, species, and often cultivar of insurable plants, the maximum insurable value for those plants, the winter protection requirements for container material in the areas in which they apply, the hardiness zone to which field grown material is insurable, the designated hardiness zone for each county, and unit classification for each plant on the list. The definition of ''eligible plant list'' has been revised to include this information. The eligible plant list will be available to producers in each crop insurance agent's office. Each producer can also receive computer software that will assist them or agents in estimating the insurable value of the nursery inventory.

Comment: Two insurance companies and two crop insurance agents suggested the proposed crop provisions do not appear to exclude plants for retail sales. One commenter suggested that these sections should be changed so only wholesale producers of plant materials and those plant materials being grown for the wholesale market are covered. A commenter stated the proposed definition of ''nursery'' states that a majority of the plant materials must be sold in the wholesale market. The commenter was concerned that insurance was available for nursery operations where more than 50 percent of the plants may be sold retail. Another commenter suggested there should be clarification on the issue of insurability of field grown production of trees and vines grown for commercial use versus grown for retail sales. The commenter stated some nurseries growing for a commercial use sell to retailers, and there needs to be requirements to separate the commercial from the retail grower.

Response: FCIC's intentions are to insure wholesale producers of nursery plant materials. In discussions with producers prior to writing the proposed rule, FCIC became aware that wholesale producers of nursery plant material also may have some retail sales. FCIC has revised the definition of ''nursery'' to require at least 50 percent of gross revenues come from the wholesale sale of plants.

Comment: One commenter suggested changing the definition in section 1 ''policy renewal date'' noting this is the equivalent to the sales closing date.

Response: A sales closing date is the date by which all sales must be completed. For nursery, sales are permitted until May 31. However, FCIC wanted to have a fixed date by which the crop year will begin each year for continuing policies regardless of the date of application. The date is the policy renewal date.

Comment: A producer asked why the optional unit proposal had different classes for annuals and perennials.

Response: Prior to writing the proposed rule, many producers requested a division of units by type of plant material. Types of plants listed as eligible for optional units in section 2(c) of the policy are based on the classification system used by the American Nursery and Landscape Association's Handbook on Nursery Standards. Many producers recognize this as an authoritative source.

Comment: An insurance company asked whether container plants would be a separate unit from field grown nursery plants.

Response: FCIC has added the definition for ''practice'' and revised the provisions of sections 2(a) and 6(c) to clarify that containerized and field grown nursery plant materials will be separate basic units.

Comment: A producer asked whether units would be available on irrigated acres and non-irrigated acres.

Response: The nursery policy requires all nurseries to be irrigated to be insured unless otherwise specified in the actuarial documents. Basic units will be established only by container and field grown growing practices. Optional units will be available by plant types listed in section 2 of the policy.

Comment: An insurance company supervisor asked if the proposed Optional Unit Endorsement guidelines apply to catastrophic risk protection (CAT) policies.

Response: FCIC has revised the policy to incorporate the Optional Unit Endorsement into section 2. Optional units will now be available to producers who elect either the limited or additional level of coverage without the need to purchase an endorsement. Producers who elect CAT coverage are not eligible for optional units.

Comment: An insurance company and a producer association expressed concern with the plant price schedule compiled by FCIC. One commenter was concerned that the plant price schedule is not subject to public analysis and comment. Another commenter stated that producers must revalue inventory for insurance purposes using prices set by FCIC. The commenter stated that this requirement negates the simplification created by removal of the requirement that the producer file a projected inventory, and will cause an additional burden should the producer's inventory change during the year.

Response: The plant price schedule is a listing of plant prices determined by FCIC based on price information available from the nursery industry. FCIC determined that a fixed plant price schedule was essential to the continued offering of a nursery insurance program. A number of public oversight agencies found that FCIC was exposing the nursery program to potential abuse and litigation when it allowed individual nurseries to set their own prices. The plant price schedule will be available to producers and insurance companies by the contract change date in the same manner used by FCIC to issue rates, price elections, amounts of insurance and other information used to establish insurance coverage and determine crop indemnities. It should not impose any greater burden on producers to calculate the value of their inventory since only the price used is changed. Therefore, no change has been made.

Comment: An insurance company expressed a concern that plant size is the sole determinant of price in the plant price schedule, and that price variations caused by quality are not considered.

Response: The prices published in the plant price schedule recognize the most important and common pricing factor, which is size, at a standard level of quality. It would be impossible to include the quality variables for each plant type. If the quality of the plants are deficient, the insurance company can deny insurance on such plants. Therefore, no change has been made.

Comment: Two crop insurance agents and a producer asked whether the prices on the eligible plant list will be on a regional or national level. One commenter had a concern that prices will not be representative of regions. Another commenter asked whether all the cultivars will be listed.

Response: FCIC determined that adequate price information was not available on a regional basis. Therefore, the decision was made to offer national prices as a means of insuring the largest number of plants in all areas. For many plants, cultivars will be listed; however, many cultivars will not be listed. In cases where the plant is listed by genus and species but a specific cultivar is not listed, the price for the unlisted cultivar will be the price shown for genus and species of the plant.

Comment: A producer asked whether the value of the plants will be adjusted annually as plants mature.

Response: The prices contained in the plant price schedule recognize different sizes, which reflect different maturity levels. It is the producer's responsibility to value the plant inventory during and between crop years based on these prices.

Comment: A crop insurance agent asked when a producer may change price elections, coverage elections, etc.

Response: The Basic Provisions require all changes in price elections, coverage levels, etc., be made by the sales closing date.

Comment: A crop insurance agent asked whether there is a reduction in the wholesale price for field grown tree plant material that is not harvested. The commenter stated that the producers' costs for digging, moving, burlapping, and tying of the tree could be substantial.

Response: FCIC is not considering a reduction for unharvested field grown plant material at this time. FCIC recognizes that the cost for harvest can be substantial, but it could not identify a uniform percentage reduction that would be fair to all producers. FCIC will continue its research in this area and may adjust prices when sufficient information is available.

Comment: A producer association was concerned that a nationwide plant price schedule listing the maximum amount payable for insured plants would be inequitable. The commenter maintains that the best and fairest method for valuing insurable plants is to use the wholesale market value of the nursery inventory as stated in the producer's own catalogs. The commenter recognized FCIC's need to establish a crop insurance program that minimizes fraud potential. Nonetheless, the commenter asserts that quality plants command a higher market price and better producers will be penalized with the crop insurance program that subjects them to a lower national average price. The commenter was also concerned that substandard producers will be rewarded with a program that provides them with a higher average value for their plants.

Response: FCIC recognizes that there can be variation in the quality of plants produced, growing practices employed, and the prices received by producers for their plant material. However, this problem is no different from other crop insurance programs where actual market prices may be higher than FCIC's announced expected market prices. Most oversight organizations considered the pricing methodology employed in the current nursery program a serious risk for program abuse. FCIC has an obligation to protect its programs. FCIC has attempted to create an accurate and fair price list, while meeting its mandate to provide an actuarially sound nursery crop insurance program. Therefore, no change has been made.

Comment: A crop insurance agent asked whether an insured could buy a higher coverage level during the policy year.

Response: The producer must elect the coverage level for the crop year at the time of application or by the policy renewal date for subsequent crop years and any change the coverage level made after that date will not be effective until the next crop year.

Comment: Two insurance companies and a crop insurance agent stated that provisions contained in section 4(b) of the proposed rule would present difficult data processing problems if implemented. A commenter stated this provision allows insureds with a policy renewal date between March 31 and June 30 to choose either the current or the proposed nursery policy. The commenter stated, for example: If producer A has a renewal date of July 1 and on March 31 FCIC publishes contract changes that increase premiums and reduce indemnities, producer A will be covered by that new policy or not at all. Producer B has a renewal date of June 30. Producer B may pick either policy. The commenter stated if FCIC changes the policy again the following year, producer B will have another opportunity to pick the policy most disadvantageously to the company. The commenter also stated that the insurance company must maintain two systems for different policies and must track those different policies under two different Standard Reinsurance Agreements (SRA). Another commenter stated that many facets of the policies could become very confusing, such as (1) which Special Provisions apply; (2) which price listing is used; (3) which rates will apply; (4) what loss adjustment will be used; (5) which SRA would this come under; and (6) for what crop year.

Response: FCIC has revised specific provisions in section 9 of the policy so that the nursery policy can only be sold through May 31 and all continuing policies will have a common renewal date. The current insurance periods ends on September 30, 1998. Producers will have the option to insure their nursery crop under the existing Nursery Crop Insurance Provisions (7 CFR 457.114) or the new Nursery Crop Insurance Provisions (7 CFR 457.162) for the 1999 crop year only. Regardless of the option chosen, coverage will not be effective before October 1, 1998. FCIC has also revised section 4 to specify that all policies will have the same contract change date of June 30. After the 1999 crop year, all nursery crop policies under 7 CFR 457.114 will be terminated and producers will be required to apply

for insurance under 7 CFR 457.162 to maintain or obtain insurance coverage.

Comment: A crop insurance agent asked what the difference is between the 12 month nursery plant inventory and the Peak Inventory Endorsement.

Response: The Peak Inventory Endorsement allows a producer to increase coverage for specific months where the value of the inventory may be higher than for the rest of the insurance period. Without this endorsement, producers would have to carry higher coverage throughout the insurance period, with unnecessary premium paid, or risk having uncovered losses. The Peak Inventory Endorsement is designed to help producers lower the premium cost by isolating peak amounts of inventory value and charging premium only for the period the peak insurance coverage is in effect.

Comment: A producer and a crop insurance agent asked whether plant materials not on the plant price schedule would be insurable by written agreement.

Response: Although FCIC is greatly expanding the number of insurable plants by including field grown nursery plants under these provisions, some plants may not be listed. To the extent that FCIC can determine the proper cold weather storage requirements for the container grown plant material, the cold hardiness zones for field grown material, and a scheduled price for each plant according to size and growing practice. Insurance by written agreement may be available. Plants insured by written agreement will be included on the eligible plant list in subsequent crop years.

Comment: A crop insurance agent stated that an inventory list of plants was necessary to adjust a loss.

Response: When loss adjustment occurs, loss adjusters must determine the value of the inventory just prior to and after the loss. This is done by a visual examination of the plants. FCIC determined that an examination of the existing plants on hand was more accurate than a plant inventory list since the inventory changes so frequently. If concerned, the policy permits insurance providers to require an inventory list of plants. However, since most losses tend to occur infrequently and as a result of catastrophic events, FCIC determined that requiring all producers to annually report plant inventory lists was too burdensome. Therefore, no change has been made.

Comment: A producer asked whether the dollar value of an inventory can be a lower dollar value than the national price.

Response: The nursery policy permits producers to select less than 100 percent of the price listed in the plant price schedule. Producers must make this election at the time of application or by the policy renewal date for all plants covered under the policy but cannot select different price percentages on individual plants or types of plants.

Comment: A producer asked why 100 percent of all the plants must be insured.

Response: FCIC has always required that all acreage of a crop in the county be insured under a policy. Nursery is no different. The nursery policy requires that all insurable plants listed on the eligible plant list in which the producer has a share in the county be insured.

Comment: A loss adjuster asked whether the plant inventory value report can be revised upward during the year.

Response: Section 6 of the Nursery Crop Insurance Provisions states the Plant Inventory Value Report may be revised until May 31st to reflect an increase in inventory value. Section 6 also states that insurance will attach on any proposed increase in inventory value 30 days after a written request is received unless the insurer rejects the proposed increase in your plant inventory value in writing.

Comment: An insurance company and a producer association stated that section 6(b) is not clear and asked if the policy is continuous.

Response: FCIC has revised section 9 of the policy to provide a date certain for the beginning and end of the insurance period to make it clear that this is a continuous policy. Language was also added to section 6 to make it clear that the plant inventory value report for continuing policies must be submitted by September 1 if the producer wants to change any inventory values.

Comment: An insurance company questioned whether section 6(c) excludes new nurseries that may not have sales records from previous years and what are the consequences of not having any sales records.

Response: Records of sales and purchases are not required as a condition of insurance except for producers insured under the catastrophic level of coverage. Since producers insured under the catastrophic level of coverage are limited to an amount of coverage based on previous year's sales, they may be required to submit such records. For producers covered by limited or additional levels of coverage, it is within the discretion of the insurance provider whether such records are necessary. This provision was intended to allow insurance providers to obtain additional information from high risk producers and will not exclude new producers from obtaining insurance.

Comment: An insurance company had a concern that the definitions of field market value A and B refer to the value ''in the unit'' before and after occurrence of a loss. The commenter stated that it would be helpful to state somewhere in section 6 that the value must be reported by unit. The commenter stated that the last sentence in section 6(d), which says errors in reporting may be corrected by us at loss adjustment time, may not be clear to the policyholder.

Response: Section 6(c) requires the producer to report the inventory value for each practice, which is the basic unit. Requiring an inventory report for each optional unit would place an undue burden on producers to accurately project inventory in multiple categories of plants over the insurance period. The difficulty of this task would likely result in numerous revisions of unit values or frequent instances of misreported unit values. Therefore, no change has been made.

Comment: An insurance company and a producer association suggested that a clarification may be needed in section 6(f). The commenter feels that this provision would allow shifting of plants between plant groups at loss time since some plants fall into more than one group.

Response: Since plants will be assigned to plant groups on the eligible plant list, there will be no opportunity for producers to reassign plants to a different plant group.

Comment: An insurance company and a producer association suggested FCIC consistently apply waiting periods. The proposed rule contains a 30-day waiting period for a Peak Inventory Endorsement, but only a 14-day waiting period for an inventory increase. The commenter stated it would be less confusing if the waiting period for a Peak Inventory Endorsement and for an inventory increase would be the same. The commenter stated the waiting period should be 14 days.

Response: FCIC has revised section 6 to require a 30 day waiting period for an inventory increase to be consistent with the waiting period for the Peak Inventory Endorsement.

Comment: An insurance company recommended changing section 6(h) to read ''You must insure the full value in accordance with section 6(e) of your insurable plant inventory.''

Response: FCIC has amended redesignated section 6(g) accordingly.

Comment: An insurance company and a producer association stated the proposed policy confuses and complicates the relationship between premiums and indemnities and thereby creates unnecessary work and invites abuse. One commenter stated: (1) Premiums are determined based on the plant inventory value report the producer prepares and the values should be reported by unit, not growing location; and (2) indemnities are determined by plant price schedule which lists the maximum amount payable for insurable plants. If inventory is valued according to the plant price schedule, producers need not separately value inventory. The commenter stated all they need do is list inventory and the insurers will calculate the premium from the plant price schedule. Moreover, while it is pointless for producers to value inventory above the maximum amount payable for the loss of that inventory, as determined by the plant price schedule, it may be profitable to overvalue inventory up to the price established by the plant price schedule. For example, if the plant price schedule establishes a price of $10 for a particular plant, a producer might value such a plant at up to $10 when, if fact, its true value is only $5. The commenters also asked how devalued (damaged) plants would be handled; a detailed plant inventory listing is not required but is the basis for determining the inventory value report. The commenter stated that a detailed plant listing must be a requirement, not an option. It is imperative that FCIC make available computer software that includes the plant price schedule and includes the appropriate reports required to determine the amount of insurance for the nursery by optional unit if applicable.

Response: According to the terms of the policy, inventory values are reported on the plant inventory value report by basic unit and the location of the plants in each unit must also be reported. The nursery plant prices on the plant price schedule will generally be close to the average price. FCIC recognizes that there will be instances where prices for a particular nursery may differ from the average price. However, during the establishment of the plant price schedule, FCIC did not encounter a high number of instances in which the producer's prices were materially lower for a large portion of the inventory. Therefore, FCIC does not perceive significant risk in producers being able to over value their inventory. FCIC designed the nursery insurance product to function efficiently using a minimum amount of paper for both the insurance delivery system and the insured, while protecting program integrity. Further, insurance providers who are concerned may require detailed plant listings. FCIC will have computer software that will assist producers and crop insurance agents in the valuation of the insurable plant inventory.

Comment: An insurance company noted that under the current policy the producer provides the insurance company with a listing of plants that will be grown during the insurance period. Based on that list, the company has the opportunity to determine if the cold protection equipment or facilities can adequately meet the cold protection requirements. The proposed policy does not require the producer to provide a detailed plant list. The commenter stated that the inspector may not know that the required cold protection is unavailable until a notice of loss is filed by the insured. The commenter also stated that the current inspection form provides a place to list the insurable plants, but if the loss adjuster does not know what plants are insurable, he or she will not be able to make that determination.

Response: A major objection to the current policy, voiced repeatedly by producers, was the amount of paperwork involved to establish coverage. It was FCIC's goal to provide an insurance product that would meet the needs of producers and the insurance companies while remaining actuarially sound. FCIC believes that detailed inventory reports present a significant barrier to program participation. When the application is first received, the nursery will be inspected. The inspector will be able to see the plants and the cold protection measures to determine if they meet the policy requirements. Thereafter, the nursery will be inspected after a loss. The loss adjuster will again inspect the plants and the cold protection measures to ensure compliance with the policy requirements. A detailed list of plants is not necessary to protect the program's integrity. Therefore, no change has been made.

Comment: A producer association asked what effect a revised plant inventory value report that decreases the amount of insurance would have on the crop year deductible.

Response: Permitting producers to revise inventory values downward on a regular basis is likely to create an excessive and unnecessary administrative burden. Therefore, FCIC has revised section 6(f) of the policy to specify that revisions in inventory value are only for increasing reported values. The availability of the occurrence deductible makes downward revisions to obtain a lower coverage unnecessary.

Comment: A crop insurance agent asked whether the proposed policy will have different premium rates based on classes of insured plants.

Response: At the present time, FCIC does not plan to offer insurance at different premium rates based on plant types. Premium rates may be adjusted in the future as actual experience is reviewed. However, FCIC anticipates different premium rates for the container grown and field grown nursery practices.

Comment: A crop insurance agent asked whether there will be an additional rate for optional units.

Response: For an additional premium, section 2 of the policy allows basic units to be divided into optional units by producers who elect limited or additional coverage.

Comment: An insurance company expressed concern about rating for the proposed policy. The commenter asked if the premium cost will change from 1998 to 1999 for the same inventory.

Response: This policy is substantially different in many respects from the current policy. FCIC is developing rates specific to the provisions of the new nursery policy. FCIC anticipates changes in rating structures across the country. In some regions, rates are likely to be higher and other regions' rates may be lower. For the 1999 crop year, producers with coverage under the existing nursery policy will be charged rates for the coverage under that policy.

Comment: Insurance companies recommended adding in section 7 ''any amount due us will be deducted from any loss payment.''

Response: FCIC has amended the provisions in section 7(c) to allow the deduction of any amount due under a FCIC reinsured crop insurance policy to be set off against any indemnity which may be due.

Comment: Insurance companies and a producer association had concerns with sections 7(b)(2) and (3). The commenters recommended: (1) The time frames as proposed for paying the premium in full be removed and substituted with 6 months; and (2) the insured have at least 30 days to pay the premium before interest begins. With respect to the requirement that 40 percent of the premium is due on the date the insurance inventory is accepted, the commenter questions what was the consequence if the amounts are miscalculated and an amount less than 40 percent of the premium is paid. The commenter asked whether coverage would be postponed

until the 40 percent is paid. The commenter also asked the consequences if damage occurs in the interim and would the amount of insurance be prorated to the amount of a premium paid or would coverage be denied. A commenter questioned, if a revised plant inventory value report is submitted that increases the premium, whether the 40 percent must be paid with the report or is this additional amount billed. The commenter stated it would seem simpler to issue a billing after the amount of insurance is established and require the full amount to be paid within 30 to 60 days.

Response: Based on the comments, FCIC finds no substantial benefit in its original proposal to collect premiums in installments. Therefore, FCIC has determined that it is in the best interest of the nursery program to establish one premium billing date. Sections 7(b) and (c) have been revised to use the premium provisions in the Basic Provisions regarding premium billing dates and the offset of amounts owed from indemnity payments. The billing date should be sufficiently late in the crop year so that all premium adjustments for the purchase of Peak Inventory Endorsements should have been made.

Comment: An insurance company asked whether FCIC will have a separate document for the producer to sign, certifying that the producer fully understands that only insurable plants are covered. The commenter stated they would prefer that producers be required to submit a list of their plants to their agent.

Response: Many crops have types or practices that are uninsurable and certification is not required. Since the policy is clear that only those plants listed on the eligible plant list are insurable and such list is available to producers, certification is not required for nursery. As stated above, FCIC found the requirement that all producers annually submit plant lists to be too burdensome and that amount of insurance, losses and indemnities could be determined without requiring detailed inventory reports in advance of a loss. Therefore, no change has been made.

Comment: An insurance company, a crop insurance agent and two producers asked whether the policy covered nursery plants after they are dug, balled and burlapped until the time they are sold. One commenter suggested clarification on field grown production for situations where plants are removed from the ground and damage occurs while in storage.

Response: Section 9 is revised to specify that balled and burlapped plant material is insurable until it is removed from the nursery because FCIC considers the balling and burlapping of field grown plant material a standard practice for field grown nursery material. It is appropriate to continue insurance coverage after the nursery material was balled. FCIC will specify management practices needed to care for balled and burlapped plant material in the Special Provisions (For example: FCIC may require shade and irrigation for balled and burlapped plant material in some circumstances). Insurance coverage will end when the plant material is removed from the nursery or at 11:59 p.m. on September 30 of the crop year.

Comment: A crop insurance agent asked whether Christmas trees are covered under the policy. The commenter stated that it seems they would be covered if the tree is listed in the eligible plant list and there were an established price. The commenter also asked whether insurance would end once the trees are cut and sold as a wholesale crop.

Response: FCIC did not intend to insure Christmas trees. Specific language was added to section 8 clarifying this exclusion. FCIC will consider insuring Christmas trees under a separate policy.

Comment: A crop insurance agent asked whether the proposed rule will cover seedbed and transplant beds.

Response: To be insurable, plants are required to be produced in standard nursery containers or field grown and must be a size specified in the eligible plant list. It is unlikely that seedbed or transplant beds would meet these criteria. If they did, and all other requirements for insurability are met, they may be insured.

Comment: An insurance service organization, a crop insurance agent, and two producer associations expressed concern that the proposed policy does not cover trays, cellpacks, and plant containers less than 3 inches in size, which form a significant part of the industry.

Response: In conducting research regarding insurability of small containers (less than 3 inches), FCIC determined that these containers presented a unique set of risks that would require special underwriting considerations. FCIC does not have sufficient information to offer such coverage. Further, FCIC has been informed that plants in containers less than 3 inches are generally produced in greenhouses, where private insurance is available. Therefore, no change has been made.

Comment: An insurance service organization had a concern that the proposed policy states that plants must be grown under an irrigated practice unless otherwise provided on the actuarial table or by written agreement. The commenter asked how the written agreement would be completed.

Response: The nursery policy requires that the insured crop be irrigated. The policy also contains a provision that allows FCIC to waive the irrigation requirement for field grown nursery plant material if appropriate. FCIC will list any waiver of the irrigation requirement in the Special Provisions. FCIC has included the procedures for approval of written agreements.

Comment: Two producer associations had concerns with the provisions of section 8 that state: (1) ''The insured nursery plants are those determined by us to be acceptable'; and (2) ''the insured nursery plants are those that are grown in an appropriate medium.'' The commenters requested clarification of ''acceptable'' and ''appropriate.''

Response: This provision of the policy is designed to protect insurance providers from accepting or being forced to accept plant materials that are damaged or are growing in a soil medium, particularly when containerized, that is inappropriate for the healthy growth of nursery plants. Generally available horticulture reference materials can be used to determine appropriate growing media. Such references would include factors such as soil composition, soil pH, drainage requirements for the particular plant material, etc. It is impossible to cover the range of possibilities in the insurance contract and, therefore, it will be within the loss adjusters' authority to determine the acceptability of the plants and the appropriateness of the growing medium in the event of loss.

Comment: An insurance company suggested adding to section 8(c) ''while the plant is located in the nursery'' at the end of the sentence.

Response: FCIC has revised the provision accordingly.

Comment: An insurance company questioned whether it is required to inspect the nursery for new applicants. The commenter stated it appears there are four required inspections, each involving a great deal of work, before coverage can be accepted: application, plant inventory value report, inspection, and payment of 40 percent of the premium.

Response: The policy requires an inspection to determine the acceptability of the nursery plant

materials and an inspection for determining the amount of any loss claimed by the policyholder. No other inspections are implied or required by the nursery policy. FCIC has removed the 40 percent premium requirement and there is no more work required for a plant inventory value report than there would be for an acreage report. Therefore, no other changes have been made.

Comment: A producer asked when a plant is considered an insurable plant (i.e., seedlings).

Response: Plants growing in containers that are at least 3 inches across which are at least the minimum insurable size as specified in the eligible plant list, for which a price can be determined from the plant price schedule or approved written agreement, and are not rejected as unacceptable are insurable.

Comment: Two insurance companies, an insurance agent, and two producers asked about the policy renewal date.

Response: Based on the numerous complaints regarding the complexities associated with administrative and operating procedures, FCIC has determined that it is in the best interest of the insurance delivery system to create a common renewal date for all policies. FCIC has revised section 9 of the policy to provide a renewal date of October 1. Although, producers will be permitted to purchase an initial nursery policy after October 1, the policy will annually renew on October 1.

Comment: A producer association asked if a producer who currently does not have nursery coverage may buy a policy before October 1, 1998, for the 1999 crop year.

Response: Once the final rule is published and FCIC files the policy, rates, and other information, sales may begin. For the 1999 crop year only, producers can elect to obtain coverage under either the existing nursery policy or this new nursery policy. However, although either policy may be purchased prior to October 1, coverage will not begin prior to October 1. With respect to the new nursery policy, to be insured as of October 1 of any crop year, producers must submit an application at least 30 days prior to that date.

Comment: An insurance company questioned the elimination of the sales closing date. The commenter stated it could cause an insured to wait until the producer could make a prediction as to the risk. For example, a producer in Florida might purchase a nursery policy in June or July, when there is a forecast for a high number of hurricanes or the insured may use the forecasts to increase their level of coverage.

Response: FCIC has revised section 9 of the policy to state that no policy may be purchased after May 31 to eliminate the ability to purchase a policy for only those periods where a loss is more likely. Further, the final rule states that coverage will begin 30 days after the application is received by the crop insurance agent. Therefore, no change has been made.

Comment: An insurance company stated that the movement to property and casualty philosophy of ''no sales closing date'' causes administrative issues that do not apply to other Federal crop insurance programs. The commenter stated it appears that developmental and assigned risk fund selections, premium due dates, premium billing cycles, renewal dates, issuing provisions and inventory deadlines could potentially occur each day of the year under the proposal, which increases the burden on the processing companies. The commenter stated if the ''no sales closing date'' concept is retained, a prorated premium for the first year insured up to some renewal date that is common to all policies would alleviate this problem.

Response: FCIC has revised section 9 of the final rule to state the policy will be offered for sale until May 31st for the year of application. After the year of application, if the policyholder has not canceled or terminated, the policy will have a common renewal date of October 1 with no 30 day waiting period. The premium will be prorated for the year of application to reflect the risks from any reduction in the coverage period until September 30.

Comment: An insurance company expressed a concern regarding the determination of the reinsurance year, especially for applications accepted after one reinsurance year ends and another begins.

Response: FCIC has revised section 9 of the policy to require all initial policies be purchased by May 31. This will ensure that all sales will occur in the same reinsurance year.

Comment: A producer asked whether the proposed nursery policy will allow a producer to cancel in mid-year.

Response: A producer is not permitted to cancel a policy for the crop year once the application is submitted unless the producer sells or otherwise divests himself or herself of his or her share of the nursery. The producer may cancel the policy at any time effective for the next crop year.

Comment: A producer asked when insurance ends on bare root stock.

Response: Section 9 has been modified to specify that insurance ends for bare root nursery stock with the removal of the nursery stock from the field.

Comment: A crop insurance agent asked whether the proposed policy will be on a 12-month basis from the date of sale.

Response: FCIC has revised section 9 of the policy to permit sales throughout the crop year until May 31. The insurance period will end on September 30 of each crop year, regardless of when the policy is purchased. The premium will be prorated for the period of risk.

Comment: A crop insurance agent and a producer asked whether the proposed policy is a continuous policy from year to year.

Response: The nursery policy is continuous from year to year provided that the premium is paid in full.

Comment: A crop insurance agent asked if the proposed nursery policy is released after July 1, 1998, whether a carryover insured can buy insurance for protection under the new policy between July 1 and September 30. The commenter also asked how this might affect a current 1998 policy.

Response: Once the final rule is published and FCIC files the policy, rates, and other information, sales may begin. However, no coverage will begin before October 1, 1998. For the 1999 crop year only, producers will have the option to be covered under their existing policy or the new nursery policy. Thereafter, only the new policy will be available.

Comment: A producer asked whether it is possible to change the effective date of the policy. The commenter stated this would require insurers to short rate the nursery policy.

Response: The effective date of the policy will not be changed since it corresponds with the effective date of the current nursery policy. FCIC has revised the new nursery policy to specify a single policy renewal date and a limited sales period. FCIC will prorate the premium for partial year insurance periods.

Comment: An insurance company asked if a policy is canceled or terminated, how soon could the policy be reinstated (since there are no sales closing dates in the proposed provisions).

Response: Once a policy is terminated, it cannot be reinstated unless allowed under 7 CFR part 400, subpart U. Under section 9 of the policy as revised, producers can make new application for a policy until May 31.

Comment: An insurance company questioned whether the price list, rate changes, etc., take effect based on the date the application is signed or the date

coverage begins (30 days later or when the insurance inventory is accepted).

Response: For the 1999 crop year only, the plant price schedule, rate changes, etc., take effect upon publication by FCIC of such information for the existing policy and the new policy. Thereafter, such policy terms will take effect on the date insurance attaches. The terms of the policy will be fixed for the subsequent crop years by the contract change date.

Comment: A producer association asked whether the proposed changes provide payment for removal of the damaged plant materials.

Response: The Federal Crop Insurance Act only authorizes payment for damage to insured plant material. There is no authority to provide coverage for removal of damaged plant material.

Comment: A producer asked whether the proposed policy provides coverage only against the ''death'' of the plants or whether the policy also covered damage that leaves plants unmarketable.

Response: Damage from an insured cause of loss that renders a plant unmarketable during the insurance period or substantially delays the producers' ability to sell the plant would be covered. Losses will be determined using FCIC approved loss adjustment procedures.

Comment: A producer asked what happens if the plants do not grow to their expected size due to drought.

Response: The nursery policy does not guarantee the plant will reach a producer's expectation. FCIC added a provision in section 10 that specifically excludes coverage for failure of the plant to reach an anticipated size due to drought. FCIC considered such coverage but could not accurately determine an amount of loss for failure of a plant to reach an anticipated size. Drought is a covered cause of loss if the plant is destroyed or damaged to the extent that it is unmarketable during the insurance period.

Comment: A producer asked what the irrigation requirements are for nursery producers.

Response: Section 8 of the nursery policy states that adequate irrigation equipment and water to irrigate all insurable nursery plants must be available at the time coverage begins and throughout the insurance period, unless otherwise provided by the actuarial documents or by written agreement. These determinations will be made during inspections conducted prior to the acceptance of insurance by the insurance provider and at the time of loss. It is not possible to provide more detailed requirements because these will vary based on the type of nursery operation and its location. The definition of ''irrigated practice'' has been revised to require sufficient water to sustain the normal growth of the plant and provide cold protection for applicable plants as described in the eligible plant list published by FCIC.

Comment: A producer asked whether drought will be covered as a cause of loss for field grown plants that are not irrigated because most producers in their region do not irrigate field grown nursery plants.

Response: The policy will only cover drought for non-irrigated plants as an insurable cause of loss if the irrigation requirement is waived by the actuarial documents or by written agreement.

Comment: A crop insurance agent asked whether earthquake is an insurable cause of loss.

Response: Section 10 lists earthquake as an insured peril.

Comment: A crop insurance agent asked whether excessive rain would be considered a cause of loss if the moisture causes a disease on the plant.

Response: Excessive rain and its consequences are considered an insurable cause of loss. However, disease for which control measures exist is specifically excluded as a cause of loss in section 10.

Comment: A crop insurance agent questioned section 10(b)(4) and recommends changing this section to read ''cold'' instead of frost and freeze, because plant materials can be damaged at less than freezing temperatures.

Response: FCIC has amended the provision accordingly.

Comment: A crop insurance agent, a producer association, and an insurance company stated a need to identify criteria and procedures for payments of disease or insect claims.

Response: Within the loss adjustment procedures, loss adjusters will be given specific instructions for documenting claims for these causes of loss. Therefore, no change has been made.

Comment: A producer asked whether the policy covered damage that becomes apparent over time. For example, the commenter questioned, if plants are damaged by flood and damage does not become apparent for a year, whether the producer could make a claim for indemnity.

Response: The policy provides protection against causes of loss that occur within the insurance period and that damage insured plants. The insured may make a claim for damage that occurred during the time the policy was in effect even if the insurance period has expired as long as a claim for indemnity is filed within 60 days after the insurance period has ended.

Comment: A producer questioned whether the policy would cover the cost of replacement plants if those plants to be shipped in March and April were underwater for 7 to 10 days in November and December and the producer decided to buy replacement plants for shipment in March and April due to concerns about the viability of the plants in inventory.

Response: The nursery policy covers damage to the insured nursery stock from insured causes of loss. If the flooded plants were damaged to the extent that they were unmarketable during the crop year, indemnities would be paid in accordance with loss provisions of this policy. There is no coverage provided for costs associated with replacing stock.

Comment: An insurance company recommended that section 10(b)(4)(i) be changed to indicate that proof of the repair or replacement of cold protection equipment or facilities was not possible and would not be required for the first 72 hours after failure of the equipment or facilities.

Response: FCIC believes this section is stated clearly. Therefore, no change has been made.

Comment: Two producers had concerns that the penalties for over and under reporting the value of the plant inventory are extremely severe. One commenter stated that the penalty for over reporting in particular is inconsistent with other insurance products. Another commenter stated the current policy establishes the amount of deductible on a percentage basis, based on the value of the inventory at the time of loss, and the proposed rule would fix the deductible as a percentage of the inventory value reported at the beginning of the policy year.

Response: There is no penalty for under or over-reporting inventory value. Producers are unlikely to over-report their inventory since it would increase their premium and decrease the likelihood that they will receive an indemnity since their crop year deductible will be higher. However, there is an incentive for producers to under-report their inventory value to reduce the amount of premiums owed. The claims provisions adjust the amount of indemnity by the proportional amount of the under-reported value to be commensurate with the amount of liability for which the producer paid. Therefore, no change has been made.

Comment: A crop insurance agent asked whether the deductible will be prorated when the value of inventory reported by a producer is less than the value found at the time of a loss.

Response: The policy requires the producer to report the full value of the nursery plant inventory or a reduced indemnity will be received in the event of a loss. As stated above, section 12 provides for indemnity payments in proportion to the amount of insurance purchased when the insured reports less than the full value of the insurable nursery inventory. For example, a producer who declares inventory worth sixty dollars when it is worth one hundred dollars will be paid 60 cents for each dollar that otherwise would have been paid as an indemnity under the terms of the policy. FCIC believes the under reporting provision of this policy is fairer to the producer than the provisions of the current policy for this situation since the policy provides producers with the insurance coverage for which a premium was paid.

Comment: A crop insurance agent asked whether units have an occurrence deductible or are all occurrence deductibles summed to meet the crop year deductible. The commenter also asked whether there would be any more occurrence deductibles for the crop year if the crop year's deductible is met.

Response: If the occurrence deductible is met, an indemnity will be paid on each affected unit. All losses reported in a timely manner will be accumulated to meet the crop year deductible. After the crop year deductible is reached, producers no longer face a deductible for subsequent losses. However, it should be noted that the insurance limits are reduced with each loss. For example, if a producer has an amount of insurance of one hundred dollars and is paid a $30 loss, the remaining amount of insurance on that policy is $70. Should the producer restock lost plant material without reporting the increase to the insurer as prescribed in section 6, a subsequent indemnity would be calculated using the under report factor.

Comment: Two crop insurance agents had concerns that the proposed rule contains changes that greatly diminish the value of the nursery crop insurance program for producers who purchase the CAT level of coverage. The ''monthly loss deductible'' contained in the current program has been eliminated from the proposed rule. The commenter stated the replacement ''occurrence deductible'' has been added as a part of the Optional Unit Endorsement but it is not applicable for CAT policies. The commenter also stated the ''crop year deductible,'' which is applicable to CAT policies, penalizes producers if their inventory varies either upward or downward from the ''accepted plant inventory value report.'' An agent had a concern that the plant inventory values of many nurseries will vary 10–40 percent between the highest and lowest monthly inventories during the year. The commenter stated that the current nursery crop provisions allow the producer to establish maximum liability based on the highest monthly inventory value, but establish the monthly loss deductible based on the inventory on hand at time of loss. The commenter stated the proposed rule requires the grower to furnish a single plant inventory value that sets the amount of insurance liability and also the crop year deductible. The agent also stated the crop year deductible will increase if the plant inventory value, at the time of loss, is greater than the accepted plant inventory value, but will not decrease if the plant inventory value, at the time of loss, is less than the accepted plant inventory value. The indemnity will be further reduced by a coinsurance factor if the plant inventory value, at the time of loss, is greater than the ''accepted plant inventory value report.'' The commenter stated that these deductible changes in the proposed rule will result in producers not being indemnified for losses in excess of 50 percent damages if their plant inventory value, at the time of loss, varies either upward or downward from the accepted plant inventory value. An agent stated that heavy sales in the spring and fall can result in 20–25 percent of the annual sales occurring in one month. While these plants are restocked, they may not be restocked on the same day they are sold, resulting in significant plant inventory variations. The commenter stated the nursery crop insurance program is the only crop insurance program that requires producers to project plant inventory values for the next 12 months and then penalizes the producer (insured under a CAT policy without an occurrence deductible) if the plant inventory value varies from that single projected plant inventory value. The inventory reporting requirements in the proposed rule require the grower to report one inventory amount even though the grower knows the inventory varies throughout the year. The commenter also stated that those who purchase CAT level policies are, in instances where they have over reported their inventory, incapable of recouping 50 percent of their inventory at 55 percent of its price, as mandated by the Federal Crop Insurance Reform Act of 1994. The commenter suggests using the deductible language being proposed in the Optional Unit Endorsement. That would allow all policyholders to have benefit of a deductible.

Response: FCIC considered the large number of comments received regarding its proposal to allow an occurrence deductible only to insureds who purchase an Optional Unit Endorsement. However, the Act does not allow optional units under CAT policies. CAT is only intended to provide a basic level of coverage and admittedly the coverage available is not as good as that available under limited or additional coverage policies. Since limited and additional coverage policies charge a premium, it is only equitable that the coverage provided be better. It is up to the producer to determine which coverage best meets his or her risk management needs.

Comment: An insurance company asked whether all units must be adjusted before paying a loss, or only the units in a loss situation.

Response: An inventory of the nursery plant material in the basic unit is required at the time of loss to determine the deductible and to determine if the basic unit values have been correctly reported. While this is a departure from other crops FCIC insures with optional units, it is not different from the current policy. The current policy requires the same determination to establish the monthly deductible and compliance with the reporting requirements of the current policy.

Comment: An insurance company asked about the need for the proposed policy provision that requires losses to be 1 percent or $250 once the crop year deductible has been met.

Response: FCIC has deleted this provision.

Comment: An insurance company and a crop insurance agent questioned section 12(e) which states, ''that the value of any insured plant inventory will be determined on the basis of our appraisals.'' The commenter stated that section 6(d) and (e) states the value of the insured plant inventory is based on the plant price schedule. One commenter suggested that, because of the lack of a mutually agreeable method of determining salvage values and rehabilitation periods, a default percentage of loss should be incorporated into the policy.

Response: FCIC has deleted section 12(e) from the proposed rule.

Comment: Two insurance companies recommended an example of a loss calculation be included in the provisions.

Response: FCIC has included examples of loss calculations in section 15.

Comment: An insurance company and a producer had concerns with section 14(b)(1) and (3). The commenters stated

section 14(b)(1) indicates no written agreements for nursery will be continuous, but would have to be requested again each subsequent year if the situation still exists. The commenter stated section 14(b)(3) refers to written agreements ''submitted after the application for insurance or the policy renewal date * * *.'' should be changed to read ''a written agreement submitted after the application the initial year, or after the policy renewal date in subsequent years * * *.''

Response: The written agreements are, by design, temporary and intended to address unusual circumstances. If the condition for which a written agreement is issued exists each crop year, the policy or Special Provisions should be amended to reflect this condition. Therefore, no change has been made.

Comment: An insurance company recommended changing the definition of a peak amount of insurance from ''* * * elected under the crop provisions * * *'' to read ''* * * elected for the crop and county. * * *''

Response: Such a change may mislead producers into thinking that they may select different coverage levels under the Peak Inventory Endorsement than the Crop Provisions. Therefore, no change has been made.

Comment: An insurance company asked whether the rate charged for the Peak Inventory Endorsement will be the same as the annual rate, prorated for the increase.

Response: The rate for the peak inventory endorsement will be the same as the annual rate adjusted for seasonal changes in risk. These adjustments will be contained in the actuarial documents.

Comment: An insurance company asked if the peak inventory value report must be submitted ''on our form.'' The commenter asked whether this will be the same as the regular plant inventory value report, or whether a separate form necessary.

Response: The peak inventory value report is a separate form.

Comment: A producer group asked whether more than one Peak Inventory Endorsement could be purchased during the course of the insurance period.

Response: Section 2(b) of the Peak Inventory Endorsement allows the purchase of up to two Peak Inventory Endorsements during the crop year unless the producer has suffered an indemnified loss and restocked the nursery. In such case, the producer could purchase an endorsement each time the nursery is restocked after a loss in addition to the two other Peak Inventory Endorsements authorized.

Comment: An insurance company and a producer association asked if the occurrence deductible in the Optional Unit Endorsement is on an optional unit basis and stated the occurrence deductible is confusing particularly when the amount of insurance is greater than field market value A. The commenter stated it appeared that the deductible has decreased due to the endorsement. The commenter asked whether the crop year deductible, as well as the occurrence deductible, must be satisfied prior to any indemnity payment.

Response: The occurrence deductible applies on a unit basis, optional or basic as appropriate. FCIC acknowledges that the occurrence deductible adds a certain amount of complexity and, therefore, has included a more detailed example. The occurrence deductible must be satisfied before any indemnity is paid on a unit.

Comment: Insurance companies and a producer association observed that there are 13 optional units based on plant types and asked when the producer must select the plant type for their inventory. One commenter asked whether the eligible plant list establishes the plant type.

Response: The eligible plant list will contain all plants eligible for insurance. Each plant will be assigned a plant type, which will be its optional unit designation. Even though a plant may be classified in more than one type, FCIC will assign each plant a single type for insurance purposes.

Comment: An insurance company asked whether the ''premium rate for optional units'' used in section 5 of the Optional Unit Endorsement is the correct terminology, or whether it should be ''premium factor for optional units.''

Response: FCIC has removed the Optional Unit Endorsement from the policy. Section 7(a) allows for a premium adjustment for optional units.

Comment: A producer asked whether the producer has to declare: (1) The value of the plants within each unit grouping; and (2) the maximum amount of insurance for each group. The producer also asked if the value reported for each unit has to sum to the total insurance for each basic unit.

Response: The policy requires the value reported for the basic units are accurate for determining compliance with the insurance to value provisions of the policy. The value reported for any unit cannot exceed the total for the basic unit and at any given point in time, the values for each unit should be approximately the same as the total value for the basic unit to avoid paying unnecessary premium or being subject to the underreporting provisions. When insurance to value requirements are not met, losses are determined according to section 12(b).

In addition to the changes described above, FCIC has made minor editorial and format changes that did not change the terms of the proposed provisions. FCIC also made the following revisions:

1. The definition of ''crop year'' is revised to clarify the day on which the crop year would begin and to allow for a policy renewal date common to all policies. The definition of ''crop year deductible'' is revised to allow a deductible percentage multiplied by the sum of all plant inventory value reports for a practice including peak inventory reports. The definition of ''eligible plant list'' is revised to allow FCIC to publish this document in electronic format. The definition of ''field market value A'' is revised to clarify its application to undamaged insurable plants in the basic or optional unit. The definition of ''field market value B'' is revised to clarify its application to damaged insurable plants in the basic or optional unit. The definition of ''irrigated practice'' is revised to provide cold protection for applicable plants as specified in the eligible plant list. The definition of ''nursery'' is revised to require a business enterprise that derives at least 50 percent of its gross income from the wholesale marketing of plants. The definition of ''plant price schedule'' has been revised to allow FCIC to publish this document in electric format. The definition of ''policy renewal date'' is eliminated because a common renewal date has been established common to most policies. The definition of ''price level'' is eliminated because the price level is the equivalent of the price election. Although new to the nursery program, this is a general program feature and FCIC believes it does not require a separate definition. The definitions for ''field market value C,'' ''loss,'' ''occurrence deductible,'' ''under reporting factor'' are added to allow FCIC to simplify section 12. A definition for ''deductible percentage'' is added to improve policy readability in the definition of ''crop year deductible'' and ''occurrence deductible.'' A definition for ''practice'' is added to clarify separate insurable practices will be standard nursery containers and field grown. A definition for ''price election'' is added to improve policy readability in the definition of ''amount of insurance''. The definitions of ''Act,'' and ''practice value,'' are added for clarity.

2. Section 2(b) is revised to eliminate reference to the Optional Unit Endorsement.

3. Section 5 is revised to eliminate the phrase the ''policy renewal date'' and a cancellation and termination date of September 30 was added. This change was made in response to FCIC's decision to create a single policy renewal date.

4. Section 6(b) is revised to require producers to submit a plant inventory value report not later than September 1 preceding any subsequent crop year to correspond with the change to a single policy renewal date.

5. Section 6(c) was modified to add ''practice value'' to clarify FCIC's decision to treat container and field grown nursery plant material as separate units.

6. Section 6(f) was modified to clarify the intention of FCIC to permit upward revisions to the plant inventory value report.

7. In section 6(g) of the proposed rule, the reference to the Peak Inventory Endorsement has been deleted. Section 6(h) is redesignated 6(g).

8. Section 6(h) was added to limit the amount of insurance available for catastrophic level policies in order to avoid over reporting of inventories.

9. Section 7(a) is revised to delete the phrase ''* * * and by your share'' because the amount of insurance uses the share in that calculation. Also, the term ''for each basic unit'' has been added to allow container and field grown nursery plant material to be insured as separate basic units.

10. Section 7(b) has been revised to clarify the premium will be adjusted for partial crop years. In addition, premium will be charged for the entire month for any calendar month during which an amount of coverage is provided under the nursery provisions.

11. Section 7(d) has been deleted since the interest provisions are in the Basic Provisions.

12. Section 7(e) has been deleted because plant inventory values can no longer be reduced.

13. Section 8(a) through (j) is reordered to improve readability. The provisions regarding woody, herbaceous or foliage ornamental plants are deleted because the insurable types of plants are specified in the eligible plant list.

14. Section 9(a) is revised to state that for the year of application, coverage begins 30 days after your application is received by the agent unless it is rejected. Added provisions for the 1999 crop year only, the 30 day delay in coverage will not apply to your container nursery crop if it is currently insured under the present policy and you elect to cancel such policy and you apply for the new nursery policy by November 30, 1998.

15. Section 10(a)(1) is revised to permit restrictions on adverse weather as a cause of loss.

16. Section 12 has been revised for clarification.

17. Section 14(a) of the proposed rule refers to 18(g). It has been corrected to 18(a). Section 14(b)(3) refers to 18(c) and it has been corrected to 18(e).

18. Section 15 was added to show examples of nursery calculations.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. It is imperative that these provisions be made final as quickly as possible so that the reinsured companies and insureds may have sufficient time to implement the new provisions in time for sale for the 1999 crop year. The policy currently in effect is limited to container plants and offers no protection to nursery producers that produce field grown nursery plants. In order to expand coverage to those producers of field grown nursery plants for the 1999 crop year, it is necessary to make these changes immediately. The existing nursery policy will continue in effect for the 1999 crop year and will be terminated at the end of the 1999 crop year.

List of Subjects in 7 CFR Parts 406 and 457

Crop insurance, Nursery, Reporting and record keeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Nursery Crop Insurance Regulations (7 CFR part 406) and revises and reissues the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1999 and succeeding crop years, to read as follows:

PART 406—NURSERY CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 406 is revised to read as follows:

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

2. The part heading is revised to read as set forth above.

3. The subpart heading is removed.

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

5. The introductory paragraph of § 457.114 is revised to read as follows:

§ 457.114 Nursery crop insurance provisions.

The Nursery Crop Insurance Provisions for the 1999 crop year only are as follows:

* * * * *

6. Section 457.162 added to read as follows:

§ 457.162 Nursery crop insurance provisions.

The Nursery Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Nursery Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq.*

Amount of insurance. For each basic unit, your practice value multiplied by the coverage level percentage you elect, multiplied by your price election, and multiplied by your share. Your accumulated paid losses during the crop year for each basic unit or the optional units will not exceed your amount of insurance.

Crop year. The period beginning the day insurance attaches and extending until 11:59 p.m. of the following September 30. Crop year is designated by the calendar year in which it ends.

Crop year deductible. The deductible percentage multiplied by the sum of all plant inventory values for each basic unit. The crop year deductible will be increased for any increases in the inventory value on the plant inventory value report or through the purchase of a peak inventory endorsement, if in effect at the time of loss. The crop year deductible will be reduced by any previously incurred deductible if you timely report each loss to us.

Deductible percentage. An amount equal to 100 percent minus the percent of coverage you select.

Eligible plant list. A list published by FCIC in electronic format and available from your agent that includes the botanical and common names of insurable plants, the winter protection requirements for container material and the areas in which they apply, the hardiness zone to which field grown material is insurable, the designated hardiness zones for each county, and the unit classification for each plant on the list. A paper copy of the eligible plant list is also available from your agent.

Field grown. Nursery plants planted and grown in the ground without the use of any artificial root containment device. In-ground fabric bags are not considered an artificial root containment device.

Field market value A. The value of undamaged insurable plants, based on the prices contained in the plant price schedule, in the basic or optional unit, as applicable, immediately prior to the occurrence of any loss as determined by our appraisal. This allows the amount of insurance under the policy to be divided among the individual units in accordance with the actual value of the plants in the unit at the time of loss for the purpose of determining whether you are entitled to an indemnity for insured losses in the unit, optional or basic, as applicable.

Field market value B. The value of the insurable plants, based on the prices contained in the plant price schedule, in the basic or optional unit, as applicable, following the occurrence of a loss as determined by our appraisal plus any reduction in value due to uninsured causes. This is used to determine the loss of value for each individual unit so that losses can be paid on an individual unit basis, optional or basic, as applicable.

Field market value C. The value of undamaged insurable plants based on the prices contained in the plant price schedule for all types within the basic unit immediately prior to the occurrence of any loss as determined by our appraisal. This value is used to calculate the actual value of the plants in the basic unit at the time of loss to ensure that you have not underreported your plant values.

In-ground fabric bag. (Also called a grow bag or a root control bag). A porous fabric bag made of a non-biodegradable material such as polypropylene that typically has a plastic bottom, and is used for growing woody plants in the ground.

Irrigated practice. In lieu of the definition in the Basic Provisions, the application of water, using appropriate systems and at the proper times, to provide the quantity of water needed to sustain normal growth of your insured plant inventory and provide cold protection for applicable plants as specified in the eligible plant list.

Loss. Field market value A minus field market value B.

Marketable. Of a condition that it may be offered for sale in the market.

Nursery. A business enterprise that derives at least 50 percent of its gross income from the wholesale marketing of plants.

Occurrence deductible. This deductible allows a smaller deductible than the crop year deductible to be used when; (1) Inventory values are less than the reported practice value, or (2) you have elected optional units. The occurrence deductible is the lesser of: (a) The deductible percentage multiplied by field market value A multiplied by the under report factor; or (b) the crop year deductible.

Plant inventory value report. Your report that declares the value of insurable plants in accordance with section 6.

Plant price schedule. A schedule of insurable plant prices published by FCIC in electronic format that establishes the value of undamaged insurable plants and the maximum amount we will pay for damaged insurable plants. A paper copy is available from your crop insurance agent.

Practice. A cultural method of producing plants. Standard nursery containers grown and field grown are considered separate insurable practices.

Practice value. The full value of all insurable plants in each basic unit on your plant inventory value report including any report that increases the value of your insurable plant inventory. This will be used to determine the amount of insurance under this policy.

Price election. The allowable percentage, as specified in the actuarial documents, of the prices shown in the plant price schedule that you elect and that is used to determine the amount of insurance and any indemnity.

Standard nursery containers. Rigid containers not less than 3 inches in diameter at the widest point of the container interior and that are appropriate in size and have drainage holes appropriate for the plant. In-ground fabric bags, trays, cellpacks with individual cells less than 3 inches in diameter at the widest point of the container interior, and burlap are not considered standard nursery containers under these Crop Provisions.

Stock plants. Plants used solely for propagation during the insurance period.

Under report factor. The factor which adjusts your indemnity for underreporting of inventory values. The factor is always used in determining any indemnity. For each practice, the under report factor is the lesser of: (a) 1.000 or; (b) the sum of all practice values reported on all plant inventory value reports, including any peak inventory value reports during the coverage term of the Peak Inventory Endorsement minus the total of all previous losses, as adjusted by any previous under report factor, divided by field market value C.

2. Unit Division

(a) In lieu of the definition of ''basic unit'' contained in section 1 of the Basic Provisions, a basic unit consists of all insurable plants in which you have a share in the county for each practice for which a separate rate is established in the actuarial documents. Although the basic unit may be divided into optional units in accordance with sections 2(b) and 2(c), you will still be considered to have a basic unit that will be used to establish the amount of insurance, crop year deductible, under report factor, premium, and the total amount of indemnity payable under this policy.

(b) In lieu of the optional unit provisions in the Basic Provisions, if you elect either limited or additional levels of coverage, for an additional premium, inventory that would otherwise be one basic unit may be divided into optional units by plant type as specified in section 2(c). If you elect optional units, your amount of insurance will be divided among optional units in relation to the actual value of plants in each optional unit. If, at the time of loss, the aggregate value of the plants in all your optional units exceeds your practice value, you will be subject to the under report factor provisions.

(c) Plant Types contained on the eligible plant list.

1. Deciduous Trees (Shade and Flower);
2. Broad-leaf Evergreen Trees;
3. Coniferous Evergreen Trees;
4. Fruit and Nut Trees;
5. Deciduous Shrubs;
6. Broad-leaf Evergreen Shrubs;
7. Coniferous Evergreen Shrubs;
8. Small Fruits;
9. Herbaceous Perennials;
10. Roses;
11. Ground Cover and Vines;
12. Annuals;
13. Foliage; and
14. Other plant types listed in the Special Provisions.

(d) You must elect either basic units or optional units.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.

(b) In addition to the requirements of section 3 of the Basic Provisions, you must select one price election for all plants, regardless of type, insured under this policy.

(c) Your amount of insurance will be reduced by the amount of any indemnity paid under this policy. For losses occurring when a Peak Inventory Endorsement is in effect, to determine the amount of insurance remaining after the loss you must subtract the amount of the indemnity from the peak amount of insurance, then subtract any remaining amount of indemnity from the amount of insurance.

(d) If you restock your nursery plant inventory, you may increase your amount of insurance in accordance with section 6(f).

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is June 30 of each year.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are September 30 preceding the crop year.

6. Plant Inventory Value Report

(a) Section 6 of the Basic Provisions is not applicable.

(b) You must submit a plant inventory value report to us with your application and for each subsequent crop year, not later than September 1. If you do not submit a plant inventory value report by September 1, your policy will continue using the reported inventory values in effect as of August 31.

(c) The plant inventory value report must include all growing locations, the practice value, and your share. At our option, you will be required to provide documentation in support of your plant inventory value report, including, but not limited to, a detailed plant inventory listing that includes the name, the number, and the size of each plant; sales and purchases of plants for the 3 previous crop years in the amount of detail we require, and your ability to properly obtain and maintain nursery stock. For catastrophic level policies only, you must report your previous plant

sales on the plant inventory value report. You may be required to provide documentation to support such sales.

(d) Your plant inventory value report, including any revised report, and your peak inventory value report will be used to determine your premium and amount of insurance.

(e) Your plant inventory value report must reflect your insurable nursery plant inventory value according to prices contained in the plant price schedule. In no instance will we be liable for plant values greater than those contained in the plant price schedule.

(f) You may revise your plant inventory value report to increase the reported inventory value. Any revision must be made in writing before May 31st of the crop year. We may inspect the inventory. Your revised plant inventory value report will be considered accepted by us and insurance will attach on any proposed increase in inventory value 30 days after your written request is received unless we reject the proposed increase in your plant inventory value in writing. We will reject any requested increase if a loss occurs within 30 days of the date the request is made.

(g) You must report the full value of your practice value in accordance with section 6(e). Failure to report the full value of your practice value will result in the reduction of any claim in accordance with section 12(d).

(h) For catastrophic insurance coverage only: (1) Your plant inventory value report for container grown nursery cannot exceed the lesser of the actual value from section 6(e) or 150 percent of your previous year's sales of container grown nursery; (2) Your plant inventory value report for field grown nursery cannot exceed the lesser of the actual value from section 6(e) or 250 percent of your previous years' sale of field grown nursery; and if the above restrictions cause you to under report the value of your inventory, you may request a written agreement to waive this restriction.

7. Premium

(a) In lieu of section 7(a) of the Basic Provisions, we will determine your premium by multiplying the amount of insurance by the appropriate premium rate and by the premium adjustment factors listed on the actuarial documents that may apply.

(b) In addition to the provisions in section 7 of the Basic Provisions, the premium will be adjusted for partial crop years. Premium will be charged for the entire month for any calendar month during which any amount of coverage is provided under these provisions or the peak inventory endorsement.

(c) Additional premium from an increase in the plant inventory value report is due and payable when the revised plant inventory value report is accepted by us.

8. Insured Plants

In lieu of the provisions of sections 8 and 9 of the Basic Provisions, the insured nursery plant inventory will be all the nursery plants in the county that:

(a) Are shown on the Eligible Plant List and meet all the requirements for insurability (plant types, species and cultivars not insurable under the eligible plant list may be insured by written agreement, subject to FCIC's determination that the proper storage requirements and an accurate insurable price for the plant can be determined, and provided all other requirements, such as plant and container size, are met);

(b) Are determined by us to be acceptable;

(c) Are grown in a county for which a premium rate is provided in the actuarial documents;

(d) Are grown in a nursery inspected by us and determined to be acceptable;

(e) Are irrigated unless otherwise provided by the Special Provisions (You must have adequate irrigation equipment and water to irrigate all insurable nursery plants at the time coverage begins and throughout the insurance period);

(f) Are grown in accordance with the production practices for which premium rates have been established;

(g) Are grown in an appropriate medium;

(h) Are not grown for sale as Christmas trees;

(i) Are not stock plants; and

(j) Produce edible fruits or nuts provided the fruit or nuts are not intended for harvest while the plant is located in the nursery.

9. Insurance Period

(a) In lieu of the provisions of section 11 of the Basic Provision: (1) For the year of application, coverage begins 30 days after your crop insurance agent receives an application signed by you, unless we notify you that your inventory is not acceptable; (2) For subsequent crop years, the insurance period begins at 12:01 a.m. each October 1st; (3) No application for insurance for any current crop year will be accepted after May 31st of the crop year; (4) If you apply for coverage after May 31st, coverage will not begin prior to October 1st; and (5) For the 1999 crop year only, if you insured your nursery under 7 CFR 457.114 and you elect to cancel such policy by November 30, 1998, and obtain insurance under these Crop Provisions by November 30, 1998, by simultaneous cancellation and application, and if you select the same coverage level, the 30 day delay in coverage will not apply to your container grown nursery crop, and coverage for your container grown nursery crop will begin on the date of application. If you change coverage levels, the 30 day delay in coverage on your container grown nursery crop specified in section 9(a)(1) will apply and coverage under 7 CFR 457.114 will continue until coverage under this policy begins.

(b) Insurance ends at the earliest of:

(1) The date of final adjustment of a loss when the total indemnities due equal the amount of insurance;

(2) Removal of bare root nursery plant material from the field;

(3) Removal of all other insured plant material from the nursery; or

(4) 11:59 p.m. on September 30.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided for unavoidable damage caused only by the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions, except as specified in section 10(b) or the Special Provisions;

(2) Fire, provided weeds and undergrowth in the vicinity of the plants or buildings on your insured site are controlled by chemical or mechanical means;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of the irrigation water supply due to a cause of loss specified in sections 10(a)(1) through (5) that occurs within the insurance period; or

(7) Delay in marketability of the plants, if such delay results in a reduction in the value of the plants, due to a cause of loss specified in section 10(a)(1) through (6) that occurs within the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we do not insure against any loss caused by:

(1) Disease or insect infestation, unless:

(i) A disease or insect infestation occurs for which no effective control measure exists; or

(ii) Coverage is specifically provided by the Special Provisions.

(2) A failure of, or a reduction in, the power supply, unless such failure or reduction is due to an insurable cause of loss specified in section 10(a);

(3) The inability to market the nursery plants as a direct result of quarantine, boycott, or refusal of a buyer to accept production;

(4) Cold temperatures, if cold protection is required in the eligible plant list, unless:

(i) You have installed adequate cold protection equipment or facilities and there is a failure or breakdown of the cold protection equipment or facilities resulting from an insurable cause of loss specified in section 10(a) (the insured plants must be damaged by cold temperatures and the damage must occur within 72 hours of the failure of such equipment or facilities unless we establish that repair or replacement was not possible between the time of failure or breakdown and the time the damaging temperatures occurred); or

(ii) The lowest temperature or its duration exceeded the ability of the required cold protection equipment to keep the insured plants from sustaining cold damage;

(5) Collapse or failure of buildings or structures, unless the damage to the building or structures results from a cause of loss specified in section 10(a); or

(6) Failure of plants to grow to an expected size due to drought.

11. Duties in the Event of Damage or Loss

(a) In addition to your duties contained in section 14 of the Basic Provisions,

(1) You must obtain our written consent prior to:

(i) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or

(ii) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plants.

(2) You must submit a claim for indemnity to us on our form, not later than 60 days after the date of your loss, but in no event later

than 60 days after the end of the insurance period.

(b) Failure to obtain our written consent as required by section 11(a)(1) will result in the denial of your claim.

12. Settlement of Claim

We will determine indemnities for any unit as follows:

(a) Determine the under report factor for the basic unit;

(b) Determine the occurrence deductible;

(c) Subtract field market value B from field market value A;

(d) Multiply the result of 12(c) by the under report factor;

(e) Subtract the occurrence deductible from the result in section 12(d); and

(f) If the result of section 12(e) is greater than zero, and subject to the limit of section 12(g), your indemnity equals the result of section 12(e), multiplied by your price election, and multiplied by your share.

(g) The total of all indemnities for the crop year will not exceed the amount of insurance including any peak amount of insurance during the coverage term of the peak inventory endorsement.

13. Late and Prevented Planting

The late and prevented planting provisions in the Basic Provisions are not applicable.

14. Written Agreements

(a) In lieu of section 18(a) of the Basic Provisions, for the year of application you must request a written agreement in writing with the application and not later than the cancellation date for each subsequent crop year;

(b) In addition to the requirements of section 18 of the Basic Provisions any written agreement is valid only until the end of the insurance period; and

(c) In lieu of section 18(e) of the Basic Provisions, an application for a written agreement submitted after the date of application for the initial year and the cancellation date for all subsequent crop years may be approved if you demonstrate your physical inability to have applied timely and, after physical examination of the nursery plant inventory, we determine the inventory will be marketable at the value shown on the plant value inventory report.

15. Examples

Single Unit Example

Assume you have a 100 percent share and the plant inventory value reported by you is $100,000, your coverage level is 75 percent, and your price election is 75 percent. Your amount of insurance is $56,250 ($100,000 × .75 × .75). At the time of loss, field market value A is $125,000, field market value B is $80,000, and field market value C is $125,000. The under report factor is .80 ($100,000 divided by $125,000). The deductible percentage is 25 percent (100 − 75), the crop year deductible is $25,000 (.25 × $100,000) and the occurrence deductible is $25,000 (.25 × $125,000 × .80). Your indemnity would be calculated as follows:

Step (1) Determine the under report factor
$100,000 × $125,000 = .80;
Step (2) Field market value A minus field market value B
$125,000 × $80,000 = $45,000;
Step (3) Result of step 2 multiplied by the under report factor (step 1)
$45,000 × .80 = $36,000;
Step (4) Result of step 3 minus the occurrence deductible
$36,000 − $25,000 = $11,000;
Step (5) Result of step 4 multiplied by your price election
$11,000 × .75 = $8,250;
Step (6) Result of step 5 multiplied by your share
$8,250 × 1.000 = $8,250 indemnity payment.

Peak Inventory Report Example

Assume you have a second loss on the same basic unit. Your amount of insurance has been reduced by subtracting your previous indemnity payment or $8,250 from your amount of insurance ($56,250 − $8,250 = $48,000). Your crop year deductible has been reduced to zero by the previous loss ($25,000—$36,000, but not less than zero). You purchase a Peak Inventory Endorsement and report $60,000 in inventory. Your peak amount of insurance is your reported inventory times your coverage level times your price election ($60,000 × .75 × .75 = $33,750). The combined amount of insurance for the coverage term of the peak endorsement is $48,000 + $33,750 = $81,750. Your crop year deductible is increased by $15,000 ($60,000 × .25). At the time of loss, field market value A is $124,000, field market value B is $58,000, and field market value C is $124,000. The under report factor is 1.00 [($160,000 − $36,000) ÷ $124,000]. The crop year deductible is $15,000 (.25 × $60,000) and the occurrence deductible is $15,000 (the lesser of field market value A × .25 or the crop year deductible). Your indemnity would be calculated as follows:

Step (1) Determine the under report factor
($160,000 − $36,000) ÷ $124,000 = 1.00;
Step (2) Field market value A minus field market value B
$124,000 − $58,000 = $66,000;
Step (3) Result of step 2 multiplied by the under report factor (step 1)
$66,000 × 1.00 = $66,000;
Step (4) Result of step 3 minus the occurrence deductible
$66,000 − $15,000 = $51,000;
Step (5) Result of step 4 multiplied by your price election
$51,000 × .75 = $38,250;
Step (6) Result of step 5 multiplied by your share
$38,250 × 1.000 = $38,250 indemnity payment.

Your peak amount of insurance is reduced to zero. Your amount of insurance is reduced by the amount the indemnity exceeds the peak amount of insurance.
$48,000 − ($38,250 − $33,750) =
$48,000 − $4,500 = $43,500

Multiple Unit Multiple Loss Example

Assume you have a 100 percent share and the plant inventory value reported by you is $100,000, your coverage level is 75 percent, and your price election is 75 percent. You have elected optional units and have two optional units, unit 1 and unit 2. Your amount of insurance is $56,250 ($100,000 × .75 × .75). You have a loss on unit 1 and no loss on unit 2. At the time of loss, field market value A on unit 1 is $60,000, field market value B on unit 1 is $18,000, and field market value C is $125,000. The under report factor is .80 ($100,000 ÷ $125,000). The deductible percentage is 25 percent (100 − 75), the crop year deductible is $25,000 (.25 × $100,000) and the occurrence deductible is $12,000 (.25 × $60,000 × .80). Your indemnity would be calculated as follows:

Step (1) Determine the under report factor
$100,000 ÷ $125,000 = .80;
Step (2) Field market value A minus field market value B
$60,000 − $18,000 = $42,000;
Step (3) Result of step 2 multiplied by the under report factor (step 1)
$42,000 × .80 = $33,600;
Step (4) Result of step 3 minus the occurrence deductible
$33,600 − $12,000 = $21,600;
Step (5) Result of step 4 multiplied by your price election
$21,600 × .75 = $16,200;
Step (6) Result of step 5 multiplied by your share
$16,200 × 1.000 = $16,200 indemnity payment.

Your crop year deductible is reduced to $13,000 ($25,000 − $12,000). Your amount of insurance is reduced to $40,050 ($56,250 − $16,200). You do not restock unit 1 after the first loss. Values on unit 2 do not change from the those measured at the time of the loss on unit 1. Assume you have a second loss during the crop year but this time on unit 2. Field market value A on unit 2 is $65,000, Field market value B on unit 2 is $ 0.00 and field market value C on the basic unit is $83,000. Your loss would be determined as follows:

Step (1) Determine the under report factor
$100,000 ÷ $125,000 = .80;
Step (2) Field market value A minus field market value B
$65,000 − $0.00 = $65,000;
Step (3) Result of step 2 multiplied by the under report factor (step 1)
$65,000 × .80 = $52,000;
Step (4) Result of step 3 minus the occurrence deductible
$52,000 − $13,000 = $39,000;
Step (5) Result of step 4 multiplied by your price election
$39,000 × .75 = $29,250;
Step (6) Result of step 5 multiplied by your share
$29,250 × 1.000 = $29,250 indemnity payment.

7. Section 457.163 is added as follows:

§ 457.163 Nursery peak inventory endorsement.

Nursery Crop Insurance

Peak Inventory Endorsement

This endorsement is not continuous and must be purchased for each crop year to be effective for that crop year.

In return for payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Nursery Crop Insurance Provisions, subject to the terms and conditions described herein.

1. Definitions.

Coverage commencement date. The later of the date you declare as the beginning of the coverage or 30 days after a properly completed peak inventory value report is received by us.

Coverage term. A period of time that begins on the coverage commencement date and ends on the coverage termination date.

Coverage termination date. The date you declare that the peak amount of insurance will cease. This date cannot be after the end of the crop year.

Peak amount of insurance. The additional inventory value reported on the peak inventory value report for each basic unit multiplied by the coverage level, price election you elected for the crop and county, and by your share.

Peak inventory value report. A report that increases the value of insurable plants over the value reported on the plant inventory value report, declares the coverage commencement and coverage termination dates, and the other requirements of section 6 of the Nursery Crop Insurance Provisions.

Restock. Replacement of lost or damaged plants that increase the value of your insurable inventory to an amount greater than your remaining amount of insurance.

2. Eligibility

(a) You must have insurance under the Nursery Crop Insurance Provision, 7 CFR 457.162, in effect for the crop year that this endorsement applies;

(b) You must have elected either the limited or additional level of coverage.

(c) You must submit a peak inventory value report which will serve as the application for coverage under this endorsement. We may reject the peak inventory value report if all requirements in this endorsement and the Nursery Crop Insurance Provisions are not met.

(d) You may purchase no more than two Peak Inventory Endorsements for each practice during the crop year unless you have suffered insured losses and have restocked your nursery.

3. Coverage

(a) The amount of insurance provided under the Nursery Crop Insurance Provisions is increased by the peak amount of insurance for the coverage term.

(b) Except as provided herein, this endorsement does not change, amend or otherwise modify any other provision of your Nursery Crop Insurance Policy.

4. Peak Insurance Period

Coverage begins at 12:01 a.m. on the coverage commencement date and ends at 11:59 p.m. on the coverage termination date.

5. Premium

(a) The premium for this endorsement is determined by multiplying the peak amount of insurance by the appropriate proration factor shown in the actuarial documents, and by the coverage term.

(b) The premium for this endorsement is due and payable in accordance with section 7 of the Nursery Crop Insurance Provisions.

6. Reporting Requirements

In addition to the reporting requirements of section 6 of the Nursery Crop Insurance Provisions, you must submit a peak inventory value report on our form.

7. Liability Limit

The peak amount of insurance is limited to the practice value you declare under the Nursery Crop Insurance Provisions.

Signed in Washington, DC, on September 18, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–25466 Filed 9–23–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–116–AD; Amendment 39–10784; AD 98–20–17]

RIN 2120–AA64

Airworthiness Directives; SAFT America Inc. Part Number (P/N) 021929–000 (McDonnell Douglas P/N 43BO34LB02) and P/N 021904–000 (McDonnell Douglas P/N 43BO34LB03) Nickel Cadmium Batteries

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SAFT America Inc. P/N 021929–000 (McDonnell Douglas P/N 43BO34LB02) and P/N 021904–000 (McDonnell Douglas P/N 43BO34LB03) nickel cadmium batteries that are installed on aircraft. This AD requires replacing all battery terminal screws, verifying that the battery contains design specification cells, and replacing the cells if the battery contains non-design specification cells. This AD is the result of an incident where the cell screws on one of the affected batteries were exposed to chloride, which caused the heads of some fasteners to shear off and eventually resulted in the battery exploding. The actions specified by this AD are intended to prevent such an occurrence, which could result in loss of emergency power to electrical flight components or other emergency power systems required in the event of loss of the aircraft primary power source.

DATES: Effective November 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SAFT America Inc., 711 Industrial Boulevard, Valdosta, Georgia 31601; telephone: (912) 245–2820; facsimile: (912) 245–2827. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–116–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703 6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to aircraft that have a certain SAFT America Inc. P/N 021929–000 (McDonnell Douglas P/N 43BO34LB02) or P/N 021904–000 (McDonnell Douglas P/N 43BO34LB03) nickel cadmium battery installed was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 2, 1998 (63 FR 10156). The NPRM proposed to require replacing all battery terminal screws, verifying that the battery contains design specification cells, and replacing the cells if the battery contains non-design specification cells. Accomplishment of the proposed action as specified in the NPRM would be in accordance with SAFT Aviation Batteries Service Bulletin Document No. A00027, Rev F, dated January 15, 1998.

The NPRM was the result of an incident where the cell screws on one of the affected batteries were exposed to chloride, which caused the heads of some fasteners to shear off and

eventually resulted in the battery exploding.

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

Comment Issue No. 1: Exclude Those Batteries Maintained by Airlines

One commenter suggests that the AD be developed to identify those batteries that have undergone repairs by third party vendors or batteries that were purchased in conditions other than new. Two commenters state that the AD should not apply to batteries maintained by airlines with internal battery shops where the repair process is contained within an FAA-approved maintenance program.

The FAA does not concur. The FAA does not have any information that would show that the way airlines repair batteries is significantly different from third party (repair station) processes. While the FAA realizes that some airlines will not have any problems with the batteries on their fleet of aircraft, this number would probably be very closely related to the number of repair stations that maintain batteries in a very similar manner. The FAA knows of no other way of assuring that all of the affected batteries have acceptable battery screws and design specification cells than to require the actions specified in the NPRM.

In addition, FAA site visits to several maintenance facilities to review battery maintenance programs revealed that some airlines were installing incorrect screws, were not using the latest battery maintenance manual, and were modifying batteries without having the proper documentation. The FAA will evaluate an airline's maintenance practices on a case-by-case basis provided that an Aviation Safety Inspector that is familiar with the maintenance program submits an alternative method of compliance (AMOC) in accordance with the procedures in paragraph (d) of this AD. The FAA will evaluate the submittal and will either approve or deny the AMOC accordingly.

No changes to the final rule have been made as a result of these comments.

Comment Issue No. 2: Develop a Method of Tracing Those Batteries in Compliance With the AD

One commenter suggests a part number change be implemented in order to trace those batteries that are in compliance with the AD. The part number change will assure that the affected aircraft are not demodified by non-routine battery replacement and would assist in tracking the compliance of the AD.

The FAA does not concur that a part number change is necessary. The manufacturer assigns a part number that is intended to be used for the life of the battery. This part number establishes traceability and service history of the battery. When the AD is complied with, the repair facility or maintenance shop will record and document compliance with the AD as specified in the Federal Aviation Regulations (14 CFR). By regulation, an aircraft cannot be legally operated if not in compliance with an AD; demodifying the battery would put the aircraft in non-compliance with the AD. However, Saft America Inc. has agreed to supply a plastic label for the battery that will indicate compliance with the AD. This label shall not cover the original part number of the battery. The FAA will include information in the AD to communicate the availability of the plastic label.

Comment Issue No. 3: Revise the Service Bulletin to Include Certain Items

One commenter requests that, in order to avoid any confusion, Saft America Inc. should reference the component maintenance manual in the Service Bulletin.

One commenter states that the terminal screw CMM IPL figure and item number is additional information that the airlines will use to perform the required AD. The commenter requests that it be included in the service bulletin.

One commenter requests that Saft include a list of authorized sources for obtaining terminal screws, as this would assist the repair shop in obtaining the necessary parts.

Saft America Inc. has revised Saft Aviation Batteries Service Bulletin Document No. A00027 to the Revision G level (dated July 14, 1998) to incorporate reference to the component maintenance manual, to include a list of suppliers that will assist the repair shops in obtaining the parts (from an authorized dealer) that are necessary to comply with the AD, and include the terminal screw CMM IPL figure and item number. This service bulletin will be incorporated into the AD.

Comment Issue No. 4: Change the Compliance Time/Parts Availability

One commenter requests that the effective date be changed to coincide with parts availability.

The FAA has been assured by Saft America Inc. that parts will be available for all aircraft by the compliance time of ''at the next scheduled battery maintenance that occurs 3 calendar months after the effective date of this AD or within the next 15 calendar months after the effective date of this AD, whichever occurs first.''

No change to the final rule has been made as a result of this comment.

Comment Issue No. 5: Change the Terminal Screw Part Number

One commenter recommends that the terminal screw part be changed to differentiate the suspect terminal screws from the new terminal screws.

The FAA does not concur. The part number does not appear on the terminal screw due to the small size of the screw. The part number appears on the package that the new screw comes in. However, to differentiate between the screws, the new terminal screws have markings on the head of the screws (either two adjacent protrusions or two protrusions 180 degrees apart), while the suspect screws have no markings.

No changes to the final rule are necessary as a result of this comment.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of information communicating the availability of the compliance label from Saft, the incorporation of the revised service bulletin, and minor editorial corrections. The FAA has determined that this addition of the compliance label information, the incorporation of the revised service bulletin, and the minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 1,004 aircraft in the U.S. registry could have at least one of the affected batteries installed and will be affected by this AD, that it will take approximately 16 workhours per aircraft to accomplish these actions, and that the average labor rate is approximately $60 an hour. Parts cost approximately $78 per battery (two batteries per aircraft = $156). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,120,464, or $1,116 per aircraft if all aircraft have two affected batteries installed.

Compliance Time of This AD

The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours time-in-service (TIS).

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–20–17 Saft America Inc.: Amendment 39–10784; Docket No. 97–CE–116–AD.

Applicability: Part Number (P/N) 021929–000 (McDonnell Douglas P/N 43BO34LB02) and P/N 021904–000 (McDonnell Douglas P/N 43BO34LB03) Nickel Cadmium Batteries manufactured prior to December 1997 that are installed on, but not limited to, McDonnell Douglas DC–9 and MD–80 aircraft, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision that incorporates one of the affected batteries, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft 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 at the next scheduled battery maintenance that occurs 3 calendar months after the effective date of this AD or within the next 15 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent the battery from shorting out or exploding if the heads of fasteners become sheared off, which could result in loss of emergency power to electrical flight components or other emergency power systems required in the event of loss of the aircraft primary power source, accomplish the following:

(a) Replace all battery terminal screws, verify that the battery contains design specification cells, and replace the cells if the battery contains non-design specification cells. Accomplish these actions in accordance with the INSTRUCTIONS section of SAFT Aviation Batteries Service Bulletin Document No. A00027, Rev G, dated July 14, 1998.

(1) A plastic label indicating compliance with the AD may be obtained from Saft America Inc. at the address specified in paragraph (e) of this AD.

(2) This label shall not cover the original part number of the battery.

(3) SAFT Aviation Batteries Service Bulletin Document No. A00027, Rev G, dated July 14, 1998, provides the option of purchasing this label from Saft or manufacturing your own label.

(4) This label must be installed on the battery as depicted in Figures 3 and 4 on page 8 of SAFT Aviation Batteries Service Bulletin Document No. A00027, Rev G, dated July 14, 1998.

(b) If the actions required by this AD have been previously accomplished in accordance with SAFT Aviation Batteries Service Bulletin Document No. A00027, Rev F, dated January 15, 1998, then the only action required by this AD would be to install a compliance label on the battery as specified in SAFT Aviation Batteries Service Bulletin Document No. A00027, Rev G, dated July 14, 1998.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

(e) The replacements required by this AD shall be done in accordance with SAFT Aviation Batteries Service Bulletin Document No. A00027, Rev G, dated July 14, 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 SAFT America Inc., 711 Industrial Boulevard, Valdosta, Georgia 31601. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on November 2, 1998.

Issued in Kansas City, Missouri, on September 14, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25124 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–82–AD; Amendment 39–10793; AD 98–20–27]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300–600 series airplanes, that requires repetitive inspections to detect fatigue cracking of the wing top skin at the front spar joint; and a follow-on eddy current inspection and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the wing top skin at the front spar joint, which could result in reduced structural integrity of the airplane.

DATES: Effective October 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 1998.

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

FOR FURTHER INFORMATION CONTACT: 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: 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 Airbus Model A300–600 series airplanes was published in the **Federal Register** on May 12, 1998 (63 FR 26109). That action proposed to require repetitive inspections to detect fatigue cracking of the wing top skin at the front spar joint; and a follow-on eddy current inspection and repair, if necessary.

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

One commenter expresses no objection to the proposed rule.

Request To Allow Flight With Known Cracks

One commenter recommends that the proposed AD be revised to allow continued operation of an unrepaired airplane following detection of cracks, utilizing the allowable damage limits and temporary repairs described in Airbus Service Bulletin A300–57–6045. The commenter expresses confidence that allowing continued flight within the allowable crack limits and with the temporary repairs specified in the service bulletin will provide the necessary level of safety. The commenter further states that the manufacturer has not identified a permanent repair for the area, nor has a preventive modification been identified that would allow termination of the inspections required by this proposed AD. Additionally, the commenter notes that the area where the cracks may occur would require an extensive internal repair that has not been developed at this time. If such cracking occurs, an airplane could be grounded for a long time period while a repair is developed, analyzed, and approved.

The FAA does not concur. It is the FAA's policy to require repair of known cracks prior to further flight (except in certain cases of unusual need). This policy is based on the fact that such damaged airplanes do not conform to the FAA certificated type design, and therefore, are not airworthy until a properly approved repair is incorporated. Although the referenced service bulletin specifies temporary repairs for certain crack findings, it does not provide such repairs for cracking outside certain limits. For those cases, the service bulletin specifies that, depending upon crack length, operators should either contact the manufacturer for appropriate repairs or accomplish repetitive visual inspections at specified intervals. Therefore, the FAA has determined that, due to the safety implications and consequences associated with cracking of the wing top skin at the front spar joint, any subject area that is found to be cracked must be addressed, prior to further flight, in accordance with a method approved by the FAA.

Later Revision of Service Bulletin

One commenter has provided a copy of Airbus Service Bulletin A300–57–6045, Revision 02, dated April 21, 1998, including Appendix 1, Revision 02, dated April 21, 1998, but makes no specific request in regard to this revision. Airbus Service Bulletin A300–57–6045, Revision 1, dated August 3, 1994, including Appendix 1, Revision 1, dated August 3, 1994, was cited in the proposed AD as the appropriate source of service information for accomplishment of the actions required by this AD. The FAA has reviewed Revision 02 of the service bulletin and has determined that it contains no substantive differences from Revision 1. Therefore, the final rule has been revised to add Revision 02 as an appropriate source of service information.

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 with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 54 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $6,480, 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 requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–20–27 Airbus Industrie: Amendment 39–10793. Docket 98–NM–82–AD.

Applicability: All Model A300–600 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 fatigue cracking of the wing top skin at the front spar joint, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 22,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect fatigue cracking of the wing top skin at the front spar joint, in accordance with Airbus Service Bulletin A300–57–6045, Revision 1, dated August 3, 1994, including Appendix 1, Revision 1, dated August 3, 1994; or Airbus Service Bulletin A300–57–6045, Revision 02, dated April 21, 1998, including Appendix 1, Revision 02, dated April 21, 1998. Repeat the detailed visual inspection thereafter at intervals not to exceed 8,000 flight cycles.

(b) If any cracking is suspected or detected during any inspection required by paragraph (a) of this AD, prior to further flight, perform an eddy current inspection to confirm the findings of the visual inspection, in accordance with Airbus Service Bulletin A300–57–6045, Revision 1, dated August 3, 1994, including Appendix 1, Revision 1, dated August 3, 1994; or Airbus Service Bulletin A300–57–6045, Revision 02, dated April 21, 1998, including Appendix 1, Revision 02, dated April 21, 1998. If any cracking is detected during any eddy current inspection, prior to further flight, repair in accordance with a method approved by 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.

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–57–6045, Revision 1, dated August 3, 1994, including Appendix 1, Revision 1, dated August 3, 1994; or Airbus Service Bulletin A300–57–6045, Revision 02, dated April 21, 1998, including Appendix 1, Revision 02, dated April 21, 1998. Revision 1 of Airbus Service Bulletin A300–57–6045 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–10	1	August 3, 1994.
Appendix 1		
1–2	1	August 3, 1994.
3–6	Original	March 18, 1993.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–374–238(B), dated December 3, 1997.

(f) This amendment becomes effective on October 29, 1998.

Issued in Renton, Washington, on September 16, 1998.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25354 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–84–AD; Amendment 39–10794; AD 98–19–15]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 98–19–15, which was sent previously to all known U.S. owners and operators of Fairchild Aircraft, Inc. (Fairchild) SA226 and SA227 series airplanes. The AD applies to those airplanes that are equipped with Barber-Colman pitch trim actuators, part number (P/N) 27–19008–001 or P/N 27–19008–002. This AD requires incorporating information into the Limitations Section of the airplane flight manual (AFM) that imposes a speed restriction and a minimum pilot requirement. The AD resulted from reports of two incidents of abrupt movement of the horizontal stabilizer to or near the full airplane nose-up position. These two incidents involved mechanical failure of these Barber-Colman pitch trim actuators. The actions specified by this AD are intended to lessen the severity of airplane pitch up caused by mechanical failure of the pitch trim actuator, which could result in a pitch upset and structural failure of the airplane.

DATES: Effective September 25, 1998, to all persons except those to whom it was made immediately effective by priority letter AD 98–19–15, issued September 10, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before October 21, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel,

Attention: Rules Docket 98–CE–84–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Field Support Engineering, Fairchild Aircraft, PO Box 790490, San Antonio, Texas 78279–0490. This information may also be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Filler, Flight Test Pilot, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5132; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

On September 10, 1998, the FAA issued priority letter AD 98–19–15, which applies to Fairchild SA226 and SA227 airplanes that are equipped with Barber-Colman pitch trim actuators, P/N 27–19008–001 or P/N 27–19008–002. That AD resulted from reports of two incidents of abrupt movement of the horizontal stabilizer to or near the full airplane nose-up position. These two incidents involved mechanical failure of these Barber-Colman pitch trim actuators. In the latest incident, the airplane experienced an upset that resulted in a 42-degree nose-up pitch with the airspeed decreasing to 79 knots indicated airspeed (IAS). The other incident was very similar to the one described above.

AD 98–19–15 requires incorporating the following information into the applicable AFM:

- ''Limit the maximum indicated airspeed to maneuvering airspeed (Va) as shown in the appropriate airplane flight manual (AFM).'' and
- ''The minimum crew required is two pilots.''

The speed restriction is intended to assure that the airplane is at a manageable speed while the pilots tend to the control forces that would be present during a pitch up condition, and successfully operate and land the airplane.

The two-pilot requirement is based on the comments received from those that were involved in the investigation/analysis of the two incidents. Both incidents were with two pilots in the airplane, and the comments indicated that the forces involved required two pilots. When the actuator fails in the full leading edge down position and the actuator fails to retrim, the column forces exceed the temporary force limits for one pilot. One pilot may not be able to sustain the forces required to continue safe flight and landing. In addition, having two pilots has proven beneficial in other cases of aircraft that have sustained control system malfunctions resulting in high control forces and/or limited control power. Two pilots also gives one a chance to tune radios, read the navigation equipment, and communicate with air traffic control, as needed.

Operators of SA226 and SA227 series airplanes, except for the commuter category Models SA227–CC and SA227–DC airplanes, may avoid the restrictions of this AD by installing an airworthy Simmonds-Precision actuator, P/N DL5040M5 or P/N DL5040M6, in place of the affected Barber-Colman actuator. The Simmonds-Precision actuators are not approved for the Models SA227–CC and SA227–DC airplanes.

In addition, this AD does not affect AD 97–23–01, Amendment 39–10188 (62 FR 5922, November 3, 1997). AD 97–23–01 still applies to all SA226 and SA227 series airplanes equipped with either Barber-Colman or Simmonds-Precision pitch trim actuators, and requires the following:

—Repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage or ratcheting;
—Immediately replacing any actuator if certain freeplay limitations are exceeded or rod slippage or ratcheting is evident; and,
—Eventually replacing the Simmonds-Precision actuators regardless of the inspection results.

Relevant Service Information

Fairchild has issued the following service letters that specify limiting the maximum indicated airspeed to maneuvering airspeed (Va) as shown in the appropriate airplane flight manual (AFM), operating the aircraft with two pilots, and other operating instructions, to lessen the severity of airplane pitch up in case of failure of the subject actuators:

Service Letter 226–SL–017, FAA Approved: August 26, 1998; Revised: September 2, 1998.

Service Letter 227–SL–033, FAA Approved: August 26, 1998; Revised: September 2, 1998.

Service Letter CC7–SL–023, FAA Approved: August 26, 1998; Revised: September 2, 1998.

The FAA's Determination and Explanation of the AD

Since an unsafe condition was identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design airplanes that are equipped with Barber-Colman pitch trim actuators, part number (P/N) 27–19008–001 or P/N 27–19008–002, the FAA:

—Determined that immediate AD action should be taken to lessen the severity of airplane pitch up caused by mechanical failure of the pitch trim actuator, which could result in a pitch upset and structural failure of the airplane; and
—Issued AD 98–19–15 as a priority letter on September 10, 1998.

Because of the seriousness of the issue and in order to assure the continued airworthiness of the SA226 and SA227 series airplanes, the FAA determined that the speed restriction and minimum pilot requirement are necessary while a mechanical fix is being researched and developed for the affected Barber-Colman pitch trim tab actuators.

At the present time, there is a design alternative to the Barber-Colman pitch trim actuators for the affected airplanes, except for the Models SA227–CC and SA227–DC airplanes. This alternative is the Simmonds-Precision pitch trim actuator, P/N DL5040M5 or P/N DL5040M6. The goal is to find, approve, and eventually require a mechanical fix for all of the SA226 and SA227 series airplanes equipped with Barber-Colman pitch trim actuators, instead of imposing the speed restriction and minimum pilot requirement.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 10, 1998, to all known U.S. operators of Fairchild SA226 and SA227 series airplanes that are equipped with Barber-Colman pitch trim actuators, P/N 27–19008–001 or P/N 27–19008–002. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the

Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–84–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 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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–19–15 Fairchild Aircraft, Inc.: Amendment 39–10794; Docket No. 98–CE–84–AD.

Applicability: Models SA226–T, SA226–T(B), SA226–AT, SA226–TC, SA227–TT, SA227–AT, SA227–AC, SA227–BC, SA227–CC, and SA227–DC airplanes, all serial numbers, certificated in any category; that are equipped with Barber-Colman pitch trim actuators, part number (P/N) 27–19008–001 or P/N 27–19008–002.

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 in the body of this AD, unless already accomplished or made unnecessary by replacement of the P/N 27–19008–001 or P/N 27–19008–002 Barber-Colman pitch trim actuator with a Simmonds-Precision actuator, P/N DL5040M5 or P/N 5040M6. This replacement may only be accomplished on SA226–T, SA226–T(B), SA226–AT, SA226–TC, SA227–TT, SA227–AT, SA227–AC, or SA227–BC aircraft. The Simmonds-Precision actuators are not approved for the Models SA227–CC and SA227–DC airplanes.

To lessen the severity of airplane pitch up caused by mechanical failure of the pitch trim actuator, which could result in a pitch upset and structural failure of the airplane, accomplish the following:

(a) Prior to further flight after receipt of this AD, revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD into the AFM:

- Limit the maximum indicated airspeed to maneuvering airspeed (Va) as shown in the appropriate airplane flight manual (AFM).''

and

- ''The minimum crew required is two pilots.''

Note 2: Fairchild Service Letter 226–SL–017, Fairchild Service Letter 227–SL–033, and Fairchild Service Letter CC7–SL–023, all FAA Approved: August 26, 1998; Revised: September 2, 1998; address the subject matter of this AD.

(b) Incorporating the AFM revision, as specified in paragraph (a) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Note 3: This AD does not affect AD 97–23–01, Amendment 39–10188 (62 FR 5922, November 3, 1997). AD 97–23–01 still applies to all SA226 and SA227 series airplanes equipped with either Barber-Colman or Simmonds-Precision pitch trim actuators, and requires the following:

—Repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage or ratcheting;

—Immediately replacing any actuator if certain freeplay limitations are exceeded or rod slippage or ratcheting is evident; and,

—Eventually replacing the Simmonds-Precision actuators regardless of the inspection results.

(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.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Field Support Engineering, Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment becomes effective on September 25, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–19–15, issued September 10, 1998, which

contains the requirements of this amendment.

Issued in Kansas City, Missouri, on September 17, 1998.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25479 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–53–AD; Amdt. 39–10795; AD 98–20–28]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 airplanes. This AD requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: November 4, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 425–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 16, 1997 (62 FR 48499). The NPRM proposed to require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Comments

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

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models (see below for a listing of all 24 proposed rules). These 24 proposals also were published in the **Federal Register** on September 16, 1997. This final rule contains the FAA's responses to all public comments received for each of these proposed rules.

Docket No.	Manufacturer airplane model	Federal Register citation
97–CE–49–AD	Aerospace Technologies of Australia Models N22B and N24A	62 FR 48520
97–CE–50–AD	Harbin Aircraft Mfg. Corporation Model Y12 IV	62 FR 48513
97–CE–51–AD	Partenavia Costruzioni Aeronauticas, S.p.A. Models P68, AP68TP 300, AP68TP 600	62 FR 48524
97–CE–52–AD	Industrie Aeronautiche Meccaniche Rinaldo Piaggio S.p.A. Model P–180	62 FR 48502
97–CE–53–AD	Pilatus Aircraft Ltd. Models PC–12 and PC–12/45	62 FR 48499
97–CE–54–AD	Pilatus Britten-Norman Ltd. Models BN–2A, BN–2B, and BN–2T	62 FR 48538
97–CE–55–AD	SOCATA—Groupe Aerospatiale Model TBM–700	62 FR 48506
97–CE–56–AD	Aerostar Aircraft Corporation Models PA–60–600, –601, –601P, –602P, and –700P	62 FR 48481
97–CE–57–AD	Twin Commander Aircraft Corporation Models 500, –500–A, –500–B,–500–S, –500–U, –520, –560, –560–A, –560–E, –560–F, –680, –680–E, –680FL(P), –680T, –680V, –680W, –681,–685, –690, –690A, –690B, –690C, –690D, –695, –695A, –695B, and 720.	62 FR 48549
97–CE–58–AD	Raytheon Aircraft Company Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	62 FR 48517
97–CE–59–AD	Raytheon Aircraft Company Model 2000	62 FR 48531
97–CE–60–AD	The New Piper Aircraft, Inc. Models PA–46–310P and PA–46–350P	62 FR 48542
97–CE–61–AD	The New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	62 FR 48546

Docket No.	Manufacturer airplane model	Federal Register citation
97–CE–62–AD	Cessna Aircraft Company Models P210N, T210N, P210R, and 337 series	62 FR 48535
97–CE–63–AD	Cessna Aircraft Company Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	62 FR 48528
97–CE–64–AD	SIAI-Marchetti S.r.l. (Augusta) Models SF600 and SF600A	62 FR 48510
97–NM–170–AD	Cessna Aircraft Company Models 500, 501, 550, 551, and 560 series	62 FR 48560
97–NM–171–AD	Sabreliner Corporation Models 40, 60, 70, and 80 series	62 FR 48556
97–NM–172–AD	Gulfstream Aerospace Model G–159 series	62 FR 48563
97–NM–173–AD	McDonnell Douglas Models DC–3 and DC–4 series	62 FR 48553
97–NM–174–AD	Mitsubishi Heavy Industries Model YS–11 and YS–11A series	62 FR 48567
97–NM–175–AD	Frakes Aviation Model G–73 (Mallard) and G–73T series	62 FR 48577
97–NM–176–AD	Fairchild Models F27 and FH227 series	62 FR 48570
97–NM–177–AD	Lockheed L–14 and L–18 series airplanes	62 FR 48574

Comment 1. Unsubstantiated Unsafe Condition for This Model

One commenter suggests that the AD's were developed in response to a suspected contributing factor of an accident involving an airplane type unrelated to the airplanes specified in the proposal. The commenter states that these proposals do not justify that an unsafe condition exists or could develop in a product of the same type design. Therefore, the commenter asserts that the proposal does not meet the criteria for the issuance of an AD as specified in 14 CFR part 39 (Airworthiness Directives) of the Federal Aviation Regulations.

The FAA does not concur. As stated in the notice of proposed rulemaking (NPRM), the FAA has identified an unsafe condition associated with operating the airplane in severe icing conditions. As stated in the preamble to the proposal, the FAA has not required that airplanes be shown to be capable of operating safely in icing conditions outside the certification envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25). This means that any time an airplane is flown in icing conditions for which it is not certificated, there is a potential for an unsafe condition to exist or develop and the flight crew must take steps to exit those conditions expeditiously. Further, the FAA has determined that flight crews are not currently provided with adequate information necessary to determine when an airplane is operating in icing conditions for which it is not certificated or what action to take when such conditions are encountered. The absence of this information presents an unsafe condition because without that information, a pilot may remain in potentially hazardous icing conditions. This AD addresses the unsafe condition by requiring AFM revisions that provide the flight crews with visual cues to determine when icing conditions have been encountered for which the airplane is not certificated, and by providing procedures to safely exit those conditions.

Further, in the preamble of the proposed rule, the FAA discussed the investigation of roll control anomalies to explain that this investigation was not a complete certification program. The testing was designed to examine only the roll handling characteristics of the airplane in certain droplets the size of freezing drizzle. The testing was not a certification test to approve the airplane for flight into freezing drizzle. The results of the tests were not used to determine if this AD is necessary, but rather to determine if design changes were needed to prevent a catastrophic roll upset. The roll control testing and the AD are two unrelated actions.

Additionally, in the preamble of the proposed rule, the FAA acknowledged that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning flight in icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with pneumatic deicing boots and unpowered roll control systems. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA has previously issued AD's to address those airplanes. Since the issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service.

Comment 2. AD Is Inappropriate To Address Improper Operation of the Airplane

One commenter requests that the proposed AD be withdrawn because an unsafe condition does not exist within the airplane. Rather, the commenter asserts that the unsafe condition is the improper operation of the airplane. The commenter further asserts that issuance of an AD is an inappropriate method to address improper operation of the airplane.

The FAA does not concur. The FAA has determined that an unsafe condition does exist as explained in the proposed notice and discussed previously. As specifically addressed in Amendment 39–106 of part 39 of the Federal Aviation Regulations (14 CFR part 39), the responsibilities placed on the FAA statute (49 U.S.C. 40101, formerly the Federal Aviation Act) justify allowing AD's to be issued for unsafe conditions however and wherever found, regardless of whether the unsafe condition results from maintenance, design defect, or any other reason.

This same commenter considers part 91 (rather than part 39) of the Federal Aviation Regulations (14 CFR part 91) the appropriate regulation to address the problems of icing encounters outside of the limits for which the airplane is certificated. Therefore, the commenter requests that the FAA withdraw the proposal.

The FAA does not concur. Service experience demonstrates that flight in

icing conditions that is outside the icing certification envelope does occur. Apart from the visual cues provided in these final rules, there is no existing method provided to the flight crews to identify when the airplane is in a condition that exceeds the icing certification envelope. Because this lack of awareness may create an unsafe condition, the FAA has determined that it is appropriate to issue an AD to require a revision of the AFM to provide this information.

One commenter asserts that while it is prudent to advise and routinely remind the pilots about the hazards associated with flight into known or forecast icing conditions, the commenter is opposed to the use of an AD to accomplish that function. The commenter states that pilots' initial and bi-annual flight checks are the appropriate vehicles for advising the pilots of such hazards, and that such information should be integrated into the training syllabus for all pilot training.

The FAA does not concur that substituting advisory material and mandatory training for issuance of an AD is appropriate. The FAA acknowledges that, in addition to the issuance of an AD, information specified in the revision to the AFM should be integrated into the pilot training syllabus. However, the development and use of such advisory materials and training alone are not adequate to address the unsafe condition. The only method of ensuring that certain information is available to the pilot is through incorporation of the information into the Limitations Section of the AFM. The appropriate vehicle for requiring such a revision of the AFM is issuance of an AD. No change is necessary to the final rule.

Comment 3. Inadequate Visual Cues

One commenter provides qualified support for the AD. The commenter notes that the recent proposals are identical to the AD's issued about a year ago. Although the commenter supports the intent of the AD's as being appropriate and necessary, the commenter states that it is unfortunate that the flight crew is burdened with recognizing icing conditions with visual cues that are inadequate to determine certain icing conditions. The commenter points out that, for instance, side window icing (a very specific visual cue) was determined to be a valid visual cue during a series of icing tanker tests on a specific airplane; however, later testing of other models of turboprop airplanes revealed that side window icing was invalid as a visual cue for identifying icing conditions outside the scope of Appendix C.

The FAA does not concur with the commenters' request to provide more specific visual cues. The FAA finds that the value of visual cues has been substantiated during in-service experience. Additionally, the FAA finds that the combined use of the generic cues provided and the effect of the final rules in increasing the awareness of pilots concerning the hazard of operating outside of the certification icing envelope will provide an acceptable level of safety. Although all of the cues may not be exhibited on a particular model, the FAA considers that at least some of the cues will be exhibited on all of the models affected by this AD. For example, some airplanes may not have side window cues in freezing drizzle, but would exhibit other cues (such as accumulation of ice aft of the protected area) under those conditions. For these reasons, the FAA considers that no changes regarding visual cues are necessary in the final rule. However, for those operators that elect to identify airplane-specific visual cures, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this AD.

Comment 4. Request for Research and Use of Wing-Mounted Ice Detectors

One commenter requests that wing-mounted ice detectors, which provide real-time icing severity information (or immediate feedback) to flight crews, continue to be researched and used throughout the fleet. The FAA infers from this commenter's request that the commenter asks that installation of these ice detectors be mandated by the FAA.

While the FAA supports the development of such ice detectors, the FAA does not concur that installation of these ice detectors should be required at this time. Visual cues are adequate to provide an acceptable level of safety; therefore, mandatory installation of ice detector systems, in this case, is not necessary to address the unsafe condition. Nevertheless, because such systems may improve the current level of safety, the FAA has officially tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop a recommendation concerning ice detection. Once the ARAC has submitted its recommendation, the FAA may consider further rulemaking action to require installation of such equipment.

Comment 5. Particular Types of Icing

This same commenter also requests that additional information be included in paragraph (a) of the AD that would specify particular types of icing or particular accretions that result from operating in freezing precipitation. The commenter asserts that this information is of significant value to the flightcrew.

The FAA does not concur with the commenter's suggestion to specify types of icing or accretion. The FAA has determined that supercooled large droplets (SLD) can result in rime ice, mixed (intermediate) ice, and ice with glaze or clear appearance. Therefore, the FAA finds that no type of icing can be excluded from consideration during operations in freezing precipitation, and considers it unnecessary to cite those types of icing in the AD.

Alternative to the AD

Since issuance of the NPRM, Pilatus has issued a temporary revision for the Pilatus Models PC–12 and PC–12/45 airplanes' Pilot's Operating Handbook (POH), which is entitled: PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision, Icing Information, dated December 18, 1997. This POH temporary revision incorporates information that is equivalent to the information proposed in the NPRM.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that (1) the above-referenced POH temporary revision should be considered as an alternative method of compliance (AMOC) to the actions proposed in the NPRM; and (2) air safety and the public interest require the adoption of the rule as proposed except for the addition of the POH temporary revision as an AMOC and minor editorial corrections. The FAA has determined that this addition and these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the

time it will take the affected airplane owners/operators to incorporate the AFM revision or POH temporary revision.

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 will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–20–28 Pilatus Aircraft Ltd: Amendment 39–10795; Docket No. 97–CE–53–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, all serial numbers, certificated in any category.

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

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

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night.

Note: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) As an alternative method of compliance to the actions required by paragraphs (a), (a)(1), and (a)(2) of this AD, incorporate PC–12 Pilot's Operating Handbook, Pilatus Report No. 01973–001, Temporary Revision, Icing Information, dated December 18, 1997, into the pilot's operating handbook (POH).

(c) Incorporating the AFM revisions or POH temporary revision, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) 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.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on November 4, 1998.

Issued in Kansas City, Missouri, on September 17, 1998.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25478 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–19–AD; Amendment 39–10800; AD 98–20–33]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model T210R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna Aircraft Company (Cessna) Model T210R airplanes. This AD requires revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. This AD was prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Effective November 17, 1998.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–19–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone: (816) 426–6932, facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Cessna Model T210R airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 8, 1998 (63 FR 31135). The NPRM proposed to require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

• Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);

• Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and

• Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

• This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

• Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

The NPRM was the result of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew.

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 50 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate the AFM revisions.

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 will accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–20–33 Cessna Aircraft Company: Amendment 39–10800; Docket No. 98–CE–19–AD.

Applicability: Model T210R airplanes (all serial numbers), certificated in any category.

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

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''The Following Weather Conditions May Be Conducive to Severe In-Flight Icing:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack. 4

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

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

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment becomes effective on November 17, 1998.

Issued in Kansas City, Missouri, on September 18, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25542 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–44]

Establishment of Class E Airspace; Carrizo Springs, Glass Ranch Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment establishes Class E airspace at Carrizo Springs, Glass Ranch Airport, TX. The development of a global positioning system (GPS) standard instrument approach procedure (SIAP) to the Glass Ranch Airport at Carrizo Springs, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to the Glass Ranch Airport, Carrizo Springs, TX.

DATES: Effective 0901 UTC, January 28, 1999. Comments must be received on or before November 9, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–44, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

This amendment to 14 CFR part 71 establishes the Class E airspace at Carrizo Springs, Glass Ranch Airport, TX. The development of a GPS SIAP to the Glass Ranch Airport, Carrizo Springs, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to the Glass Airport, Carrizo Springs, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 071.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments, or obligations. 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 as they may desire. Communications should identify the Rules docket number and be submitted to 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 is 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–ASW–44.'' 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.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical

regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR party 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ASW TX E5 Carrizo Springs, Glass Ranch Airport, TX [New]

Carrizo Springs, Glass Ranch Airport, TX
(lat. 28°27′01″ N., long. 100°09′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Glass Ranch Airport, excluding that airspace within Restricted Area R–6316.

* * * * *

Issued in Fort Worth, TX, on September 14, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–25558 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Mandatory Safety Standards—Underground Coal Mines

CFR Correction

In Title 30 of the Code of Federal Regulations, parts 1 to 199, revised as of July 1, 1998, page 579, § 75.1909, paragraph (c)(5) is corrected to read as follows:

§ 75.1909 Nonpermissible diesel–powered equipment; design and performance requirements.

* * * * *

(c) * * *

(5) Has a means in the equipment operator's compartment to apply the brakes manually without shutting down the engine, and a means to release and reengage the brakes without the engine operating; and

* * * * *

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI00

Claims Based on Exposure to Ionizing Radiation (Prostate Cancer and Any Other Cancer)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning compensation for diseases claimed to be the result of exposure to ionizing radiation. This amendment implements a decision by the Secretary of Veterans Affairs that, based on all evidence currently available to him, prostate cancer and any other cancers may be induced by ionizing radiation. The intended effect of this action is to relieve veterans, or their survivors, seeking benefits under the provisions of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of the burden of having to submit evidence that a veteran's prostate cancer or any other cancer may have been induced by ionizing radiation.

DATES: Effective Date: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7230.

SUPPLEMENTARY INFORMATION: The Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. 98–542, required VA to develop regulations establishing standards and criteria for adjudicating veterans' claims for compensation for diseases arising from exposure to ionizing radiation during service. Pub. L. 98–542 also required that the Secretary of Veterans Affairs, after receiving the advice of the Veterans Advisory Committee on Environmental Hazards (VACEH), determine which conditions should be considered service-connected on the basis of exposure to ionizing radiation and include those conditions in VA's regulations.

In September 1985, VA published 38 CFR 3.311b, since redesignated as 3.311, to implement the radiation provisions of Pub. L. 98–542. As threshold requirements for entitlement to compensation under this regulation, a veteran must have been exposed to ionizing radiation during atmospheric testing of nuclear weapons, the occupation of Hiroshima and Nagasaki, Japan, during World War II, or through other activities as claimed, and must have subsequently developed a radiogenic disease. VA defines the term ''radiogenic disease,'' for purposes of Pub. L. 98–542, to mean ''a disease that may be induced by ionizing radiation'' (38 CFR 3.311(b)(2)). Since 1985 VA has added a number of diseases to the original list of radiogenic diseases at 38 CFR 3.311(b)(2).

Once the regulation was published, VA denied claims for conditions that were not specifically listed in the regulation as radiogenic diseases. On September 1, 1994, however, the United States Court for the Federal Circuit held in *Combee* v. *Brown*, 34 F. 3d 1039 (Fed. Cir. 1994), that Pub. L. 98–542 did not authorize VA to establish an exclusive list of radiogenic conditions.

VA published a proposal to amend 38 CFR 3.311(b)(2) to add prostate cancer and ''any other cancer'' to the list of diseases VA recognizes as being radiogenic under the provisions of Pub. L. 98–542 in the **Federal Register** on September 25, 1996 (61 FR 50264–65).

Interested persons were invited to submit written comments on or before November 25, 1996. We received four comments: one from the National Council on Radiation Protection and Measurements; one from a professor of health physics at Arizona State University; and two from concerned individuals.

One commenter pointed out that the Veterans' Advisory Committee on Environmental Hazards (VACEH) considered exposure to ionizing radiation to be a contributing factor in the development of any malignancy. The commenter therefore suggested that we amend the list of radiogenic diseases to include any other ''carcinoma or sarcoma'' rather than ''cancer,'' which is often synonymous with only carcinoma.

We intend to include both carcinoma and sarcoma in this rule, and in our judgment using the broadest possible term, i.e., ''cancer,'' is the clearest way of expressing that intent. As the commenter points out, Dorland's Medical Dictionary 255 (28th ed. 1994) defines cancer as including both carcinoma and sarcoma. Furthermore, when not referring to specific conditions such as leukemia or multiple myeloma, the current list of radiogenic diseases in 38 CFR 3.311(b)(2) uses the term ''cancer'' of specified organs. Introducing other terminology into the rule might imply a difference that we do not intend. For these reasons, we make no change based on this suggestion.

Another commenter stated that VA should use radiation dose, rather than radiation exposure, as the index to measure the risk of a particular health outcome.

Once it is determined that a veteran has a radiogenic disease, radiation dose is a factor to be considered under 38 CFR 3.311(e)(1) in determining whether a veteran's disease resulted from exposure to ionizing radiation in service. VA obtains an assessment of the size and nature of the radiation dose to which the veteran was exposed during military service (§ 3.311(a)(2)) and considers the probable dose and several other factors in determining whether the disease resulted from that exposure (§ 3.311(e)).

One commenter stated that while prostate cancer is possibly radiogenic, the probability that it is related to virtually any level of radiation exposure is ''vanishingly small.'' The commenter also noted that the National Institutes of Health Radioepidemiology Tables are a better means of estimating the probability that a cancer was caused by radiation with any given dose. Another commenter stated that a significant statistical association between exposure to ionizing radiation and cancer of the oral cavity, esophagus, rectum, gall bladder, pancreas, ovary, prostate, and brain and central nervous system has not been demonstrated. The commenter pointed out that, according to the Hiroshima and Nagasaki Life Span Study, compiled by the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), the excess relative risks for these cancers are not statistically different from zero. The commenter also relies upon an analysis of the risk of cancer in Japanese survivors of the atomic bombings, prepared by the Radiation Effects Research Foundation, that supports the UNSCEAR findings that these cancers are not induced by exposure to ionizing radiation.

As explained in the notice of proposed rulemaking, when the Secretary of Veterans Affairs determines that a significant statistical association exists between a disease and exposure to ionizing radiation, and after receiving the advice of the VACEH, and applying the reasonable doubt doctrine as set forth in 38 CFR 1.17(d)(1), the regulations regarding service connection must be amended. A ''significant statistical association'' exists when ''it is at least as likely as not that the purported relationship between a particular type of exposure and a specific adverse health effect exists.'' (38 CFR 1.17(d)(1)). In addition, according to 38 CFR 3.17(f), a significant statistical association may be deemed to exist ''if, in the Secretary's judgment, scientific and medical evidence on the whole supports such a decision.''

The VACEH concluded in April 1995 that it would be appropriate to consider prostate cancer as being associated with radiation exposure. The VACEH also expressed its agreement with the statement ''[o]n the basis of current scientific knowledge, exposure to ionizing radiation can be a contributing factor in the development of a malignancy.'' We therefore believe that the Secretary's decision to add prostate cancer and any other cancer to the list of radiogenic diseases in 38 CFR 3.311(b)(2) is supported by scientific and medical evidence.

We note as well that VA's inquiry does not end once it is determined that the claimant meets the threshold requirements of 38 CFR 3.311(b)(1). VA then obtains an assessment of the size and nature of the radiation dose to which the veteran was exposed during military service. In determining whether the disease resulted from that exposure, VA considers: the probable dose in terms of dose type, rate and duration as a factor in inducing the disease; the relative sensitivity of the involved tissue; gender and pertinent family history; age at time of exposure; the time-lapse between exposure and onset of the disease; and the extent to which exposure to radiation, or other carcinogens, outside of service may have contributed to development of the disease.

VA appreciates the comments submitted in response to the proposed rule which, based on the rationale set forth in the proposal and this document, is now adopted without change.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this final rule does not directly affect any small entities. Only VA beneficiaries are directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: June 15, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.311, paragraph (b)(2)(xxi) is amended by removing ''and''; and paragraph (b)(2)(xxii) is amended by removing ''.'' and adding, in its place, ''; ''; and new paragraphs (b)(2)(xxiii) and (b)(2)(xxiv) are added to read as follows:

§ 3.311 Claims based on exposure to ionizing radiation.

* * * * *

(b) * * *

(2) * * *

(xxiii) Prostate cancer; and

(xxiv) Any other cancer.

* * * * *

[FR Doc. 98–25546 Filed 9–23–98; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–168; RM–9103 and RM–9182]

Radio Broadcasting Services; Arcadia & Ellington, MO, Carbondale, IL & Tiptonville, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 280A to Arcadia, Missouri, as that community's first local service in response to a petition filed by Iron County Broadcasting Company. *See* 62 FR 42225, August 6, 1997. The coordinates for Channel 280A at Arcadia are 37–32–30 and 90–43–00. There is is a site restriction 9.3 kilometers (5.8 miles) southwest of the community. In response to the counterproposal filed by Lyle Broadcasting Corporation, we will substitute Channel 268C1 for Channel 268B at Carbondale, Illinois, at coordinates 37–37–00 and 89–38–30 and modify the license for Station WCIL accordingly. To accommodate the allotments at Arcadia and Carbondale, we will substitute Channel 294A for Channel 280A at Ellington, Missouri, at coordinates 37–13–27 and 90–51–13 and modify the construction permit for Station KAUL to specify Channel 294A. We shall also put a new site restriction on vacant Channel 267C3 at Tiptonville, Tennessee, using coordinates 36–19–41 and 89–23–18. With this action, this proceeding is terminated. A filing window for Channel 280A at Arcadia, Missouri, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: November 2, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No.97–168, adopted September 9, 1998, and released September 18, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Arcadia, Channel 280A and by removing Channel 280A and adding Channel 294A at Ellington.

3. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 268B and adding Channel 268C1 at Carbondale.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–25559 Filed 9–23–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–98–4463]

RIN: 2127–AG55

Federal Motor Vehicle Safety Standards; Metric Conversion

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule, technical amendments; response to petition for reconsideration.

SUMMARY: On May 27, 1998, NHTSA published a final rule amending selected Federal Motor Vehicle Safety Standards (FMVSSs) by converting English measurements specified in those standards to metric measurements. In this document, NHTSA corrects typographical and other errors in the May 1998 final rule. This document also responds to a petition for reconsideration filed by Toyota, and public comments by the Truck Manufacturers Association and Ford to correct typographical errors in the final rule. The corrections of errors in this final rule are not intended to make any changes in the stringency of the affected FMVSSs.

DATES: This final rule is effective May 27, 1999. Optional early compliance with the changes made in this final rule is permitted beginning September 24, 1998.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Nakama, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Rm. 5219, Washington, DC 20590. Ms. Nakama's e-mail address is: *dnakama@nhtsa.dot.gov* and her telephone number is: (202) 366–2992.

SUPPLEMENTARY INFORMATION: On May 27, 1998 (63 FR 28922), NHTSA published in the **Federal Register** a final rule revising selected Federal Motor Vehicle Safety Standards by converting English measurements specified in those standards to metric measurements. The final rule was one of several rulemaking actions that NHTSA is undertaking to implement the Federal policy that the metric system of measurement is the preferred system of weights and measures for United States trade and commerce. The converted figures are not intended to make any substantive changes in the stringency of the affected FMVSSs.

Upon reviewing the **Federal Register** publication, NHTSA noted certain typographical and other errors in the amended regulatory text and in Tables or Figures. NHTSA also received a petition for reconsideration from Toyota and public comments from the Truck Manufacturers Association and Ford noting additional errors in the final rule. In this final rule, NHTSA will correct errors in the following standards as described below:

NHTSA's Changes to the Final Rule

Standard No. 101, Controls and displays—NHTSA noted that S5 does not reflect the current version of the regulatory text. Also, at the bottom of Table 1, footnote 5 should include the word ''filled,'' not ''filed'' as appeared in the final rule.

Standard No. 104, Windshield wiping and washing systems—NHTSA noted that in S3, Definitions, ''Glazing surface reference line'' refers to a measurement that was originally 25 inches. In converting 25 inches to the metric system, NHTSA multiplied that figure by 25 mm, resulting in 625 mm. NHTSA subsequently determined that because the glazing surface reference line centers the windshield wiper path on the windshield, a difference of 10 mm could result in a different wiper path center, substantively changing the Standard. Therefore, in this final rule, NHTSA changes the 625 mm measurement to 635 mm, which is obtained by multiplying 25 inches by 25.4 mm, a more exact measurement than 25 mm.

Standard No. 209, Seat belt assemblies—In S4.2(b), NHTSA changes the three kilo Newton measurements to Newton measurements to make the measurements consistent with the rest of the Standard. In S5.2(e), NHTSA corrects a typographical error in the rate at which the webbing is to be drawn through the adjusting device to read ''508 mm ± mm'' per minute.

Standard No. 123, Motorcycle controls and displays—NHTSA noted that in Table 3, column 2, the term ''enricher'' should be ''enrichener.'' ''Enrichener'' refers to mixture enrichment equipment and has been included in previous versions of Table 3. Also, there were two typographical errors in footnote 4 at the bottom of Table 3; the word ''filed'' should be ''filled'' and the second period at the end of the sentence should be removed.

Toyota Petition for Reconsideration

In a petition dated July 7, 1998, Toyota asked that NHTSA correct ''several apparent errors and inconsistencies.'' Upon reviewing Toyota's petition, NHTSA agrees that each error or inconsistency noted by Toyota should be corrected. Therefore, in this final rule, NHTSA also amends the following standards to correct errors as noted below:

Standard No. 101, Controls and displays—Toyota noted that in Table 1, footnotes 2 and 5 from column 3 referring to the marker lamps were omitted, and the reference to ''10,000 lbs'' in the description of footnote 4 should have been converted to 4536 kg. In Table 2, the note for footnote 8 was omitted.

Standard No. 203, Impact protection for the driver from the steering control system—Toyota noted an inconsistency between S5.1(a) that referred to testing at a relative velocity of 24.1 km/h and a force that shall not exceed 11,110 N, and S5.1(b) that referred to testing at a relative velocity of 24 km/h and a force that shall not exceed 11,120 N. Toyota suggested that a velocity of 24.1 km/h and a force of 11,120 N be established to make the two provisions consistent.

Standard No. 209, Seat belt assemblies—Toyota stated its belief that a ''force of less than 1,120 N'' in S4.4(a)(1) was in error, and should have been ''11,120 N.''

Standard No. 302, Flammability of interior materials—Toyota noted that S5.1.1 states: ''each hole 19 mm in diameter''. However, the diagram in Figure 1 has an 18 mm diameter dimension. Toyota stated its belief that the 18 mm diameter dimension in Figure 1 is incorrect and that NHTSA intended 19 mm.

Truck Manufacturers Association Comments

In a letter dated August 19, 1998, the Truck Manufacturers Association (TMA) noted typographical and other errors in the May 1998 final rule. NHTSA has reviewed TMA's comments, and will make the following changes to the final rule:

Standard No. 101, Controls and displays—TMA noted several errors in Tables 1 and 2. NHTSA concurs with TMA's comments and corrects Tables 1 and 2 in this final rule.

Standard No. 116 Motor vehicle brake fluids—TMA noted that in S6.3, the units for kinematic viscosity should be mm^2/s not mm^2s.

Ford Public Comments

In a letter dated September 9, 1998, Ford Motor Company's Automotive Safety Office noted additional typographical and other errors in the May 1998 final rule. NHTSA has reviewed Ford's comments, and will make the following changes to the final rule:

Standard No. 101, Controls and displays—Ford notes that in Table 1, Note 4 should read ''Identification not required for vehicles with a GVWR greater than 4536 kg or for narrow ring-type controls.'' Ford also stated its view that in Table 2, under the ''SPEEDOMETER'' display, Column 3 ''MPH km/h'' requires both English and metric units. Ford recommends that it read: ''MPH and/or km/h'.

Standard No. 111, Rearview mirrors—In S5.1.1, Ford noted that to be consistent with identical measurements in other provisions in Standard No. 111, 60 m should be changed to 61 m. In S9.3(b)(2), Ford noted the center of the mirror measurement should be 95 cm, not 95 cm^2. Ford corrected various typographical errors in Table 1, ''Conversion Table from Spherometer Dial Reading to Radius of Curvature''. Ford noted that in Figure 1, the measurement ''1/4'' should be 6.4 mm to be consistent with S12.3 of Standard No. 111.

Standard No. 204, Steering control rearward displacement—Ford noted that S4.2 should read ''48 km/h'', not ''48.3 km/h'', to be consistent with the test speeds specified in Standards 219 and 301.

Standard No. 209, Seat belt assemblies—Ford noted a typographical error in S5.2(d), which should read ''* * * 334 N on the components of a Type 2 seat belt assembly * * *''. The final rule omitted the word ''on'' in the sentence. Ford also asked that NHTSA include g force measurements to acceleration measurements of 7 m/s^2 (0.7 *g*) and 3 m/s^2 (0.3 *g*), specified at S4.2(j) and S5.2(j).

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E. O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under DOT's regulatory policies and procedures.

In converting the Federal Motor Vehicle Safety Standards from the English to the metric measurement system, the agency has made conversions in a way that does not substantively change the performance requirements of the FMVSSs. In this final rule, NHTSA makes corrections to errors that were in the May 27, 1998 final rule. NHTSA does not believe motor vehicle manufacturers will incur any additional costs as a result of this final rule. The impacts of this action are so minor that a full regulatory evaluation has not been prepared.

B. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that this final rule makes no substantive changes to any Federal Motor Vehicle Safety Standards, and is limited to correcting typographical and other errors in the May 27, 1998 final rule that amended the Federal Motor Vehicle Safety Standards.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rulemaking action and determined that as a final rule, it would not have a significant impact on the quality of the human environment.

D. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This rule will not have a retroactive effect. Under Section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR Part 571), are amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.101 is amended by revising S5 to read as follows:

§ 571.101 Standard No. 101, Controls and displays.

* * * * *

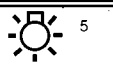
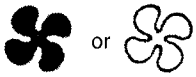
S5 *Requirements.* Each passenger car, multipurpose passenger vehicle, truck and bus manufactured with any control listed in S5.1 or in column 1 of Table 1, and each passenger car, multipurpose passenger vehicle and truck or bus less than 4,536 kg. GVWR with any display listed in S5.1 or in column 1 of Table 2, shall meet the requirements of this standard for the location, identification, and illumination of such control or display.

* * * * *

3. Section 571.101 is amended by revising Table 1 and Table 2 that follow S6. to read as follows:

BILLING CODE 4910–59–P

Table 1
Identification and Illustration of Controls

Column 1	Column 2	Column 3	Column 4
Hand Operated Controls	*Identifying Words or Abbreviation*	*Identifying Symbol*	*Illumination*
Master Lighting Switch	Lights	 5	———
Headlamps and Tail Lamps	(Manufacturer Option) 2	(Manufacturer Option) 2	———
Horn	Horn	 4	———
Turn Signal	———	 3 5	———
Hazard Warning Signal	Hazard	 5	Yes
Windshield Wiping System	Wiper or Wipe		Yes
Windshield Washing System	Washer or Wash		Yes
Windshield Washing and Wiping Combined	Wash-Wipe or Washer-Wiper		Yes
Heating and or Air Conditioning Fan	Fan		Yes
Windshield Defrosting and Defogging System	Defrost, Defog or Def.		Yes
Rear Window Defrosting and Defogging System	Rear Defrost, Rear Defog. Rear Def., or R-Def.		Yes
Identification, Side Marker and or Clearance Lamps	Marker Lamps or MK Lps	 2 5	Yes
Manual Choke	Choke	———	———
Engine Start	Engine Start[1]	———	———
Engine Stop	Engine Stop[1]	———	Yes
Hand Throttle	Throttle	———	———
Automatic Vehicle Speed	(Manufacturer Option)	———	Yes
Heating and Air Conditioning System	(Manufacturer Option)	(Manufacturer Option)	Yes

1 Use when engine control is separate from the key locking system.

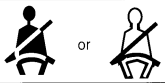
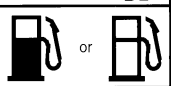
2 Separate idenfication not required if controlled by master lighting switch.

3 The pair of arrows is a single symbol. When the controls for left and right turn operate independently, however, the two arrows may be considered separate symbols and be spaced accordingly.

4 Identification not required for vehicles with a GVWR greater than 4536 kg; or for narrow ring-type controls.

5 Framed areas may be filled.

Table 2
Identification and Illustration of Displays

Column 1	Column 2	Column 3	Column 4	Column 5
Display	*Telltale Color*	*Identifying Words or Abbreviation*	*Identifying Symbol*	*Illumination*
Turn Signal Telltale	Green	Also see FMVSS 108	 1 6	—
Hazard Warning Telltale		Also see FMVSS 108	 2 6	—
Seat Belt Telltale	— 7	Fasten Belts or Fasten Seat Belts Also see FMVSS 208	 or	—
Fuel Level Telltale		Fuel	 or	—
Gauge	—			Yes
Oil Pressure Telltale		Oil		—
Gauge	—			Yes
Coolant Temperature Telltale		Temp		—
Gauge	—			Yes
Electrical Charge Telltale		Volts, Charge or Amp		—
Gauge	—			Yes
Highbeam Telltale	Blue or Green 4	Also see FMVSS 108	 6	—
Brake System 8	Red 4	Brake, Also see FMVSS 105 and 135	—	—
Malfunction in Anti-Lock or	Yellow	Antilock, Anti-lock, or ABS. Also see FMVSS 105 and 135	—	—
Variable Brake Proportioning System 8	Yellow	Brake Proportioning, Also see FMVSS 135	—	—
Parking Brake Applied 8	Red 4	Park or Parking Brake, Also see FMVSS 105 and 135	—	—
Malfunction in Anti-Lock	Yellow	ABS, or Antilock; Trailer ABS, or Trailer Antilock, Also see FMVSS 121	—	—
Brake Air Pressure Position Telltale	—	Brake Air, Also see FMVSS 121	—	—
Speedometer	—	MPH and or km/h 5	—	Yes
Odometer	—	— 3	—	—
Automatic Gear Position	—	Also see FMVSS 102	—	Yes

1 The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.

2 Not required when arrows of turn signal tell-tales that otherwise operate independently flash simultaneously as hazard warning tell-tale.

3 If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.

4 Red can be red-orange. Blue can be blue-green.

5 If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.

6 Framed areas may be filled.

7 The color of the telltale required by S4.5.3.3 of Standard No 208 is red; the color of the telltale required by S7.3 of Standard No. 208 is not specified.

8 In the case where a single telltale indicates more than one brake system condition, the word for Brake System shall be used.

BILLING CODE 4910–59–C

4. Section 571.104, is amended by revising in S3, the definition of ''Glazing surface reference line'' to read as follows:

§ 571.104 Standard No. 104; Windshield wiping and washing systems.

* * * * *

S3. * * *

Glazing surface reference line means the line resulting from the intersection of the glazing surface and a horizontal plane 635 millimeters above the seating reference point, as shown in Figure 1 of SAE Recommended Practice J903a, ''Passenger Car Windshield Wiper Systems,'' May 1966.

* * * * *

5. Section 571.111 is amended by revising in S5.1.1, the first sentence, and revising S9.3(b)(2) to read as follows:

§ 571.111 Standard No. 111; Rearview mirrors.

* * * * *

S5.1.1 *Field of view.* Except as provided in S5.3, the mirror shall provide a field of view with an included horizontal angle measured from the projected eye point of at least 20 degrees, and a sufficient vertical angle to provide a view of a level road surface extending to the horizon beginning at a point not greater than 61 m to the rear of the vehicle when the vehicle is occupied by the driver and four passengers or the designated occupant capacity, if less, based on an average occupant weight of 68 kg. * * *

* * * * *

S9.2 * * *

(b) * * *

(2) Each mirror shall be located such that the distance from the center point of the eye location of a 25th percentile adult female seated in the driver's seat to the center of the mirror shall be at least 95 cm.

* * * * *

6. Section 571.111 is amended by revising in S12.8, Figure 1 to read as follows:

BILLING CODE 4910–59–P

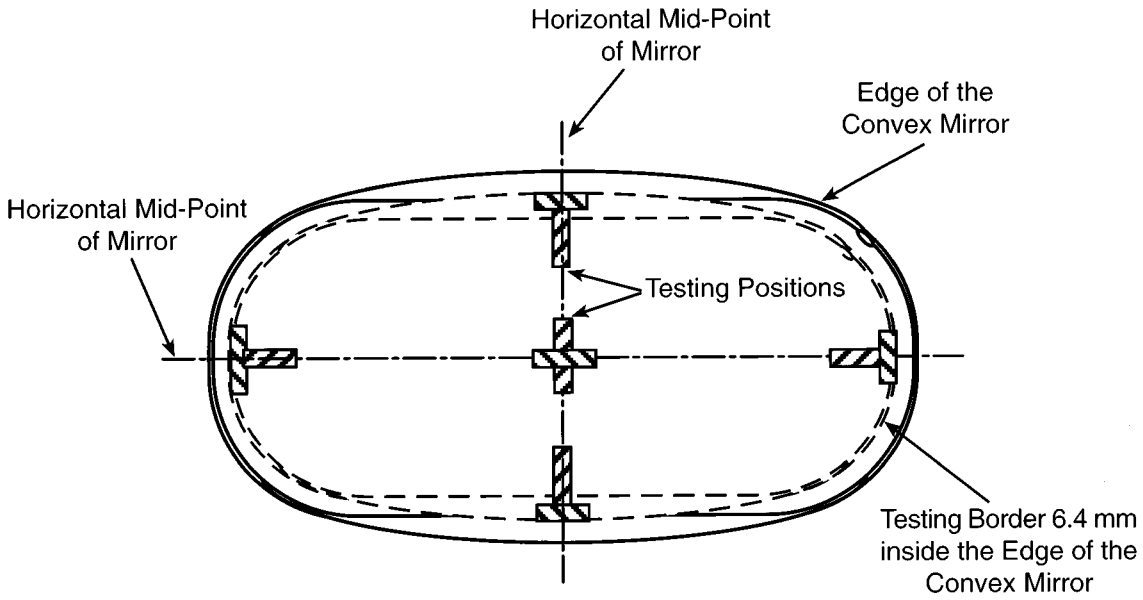


Figure 1–LOCATION OF TEN CONVEX MIRROR TESTING POSITIONS
All dimensions in millimeters (mm)

BILLING CODE 4910–59–C

7. In § 571.111, Table I—''Conversion Table from Spherometer Dial Reading to Radius of Curvature,'' following Figure 1 in S12.8, is revised to read as follows:

TABLE I.—CONVERSION TABLE FROM SPHEROMETER DIAL READING TO RADIUS OF CURVATURE

Dial reading	Radius of curvature (Inches)	Radius of curvature (mm)
.00330	85.2	2164.1
.00350	80.4	2042.92
.00374	75.2	1910.1

TABLE I.—CONVERSION TABLE FROM SPHEROMETER DIAL READING TO RADIUS OF CURVATURE—Continued

Dial reading	Radius of curvature (Inches)	Radius of curvature (mm)
.00402	70.0	1778.0
.00416	67.6	1717.0
.00432	65.1	1653.5
.00450	62.5	1587.5
.00468	60.1	1526.5
.00476	59.1	1501.1
.00484	58.1	1475.7
.00492	57.2	1452.9
.00502	56.0	1422.4
.00512	54.9	1394.5

TABLE I.—CONVERSION TABLE FROM SPHEROMETER DIAL READING TO RADIUS OF CURVATURE—Continued

Dial reading	Radius of curvature (Inches)	Radius of curvature (mm)
.00522	53.9	1369.1
.00536	52.5	1333.5
.00544	51.7	1313.2
.00554	50.8	1290.3
.00566	49.7	1262.4
.00580	48.5	1231.9
.00592	47.5	1206.5
.00606	46.4	1178.6
.00622	45.2	1148.1
.00636	44.2	1122.7

TABLE I.—CONVERSION TABLE FROM SPHEROMETER DIAL READING TO RADIUS OF CURVATURE—Continued

Dial reading	Radius of curvature (Inches)	Radius of curvature (mm)
.00654	43.0	1092.2
.00668	42.1	1069.3
.00686	41.0	1041.4
.00694	40.5	1028.7
.00720	39.1	993.1
.00740	38.0	965.2
.00760	37.0	939.8
.00780	36.1	916.9
.00802	35.1	891.5
.00822	34.2	868.7
.00850	33.1	840.7
.00878	32.0	812.8
.00906	31.0	787.4
.00922	30.5	774.7
.00938	30.0	762.0
.00960	29.3	744.2
.00980	28.7	729.0
.01004	28.0	711.2
.01022	27.5	698.5
.01042	27.0	685.8
.01060	26.5	673.1
.01080	26.0	660.4
.01110	25.3	642.6
.01130	24.9	632.5
.01170	24.0	609.6
.01200	23.4	594.4
.01240	22.7	576.6
.01280	22.0	558.8

TABLE I.—CONVERSION TABLE FROM SPHEROMETER DIAL READING TO RADIUS OF CURVATURE—Continued

Dial reading	Radius of curvature (Inches)	Radius of curvature (mm)
.01310	21.5	546.1
.01360	20.7	525.8
.01400	20.1	510.5
.01430	19.7	500.4
.01480	19.0	482.6
.01540	18.3	464.8
.01570	17.9	454.7
.01610	17.5	444.5
.01650	17.1	434.3
.01700	16.6	421.6
.01750	16.1	408.9
.01800	15.6	396.2
.01860	15.1	383.5
.01910	14.7	373.4
.01980	14.2	360.7
.02040	13.8	350.5
.02100	13.4	340.4
.02160	13.0	330.2
.02250	12.5	317.5
.02340	12.0	304.8
.02450	11.5	292.1
.02560	11.0	279.4
.02680	10.5	266.7
.02810	10.0	254.0
.02960	9.5	241.3
.03130	9.0	228.6
.03310	8.5	215.9

8. Section 571.116 is amended by revision S6.3 to read as follows:

§ 571.116 Standard No. 116, Motor vehicle brake fluids.

* * * * *

S6.3 *Kinematic viscosities.* Determine the kinematic viscosity of a brake fluid in mm^2/s by the following procedure. Run duplicate samples at each of the specified temperatures, making two times runs on each sample.

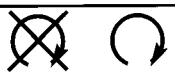
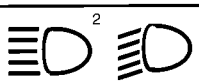
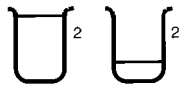
* * * * *

9. Section 571.123 is amended by revising Table 3 ''Motorcycle Control and Display Identification'', that follows S5.2.5 and Tables 1 and 2, to read as follows:

§ 571.123 Standard No. 123, Motorcycle controls and displays.

BILLING CODE 4910–59–C

Table 3
Motorcycle Control and Display Identification Requirements

No.	Column 1 *Equipment*	Column 2 *Control and Display Identification Word*	Column 3 *Control and Display Identification Symbol*	Column 4 *Identification at Appropriate Position of Control and Display*
1	Ignition	Ignition	—	Off
2	Supplemental Engine Stop (Off, Run)	Engine Stop		Off, Run
3	Manual Choke or Mixture Enrichment	Choke or Enrichener		—
4	Electric Starter	—		Start [1]
5	Headlamp Upper-Lower Beam Control	Lights	 [2]	Hi, Ho
6	Horn	Horn		—
7	Turn Signal	Turn	 [2] [3]	L, R
8	Speedometer	km/h 5 M.P.H.	—	km/h 5 M.P.H. 4
9	Neutral Indicator	Neutral	N	—
10	Upper Beam Indicator	High Beam	 [2]	—
11	Tachometer	R.P.M. or r/min.	—	—
12	Fuel Tank Shutoff Valve (Off, On, Res.)	Fuel	 [2] [2]	Off, On, Res.

1 Required only if electric starter is separate from ignition switch.

2 Framed areas may be filled.

3 The pair of arrows is a single symbol. When the indicators for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced acdordingly.

4 M.P.H. increase in a clockwise direction. Major graduations and numerals appear at 10 mph intervals, minor graduations at the 5 mph intervals. (37 F.R. 17474–August 29, 1972. Effective: 9/1/74)

5 If the speedometer is graduated in miles per hour (MPH) and in kilometers per hour (km/h), the identifying words or abbreviation shall be MPH and km/h in any combination of upper or lower case letters.

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10. Section 571.203 is amended by revising in S5.1, paragraph (a) to read as follows:

§ 571.203 Standard No. 203, Impact protection for the driver from the steering control system.

S5.1 * * *

(a) When the steering control system is impacted by a body block in accordance with SAE Recommended Practice J944 JUN80 Steering Control System—Passenger Car—Laboratory Test Procedure, at a relative velocity of 24 km/h, the impact force developed on the chest of the body block transmitted to the steering control system shall not exceed 11,120 N, except for intervals whose cumulative duration is not more than 3 milliseconds.

* * * * *

11. Section 571.204 is amended by revising in S4.2, the first sentence to read as follows:

§ 571.204 Standard No. 204, Steering control rearward displacement.

* * * * *

S4.2 *Vehicles manufactured on or after September 1, 1991.* When a passenger car or a truck, bus or multipurpose passenger vehicle with a gross vehicle weight rating of 4,536 kg or less and an unloaded vehicle weight of 2,495 kg or less is tested under the conditions of S5 in a 48 km/h perpendicular impact into a fixed collision barrier, the upper end of the steering column and shaft in the vehicle shall not be displaced more than 127 mm in a horizontal rearward direction parallel to the longitudinal axis of the vehicle. * * *

* * * * *

12. Section 571.209 is amended by revising in S4.2, paragraph(b); revising in S4.3(j), paragraphs (1) and (2); revising in S4.4, paragraph (a)(1); and revising in S5.2, the second sentence in paragraph (d)(1); the second sentence in paragraph (e), and the fourth and fifth sentences in paragraph (j) to read as follows:

§ 571.209 Standard No. 209, Seat belt assemblies.

* * * * *

S4.2 Requirements for webbing.

* * * * *

(b) Breaking strength. The webbing in a seat belt assembly shall have not less than the following breaking strength when tested by the procedures specified in S5.1(b): Type 1 seat belt assembly—26,689 N; Type 2 seat belt assembly—22,241 N for webbing in pelvic restraint and 17,793 N for webbing in upper torso restraint.

* * * * *

S4.3 *Requirements for hardware.*

* * * * *

(j) * * *

(1) Shall lock before the webbing extends 25 mm when the retractor is subjected to an acceleration of 7 m/s^2 (0.7 g);

(2) Shall not lock, if the retractor is sensitive to webbing withdrawal, before the webbing extends 51 mm when the retractor is subjected to an acceleration of 3 m/s^2 (0.3 g) or less.

* * * * *

S4.4 *Requirements for assembly performance.*

(a) * * *

(1) The assembly loop shall withstand a force of not less than 22,241 N; that is, each structural component of the assembly shall withstand a force of not less than 11,120 N.

* * * * *

S5.2 *Hardware.*

* * * * *

(d) Buckle release. (1) * * * After subjection to the force applicable for the assembly being tested, the force shall be reduced and maintained at 667 N on the assembly loop of a Type 1 seat belt assembly, 334 N on the components of a Type 2 seat belt assembly. * * *

* * * * *

(e) Adjustment Force. * * * With no load on the anchor end, the webbing shall be drawn through the adjusting device at a rate of 508 mm ±50 mm per minute and the maximum force shall be measured to the nearest 1 N after the first 25 mm of webbing movement. * * *

* * * * *

(j) Emergency-locking retractor. * * * A retractor that is sensitive to webbing withdrawal shall be subjected to an acceleration of 3 m/s^2 (0.3 g) within a period of 50 milliseconds (ms) while the webbing is at 75 percent extension, to determine compliance with S4.3(j)(2). The retractor shall be subjected to an acceleration of 7 m/s^2 (0.7 g) within a period of 50 milliseconds (ms), while the webbing is at 75 percent extension, and the webbing movement before locking shall be measured under the following conditions: For a retractor sensitive to webbing withdrawal, the retractor shall be accelerated in the direction of webbing retraction while the retractor drum's central axis is oriented horizontally and at angles of 45°, 90°, 135°, and 180° to the horizontal plane. * * *

* * * * *

13. In § 571.302, Figure 1, after S5.1.1, is revised to read as follows:

§ 571.302 Standard No. 302; Flammability of interior materials.

BILLING CODE 4910–59–P

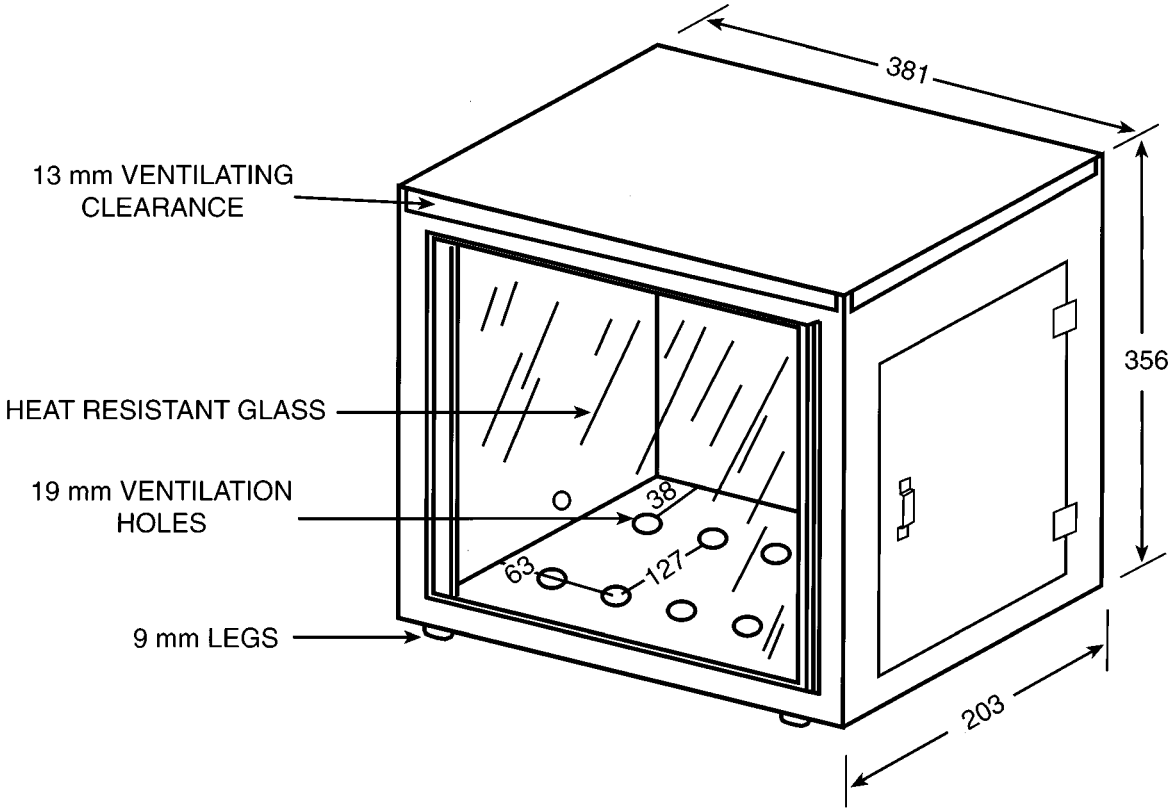


Figure 1
All dimensions in millimeters (mm)

Issued on: September 21, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–25609 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE59

Endangered and Threatened Wildlife and Plants; Final Rule To List the San Bernardino Kangaroo Rat as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). This subspecies now occurs primarily in alluvial scrub habitats with appropriate vegetative cover and substrate composition. The historical range of the San Bernardino kangaroo rat has been reduced by approximately 95 percent due to agricultural, urban, and industrial development. Threats to all of the remaining populations of the San Bernardino kangaroo rat include habitat loss, destruction, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, urban development, off-highway vehicle (OHV) use, or some combination of these. In addition, the three largest remaining populations of this subspecies are endangered due to their small size, and habitat loss caused by changes in the natural stream flow regime, including seasonal flooding and associated modification of plant succession patterns. This action continues protection for the San Bernardino kangaroo rat, which was effective for a 240-day period beginning when this species was emergency listed on January 27, 1998.

DATES: This rule is effective on September 24, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Ken S. Berg, Field Supervisor, at the above address (telephone 760/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The San Bernardino kangaroo rat (*Dipodomys merriami parvus*) is one of 19 recognized subspecies of Merriam's kangaroo rat (*D. merriami*), a widespread species distributed throughout arid regions of the western United States and northwestern Mexico (Hall 1981, Williams *et al.* 1993). In coastal southern California, *D. merriami* is the only species of kangaroo rat with four toes on both of its hind feet. The San Bernardino kangaroo rat has a body length of about 95 millimeters (mm) (3.7 inches (in)) and a total length of 230 to 235 mm (9 to 9.3 in). The hind foot measures less than 36 mm (1.4 in) in length. The body color is weakly ochraceous (yellow) with a heavy overwash of dusky brown. The tail stripes are medium to dark brown and the foot pads and tail hairs are dark brown. The flanks and cheeks of the subspecies are dusky (Lidicker 1960). The San Bernardino kangaroo rat is considerably darker and much smaller than either of the other two subspecies of Merriam's kangaroo rat in southern California, *D. merriami merriami* and *D. merriami collinus*. Lidicker (1960) noted that the San Bernardino kangaroo rat is one of the most highly differentiated subspecies of *D. merriami* and that ''it seems likely that it has achieved nearly species rank.'' This differentiation is likely due to its apparent isolation from other members of *D. merriami*.

The San Bernardino kangaroo rat, a member of the family Heteromyidae, was first described by Rhoades in 1894 under the name *Dipodomys parvus* from specimens collected by R.B. Herron in Reche Canyon, San Bernardino County, California (Hall 1981). Elliot reduced *D. parvus* to a subspecies of *D. merriami* (*D. merriami parvus*) in 1901. Hall (1981) and Williams *et al.* (1993) have confirmed this taxonomic treatment of the species.

The San Bernardino kangaroo rat appears to be separated from Merriam's kangaroo rat (*D. merriami merriami*) at the northernmost extent of its range near Cajon Pass by a 8 to 13 kilometer (km) (5 to 8 mile (mi)) gap of unsuitable habitat. The San Bernardino kangaroo rat may have in the distant past also intergraded with *D. merriami collinus* to the south in the vicinity of Menifee in Riverside County (Lidicker 1960, Hall 1981).

The historical range of this subspecies extends from the San Bernardino Valley in San Bernardino County to the Menifee Valley in Riverside County (Lidicker 1960, Hall 1981). Within this range, the San Bernardino kangaroo rat was known from over 25 localities (McKernan 1993). From the early 1880's to the early 1930's, the San Bernardino kangaroo rat was a common resident of the San Bernardino and San Jacinto valleys of southern California (Lidicker 1960).

In most heteromyids, soil texture is a primary factor in determining species' distributions (Brown and Harney 1993). San Bernardino kangaroo rats are found primarily on sandy loam substrates, characteristic of alluvial fans and flood plains, where they are able to dig simple, shallow burrows (McKernan 1997). Based on the distribution of suitable (i.e., sandy) soils and the historical collections of this subspecies, the historical range is thought to have encompassed an area of approximately 130,587 hectares (ha) (326,467 acres (ac)) (Service unpub. GIS maps, 1998). Although the entire area of the historical range would not have been occupied due to variability in vegetation and soils, the San Bernardino kangaroo rat was apparently widely distributed across this area. By the 1930's, the habitat had been reduced to approximately 11,200 ha (28,000 ac) (McKernan 1997).

In 1997, the San Bernardino kangaroo rat was known to occupy approximately 1,299 ha (3,247 ac) of suitable habitat divided unequally among seven locations, which are widely separated from one another (McKernan 1997). Four of these locations (City Creek (8 ha (20 ac)), Etiwanda (2 ha (5 ac)), Reche Canyon (2 ha (5 ac)), and South Bloomington (0.8 ha (2 ac))) support only small, remnant populations (McKernan 1997). The remaining three locations (the Santa Ana River (690 ha (1,725 ac)), Lytle and Cajon washes (456 ha (1,140 ac)), and San Jacinto River (140 ha (350 ac))) contain the largest extant concentrations of kangaroo rats and blocks of suitable habitat (McKernan 1997, Service unpub. GIS maps 1998).

Based on further review of available information, the Santa Ana River, Lytle and Cajon washes, and the San Jacinto River are estimated to have additional habitat that is likely occupied, at least in part, by the San Bernardino kangaroo rat (Service unpub. GIS maps, 1998). Based on this review, the Santa Ana River contains approximately 2,090 ha (5,224 ac) of which approximately 545 ha (1,363 ac) have too much cover or are otherwise degraded (e.g., percolation ponds). Lytle and Cajon washes have approximately 2,787 ha (6,967 ac) of which approximately 722 ha (1,806 ac) have too much cover or are otherwise degraded (e.g., shielded from flood events). The San Jacinto River has approximately 401 ha (1,002 ac) of which approximately 91 ha (227 ac) have too much cover or are otherwise degraded (e.g., too frequent of flows).

The three largest remaining blocks of suitable habitat (i.e., Santa Ana River, Lytle/Cajon creeks, and San Jacinto River) (Fish and Wildlife Service unpub. GIS maps, 1998; McKernan 1997) are distributed across a mosaic of approximately 5,277 ha (13,193 ac) of typically suitable, alluvial soils dominated by sage scrub and chaparral. Approximately 1,358 ha (3,396 ac) of this area has a vegetation that is more mature than the open, early successional habitat structure required by the San Bernardino kangaroo rat, or is otherwise degraded. Therefore, only about 3,919 ha (9,797 ac) of these areas appear to be suitable for this subspecies at this time. The Service considers this suitable habitat to be occupied given the San Bernardino kangaroo rat's affinity for sandy soils and low vegetative cover (McKernan 1997).

Existing and proposed hydrological modifications to the river systems eliminate habitat renewal and obstruct population recovery over these highly fragmented wash habitats (Hanes *et al.* 1989, McKernan 1997). Based on information concerning future flows in the Santa Ana River (U.S. Army Corps of Engineers (Corps) 1988), a minimum of 80 percent (i.e., 1,672 ha (4,179 ac)) of the alluvial scrub (2,090 ha (5224 ac)) is now shielded from fluvial renewal. Based on more recent information (Corps 1998), approximately 90 percent (1,881 ha (4,702 ac)) of this area is at risk due to projected changes in the hydrology of this area. Thus, of the remaining habitat, only about 3,396 ha (8,491) are ever likely to be subject to frequent (i.e., 50–100-year event) fluvial renewal. The balance of the residual habitat would require a catastrophic flood (i.e., greater than 100-year event), or intensive management, to maintain a possibility of persistence. Conversely, large-scale flooding also poses a threat to populations of San Bernardino kangaroo rats that are almost entirely confined to fluvial systems (e.g., San Jacinto River).

The San Bernardino kangaroo rat is now primarily associated with a variety of sage scrub vegetation, where the common elements are the presence of sandy soils and relatively open vegetation structure (McKernan 1997). Where the San Bernardino kangaroo rat occurs in alluvial scrub, the subspecies reaches its highest densities in early and intermediate seral stages (McKernan 1997). Alluvial scrub includes elements from chaparral, coastal sage, and desert communities. Three successional phases of alluvial scrub have been described: pioneer, intermediate, and mature alluvial scrub. The distribution of these phases is influenced by elevation, distance from the main channels, and the time since previous flooding (Smith 1980, Hanes *et al.* 1989). Vegetation cover generally increases with distance from the active stream channel. The pioneer, or youngest phase, is subject to frequent disturbance, and vegetation is usually renewed by annual floods (Smith 1980, Hanes *et al.* 1989). The intermediate phase, defined as the area between the active channel and mature terraces, is subject to periodic flooding at longer intervals. The vegetation on intermediate terraces is relatively open, and supports the highest densities of the San Bernardino kangaroo rat. The mature phase is rarely affected by flooding and supports the highest plant cover (Smith 1980). Flood events break out of the main river channel in a complex pattern, resulting in a braided appearance to the flood plain. This dynamic nature to the habitat leads to a situation where not all the alluvial scrub habitat is suitable for the kangaroo rat at any point in time. The San Bernardino kangaroo rat, like other subspecies of Merriam's kangaroo rat, prefers open habitats characterized by low shrub canopy cover (mostly 7 to 22 percent) and rarely occurs in dense vegetation (McKernan 1997). The older seral stages of the flood plain vegetation are generally less suitable for this subspecies.

The range of the San Bernardino kangaroo rat partially overlaps the distribution of the Stephens' kangaroo rat (*Dipodomys stephensi*) and its range is entirely overlapped by the Pacific kangaroo rat (*D. simulans*). Where these species occur in proximity, they are usually concentrated in different areas. The Stephens' kangaroo rat typically is associated with open, arid, grassland associations (Lackey 1967, O'Farrell *et al.* 1986, O'Farrell and Uptain 1987, O'Farrell 1990), and occurs on a variety of soil types. In contrast, the Pacific kangaroo rat typically inhabits areas possessing greater shrub cover. All three of these subspecies can be distinguished from one another based on morphological characters.

Home ranges for the Merriam's kangaroo rat average 0.33 ha (0.8 ac) for males and 0.31 ha (0.8 ac) for females (Behrends *et al.* 1986). Long sallies (bursting movements) of 100 meters (m) (328 feet (ft)) or more beyond these ranges are not uncommon. Although outlying areas of their home ranges may overlap, adults actively defend small core areas near their burrows (Jones 1993). Home range overlap between males and between males and females is extensive, but female-female overlap is slight (Jones 1993). McKernan (1993) found pregnant San Bernardino kangaroo rats from February through October, and immature individuals from April through September. Some females may produce more than one litter per year. Litter size averages between two and three young (Eisenberg 1993).

Similar to other kangaroo rats, the San Bernardino kangaroo rat is primarily granivorous and often stores large quantities of seeds in surface caches (Reichman and Price 1993). Green vegetation and insects are also important seasonal food sources. Insects, when available, have been documented to constitute as much as 50 percent of a kangaroo rat's diet (Reichman and Price 1993). Females are known to increase ingestion of foods with higher water content during lactation, presumably to compensate for the increased water loss associated with milk production (Reichman and Price 1993). *Dipodomys merriami* are known for their ability to live indefinitely without water on a diet consisting entirely of dry seeds (Reichman and Price 1993).

Previous Federal Action

The San Bernardino kangaroo rat was designated by the Service as a category 2 candidate species for Federal listing as endangered or threatened in 1991 (56 FR 58804). Category 2 comprised taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which data on biological vulnerability and threat(s) were not available to support a proposed rule. Based on a review of status and distribution of the San Bernardino kangaroo rat, the subspecies was upgraded to a category 1 candidate for listing in 1994 (59 FR 58982). Category 1 candidate species were those species for which the Service had sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), the Service ceased using category designations and included the San Bernardino kangaroo rat as a candidate species. The San Bernardino kangaroo rat was retained as a candidate species in the September 19, 1997, Notice of Review (62 FR 49401). The San Bernardino kangaroo rat was emergency listed as endangered on January 27, 1998; concurrently, a proposal to make provisions of the emergency listing permanent also was published (63 FR 3837 and 63 FR 3877).

The processing of this final rule conforms with the Service's final listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR

25502). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1). Second priority (Tier 2) is given to processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, delist species, or reclassification of listed species (per petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions. Processing of proposed or final designations of critical habitat are accorded the lowest priority (Tier 3). This final rule constitutes a Tier 2 action.

Summary of Comments and Recommendations

In the proposed rule (63 FR 3877), all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule for the San Bernardino kangaroo rat. Appropriate State agencies, County governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Legal notices were published in the *Riverside Press Enterprise* and the *San Bernardino Sun* on February 5, 1998, and invited general public comment on the proposal. In anticipation of public interest, the Service conducted a public hearing consisting of two sessions on March 3, 1998 in San Bernardino, California.

During the 3-month comment period, including the public hearing, the Service received a total of 56 comments (multiple comments from the same party on the same date were regarded as one comment). Of these comments, 29 (51 percent) supported the listing, 14 (24.5 percent) opposed the listing, and 14 (24.5 percent) were noncommittal.

The Service reviewed all of the comments (i.e., written and oral testimony) referenced above. The comments were grouped and are discussed under the following issue headings. In addition, all biological and commercial information obtained through the public comment period has been considered and incorporated, as appropriate, into the final rule.

Issue 1: Several commenters requested that the population of San Bernardino kangaroo rats on the Santa Ana River not be listed as an endangered species. One of these commenters recommended that the animal be listed as threatened with a special rule pursuant to section 4(d) of the Act.

Service Response: Threatened status would not accurately reflect the current threats to or status of the subspecies as a whole or of the subpopulation remaining along the Santa Ana River (See ''Status and Distribution'' and ''Summary of Factors Affecting the Species'' sections of this rule and the summary conclusion below for further discussion of this issue). In addition, sections 10 and 7 of the Act provide flexibility for project approval and the incidental take of endangered species under certain conditions (e.g., when the proposed action is not likely to jeopardize the species' continued existence).

Issue 2: Several of the commenters contended that the San Bernardino kangaroo rat should not be listed as an endangered species because the threats facing the kangaroo rat were overstated in the proposed rule.

Service Response: The San Bernardino kangaroo rat's historic range has been reduced by approximately 95 percent due to agriculture, urban, and industrial development. In addition, all of the remaining populations are at risk due to either habitat loss, degradation, and fragmentation from sand and gravel mining operations; flood control projects; urban development; OHV activity; or a combination of these factors. Moreover, the three largest remaining populations are threatened by their small size and habitat changes caused by human modification of the fluvial system.

Issue 3: Several commenters stated that the threat posed by vandalism or grading of habitat, which was cited in the emergency rule as justification for the immediate listing of the San Bernardino kangaroo rat, was overstated.

Service Response: At the time the Service published the emergency and proposed rules, the Service believed that publication of a proposed listing alone likely would ''elicit preemptive grading.'' The Service's reason for this conclusion was detailed in the emergency rule in the Reason for Emergency Determination section (63 FR 3840). Since publication of the emergency rule, habitat destruction has been prevented, and lands inhabited by the San Bernardino kangaroo rat are protected under the emergency listing provision of the Act. The area once threatened by vandalism or grading has not been damaged. However, the San Bernardino kangaroo rat remains vulnerable to vandalism should negative public perceptions and attitudes reappear because of the final listing action. (see the ''Summary of Factors Affecting the Species'' and ''Critical Habitat'' sections of this rule for a more thorough discussion of threats). The Service must consider even verbal threats of habitat destruction and/or vandalism when conserving critically imperilled species, and must act on such threats.

Issue 4: Several of the commenters stated that inadequate information was used to propose the animal as an endangered species. In addition, they felt the Service relied too heavily on the report prepared by McKernan (1997) in drafting the proposed rule.

Service Response: The Service is required to base listing decisions on the best available scientific and commercial information. In this regard, the Service reviewed information from the scientific literature, and commercial information (e.g., California Environmental Quality Act (CEQA) documents), as well as McKernan (1997). Based on this information, the Service concludes that the San Bernardino kangaroo rat is in danger of extinction throughout a significant portion of its range. In addition, no new information was submitted during the public comment period, or at the public hearing, that indicated other viable populations of this animal existed or that the remaining populations were not at risk. The Service is unaware of any data that would lead to a conclusion that the San Bernardino kangaroo rat does not warrant listing under the Act.

Issue 5: Several of the commenters stated that due to errors in the technical descriptions of San Bernardino kangaroo rat locations (e.g., township and range) contained in McKernan (1997), the report could not be relied upon in assessing threats to the San Bernardino kangaroo rat. In addition, these commenters recommended that the technical errors be corrected prior to the Service making a final determination on whether or not to list the San Bernardino kangaroo rat as endangered.

Service Response: Although some errors exist in the technical descriptions regarding the locations of the San Bernardino kangaroo rat under the ''Results and Discussion'' section of McKernan (1997), the Service did not rely on the township and range information contained in this report for determining the distribution of the San Bernardino kangaroo rat. In addition, the Service disregarded township and range information in assessing threats to the animal's continued existence. The distribution of this species, at a landscape scale, has been reduced significantly and the remaining

populations are at risk due to a variety of factors (see sections on ''Status and Distribution'' and ''Summary of Factors Affecting the Species'' for further discussion of this issue). Therefore, it is inappropriate to delay listing of this subspecies as endangered to correct transcription errors in McKernan (1997).

Issue 6: One commenter stated that the Service had misrepresented the decline of the San Bernardino kangaroo rat by assuming that all habitat within the historic range of the species was occupied.

Service Response: As stated in the proposed rule, only portions of the historic range would have been occupied at any one time due to variability in the distribution of vegetation and soils. In fact, an effort was made to more accurately portray the decline by not mapping, or excluding from the analysis, some areas which could have been occupied, but were unavailable because of soil unsuitability or lack of connectivity to known occupied locales.

Issue 7: Several commenters contended that the continuing presence of the San Bernardino kangaroo rat within channelized portions of the San Jacinto River contradicts the Service's conclusion that channelization of these areas is harmful to the persistence of the animal.

Service Response: The presence of the San Bernardino kangaroo rat in channelized areas does not necessarily indicate that channelization does not have detrimental effects on the kangaroo rat's habitat. Channelization has opened flood plain habitats to agricultural, urban, and industrial development. In addition, channelization of flood plains into narrow, monotypic channels has removed the physical structure (i.e., terracing) of the active flood plain and areas of refugia. Based on the current distribution, the San Bernardino kangaroo rat occupied flood plain habitats as well as adjacent upland habitats containing appropriate physical and vegetative characteristics. Therefore, animals would have been available from upper tiers of the flood plain as well as adjacent uplands to recolonize habitat that was flooded and scoured during storm event(s). These refugia are no longer available, or have been severely reduced because these areas have been converted into agricultural fields, residential sites, and industrial developments. Therefore, the remaining population of San Bernardino kangaroo rats within the channelized portions of the San Jacinto River is at risk due to flooding because of the subspecies' confinement to the active flood plain.

Issue 8: Several commenters stated concern for maintaining the ability to protect life and property if the San Bernardino kangaroo rat was listed. In addition, these commenters were concerned that the listing of the animal would prevent or seriously impare abilities to operate and maintain current facilities and would hamper future development.

Service Response: Listing of the San Bernardino kangaroo rat as an endangered species will not prevent the protection of human life or property. In the event of an emergency, the implementing regulations of section 9 of the Act provide that, ''any person may take endangered wildlife in defense of his own life or the lives of others.'' In addition, the operation and maintenance of current facilities, and the construction of future facilities, where there are conflicts with the conservation of endangered species, can be addressed pursuant to section 7 or 10 of the Act, as appropriate. For example, the construction of Seven Oaks Dam, which was likely to adversely affect the Santa Ana River wooly-star, a Federal endangered species, was allowed to proceed in compliance with section 7 of the Act.

Issue 9: One commenter disagreed with the Service's estimation concerning the area shielded from scouring events due to the operation of Seven Oaks Dam, and stated that the Service had overstated the threat.

Service Response: The Service based its estimation of the future extent of scouring on information generated by the Corps. According to this information, 100-year flows from the Santa Ana River would be reduced to approximately 5,000 cubic feet per second (cfs) (approximately equivalent to a 4-year rain event) below the dam and through the habitat of the San Bernardino kangaroo rat. Therefore, the majority of alluvial scrub, once subject to flood flows during 11-year events from the Santa Ana River, will be shielded. On this basis, the estimate of the flood plain at risk (80 percent) was considered conservative. However, based on more recent information (Corps 1998), approximately 90 percent of the flood plain is at risk due to projected changes in the hydrology of the Santa Ana River.

Issue 10: One commenter asserted that the listing of the San Bernardino kangaroo rat was unnecessary due to the overlap in its distribution with Santa Ana River wooly-star (*Eriastrum densifolium* ssp. *sanctorum*) and slender-horned spineflower (*Dodecahema leptoceras*).

Service Response: The partial overlap in distribution of the San Bernardino kangaroo rat with Santa Ana River wooly-star and slender-horned spineflower inadequately protects this animal because of differences in spatial and temporal distributions of these species. The prohibition for ''take'' under section 9 of the Act applies to wildlife and does not protect plants from ''take'' on non-Federal lands. In addition, due to changes in hydrology and the anthropogenic confinement of the San Bernardino kangaroo rat to the active flood plain, the concurrent distribution of the kangaroo rat with the two listed plant species does not alleviate the threat facing this species due to flooding and inundation of occupied habitat.

Issue 11: Several commenters suggested it was unlikely that Federal listing of this population would result in protection beyond that already provided by the California Environmental Quality Act (CEQA). One of these commenters stated that CEQA already provided adequate protection.

Service Response: Urban development and associated direct and indirect effects, pose the most significant threat to threatened and endangered species in California. Though such development is subject to review under CEQA, CEQA alone does not adequately protect and conserve species because the impacts of proposed projects are often not recognized, overridden, or inadequately mitigated in the process (for a more thorough discussion of this issue, see factors A and D). Federal listing of the San Bernardino kangaroo rat will complement the protection options available under State law through measures discussed in the ''Available Conservation Measures'' section. The Service will use established procedures to evaluate management actions necessary to achieve recovery of the species and thereby avoid any undue implementation delays. In addition, Federal listing would provide additional resources for the conservation of the species through sections 6 and 8 of the Act.

Issue 12: Several commenters stated that listing of the San Bernardino kangaroo rat was unnecessary because effective voluntary efforts exist for safeguarding this subspecies at no public cost.

Service Response: Voluntary efforts are important to conservation of the San Bernardino kangaroo rat. To date however, these efforts have not stabilized or reversed the destruction and degradation of habitat essential to this subspecies' survival throughout its range. The effects of activities, such as

sand and gravel mining, flood control activities, agricultural activities, and urban and commercial development, continue to represent imminent and tangible threats to this animal. The inadequacy of existing regulatory mechanisms to stabilize or reverse the decline is discussed under Factor D of the ''Summary of Factors Affecting the Species'' section.

Issue 13: Several commenters stated that the Service has ignored existing efforts to conserve the San Bernardino kangaroo rat and had, in fact, undermined the conservation of the animal by publishing the proposed rule.

Service Response: The Service strongly supports the establishment of the multispecies planning process in San Bernardino and Riverside counties, and the progress, to date, in the latter County. However, these ongoing planning efforts are in the early stages and have yet to address the conservation of habitat essential for the recovery of listed species, including the San Bernardino kangaroo rat. Federal listing will complement these conservation planning efforts (see, in particular, the Service response to Issue 10).

Issue 14: Several commenters criticized the Service for failing to address the economic impacts of listing the San Bernardino kangaroo rat. One of these commenters stated that the San Bernardino kangaroo rat should not be listed if it would stifle economic development.

Service Response: In accordance with 16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11(b), listing decisions are made solely on the basis of the best scientific and commercial data available. In adding the word ''solely'' to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act. The legislative history of the 1982 amendments states: ''The addition of the word ''solely'' is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The Committee strongly believes that economic considerations have no relevance to determinations regarding the status of species and intends that the economic analysis requirements of Executive Order 12291, and such statutes as the Regulatory Flexibility Act and the Paperwork Reduction Act, not apply. Applying economic criteria to the analysis of these alternatives and to any phase of the species' listing process is applying economics to the determinations made under section 4 of the Act, and is specifically rejected by the inclusion of the word ''solely'' in this legislation.'' H.R. Rep. No.567, Part I, 97th Cong., 2d Sess. 20 (1982).

Issue 15: One commenter recommended that the Service designate critical habitat.

Service Response: The Service has determined that designation of critical habitat is unlikely to provide a net benefit to the conservation of the San Bernardino kangaroo rat. For the San Bernardino kangaroo rat, protection of habitat and other conservation actions are better addressed through recovery planning and the section 7 consultation processes (see section on Critical Habitat for a more thorough discussion of this issue).

Issue 16: Several of the commenters stated that estimated acreage of the San Bernardino kangaroo rat's range found in Table 2 (McKernan 1997) did not agree with the estimated decline of the species' occupied habitat identified in the proposed rule.

Service Response: The reason there is a difference in the estimated acreage is the basic difference among the concepts of ''range,'' ''potential occupied habitat,'' and ''occupied habitat.'' Occupied habitat, in the case of many rodents, typically represents a subset of a species' range because not all areas within the ''range'' are suitable or occupied by the animal. In addition, occupied habitat indicates that the animals were confirmed to be present and are expected to still occur on site. The amount cited in the proposed rule (i.e., 1,299 ha (3,247 ac)) refers to the estimated amount of known ''occupied habitat'' whereas the information from Table 2 in McKernan (1997) represents coarser ''potential occupied habitat.'' It is important to stress that even the acreage of ''occupied habitat'' is imprecise because of—(1) issues of scale; (2) differences in individual or populations' perception and use of habitat; and (3) population dynamics influenced by a large number of ecological and biological parameters.

Issue 17: One commenter argued that the Service lacked authority to list the San Bernardino kangaroo rat under the Act because there is no interstate commerce involving this animal.

Service Response: In accordance with 16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11(b), listing decisions are made solely on the basis of the best scientific and commercial data available. In a recent court ruling (December 1997), the U.S. Court of Appeals for the District of Columbia upheld the listing of the Delhi sands flower-loving fly under the Act. The court stated that the loss of species has a substantial effect on interstate commerce by diminishing a natural resource that could otherwise be used for present and future commercial purposes. Following this court decision, the Supreme Court refused the plaintiffs' request that they hear the case. Importantly, the distribution of the Delhi sands flower-loving fly, like the San Bernardino kangaroo rat, is endemic only to California and does not occur in adjacent states.

Peer Review

In compliance with the July 1, 1994, Service Peer Review Policy (59 FR 34270), the Service solicited the expert opinions of independent specialists regarding pertinent scientific or commercial data and issues relating to the supportive biological and ecological information for the San Bernardino kangaroo rat. The responses received from the reviewers supported the proposed listing action. Information and suggestions provided by the reviewers were considered in developing this final rule, and incorporated where applicable.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The majority of all remaining suitable habitat, and the long-term persistence of the subspecies, is threatened by the direct and indirect effects of either, or some combination of, sand and gravel mining, flood control structures and operations, agricultural activities, urban and industrial development, water conservation activities, and off-road activity.

Loss and fragmentation of San Bernardino kangaroo rat habitat is expected to continue as southern California's human population expands. In the 1950's, the population of Riverside and San Bernardino counties combined was about 400,000. Over 2.5 million people currently reside in this region, and by the year 2000, the human population of San Bernardino and Riverside counties is expected to increase to nearly 4 million (California Department of Finance 1993). Further habitat losses resulting from development or alteration of the

landscape will likely have a significant adverse effect on the viability of remaining San Bernardino kangaroo rat populations. Threats to the largest of these extant populations are individually addressed below.

Santa Ana River

The largest documented remaining population of the San Bernardino kangaroo rat occurs along the Santa Ana River (McKernan 1997). Based on a review of aerial imagery (Service unpub. GIS maps, 1998), the amount of estimated occupied habitat in this area, including degraded habitat, encompasses about 2,090 ha (5,224 ac), of which approximately 690 ha (1,725 ac) are known to be occupied by the San Bernardino kangaroo rat (McKernan 1997). The occupied habitat extends more or less continuously from the vicinity of Norton Air Force Base to the Greenspot Road Bridge north of Mentone (Service unpub. GIS maps 1998, McKernan 1997). Approximately 47 percent of the alluvial scrub habitat within this area is directly at risk due to the combined activities of the Corps, U. S. Bureau of Land Management (BLM), San Bernardino Valley Water Conservation District, San Bernardino County Flood Control District, two private sand mining operations, and Metropolitan Water District's Inland Feeder Project.

Based on a review of projected flows in the Santa Ana River following completion of Seven Oaks Dam (Corps 1988, 1998) and the approximate distribution of the San Bernardino kangaroo rat (Service unpub. GIS maps 1997, McKernan 1997), at least 80 percent of the remaining occupied habitat along the Santa Ana River is indirectly at risk because of the projected changes in hydrology of this system resulting from severe reductions in peak flows during flood events. Based on more recent information (Corps 1998), approximately 90 percent of the flood plain is at risk for the same reason. That is, an indirect effect of construction and operation of the Seven Oaks Dam will be the long-term succession of various stages of alluvial scrub, including much of a 310-ha (775-ac) mitigation area established for this project, into even-aged stands of habitat scrub persisting through time due to a reduction in scouring and deposition of fresh sands by floods. Curtailed hydrologic disturbance, where soil moisture is adequate, will allow shrub densities to develop that exceed the low to moderate densities tolerated by the subspecies (Hanes *et al.* 1989, McKernan 1997).

Activities of the San Bernardino County Flood Control District pose a threat to approximately 310 ha (775 ac) of alluvial scrub habitat in this area. Based on the distribution of soils and vegetative cover, approximately 310 ha (775 ac) of this area is estimated to be occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1998). Activities that impact this subspecies and its habitat, both directly and indirectly, include the construction of levees and sediment removal. The general area at risk due to these potential activities supports approximately 15 percent of the projected population along the Santa Ana River (Service unpub. GIS maps 1998).

The BLM and San Bernardino Valley Water Conservation District lands are managed, in part, for the development or operation of water spreading basins for groundwater recharge. Although the San Bernardino kangaroo rat can occupy portions of areas modified by spreading basins, flooded areas are essentially lost to this animal due to the periodic presence of standing water and the degradation of habitat. Based on the distribution of soils and vegetative cover, approximately 388 ha (970 ac) are at risk due to these potential activities (Service unpub. GIS maps 1998). The area potentially affected by spreading basins represents approximately 18 percent of the habitat along the Santa Ana River (Service unpub. GIS maps 1998). The San Bernardino Valley Water Conservation District and BLM are coordinating with the Service and others to develop a regional conservation plan that attempts to reconcile conflicts among competing land uses, including the conservation of the San Bernardino kangaroo rat. However, this conservation plan has not been finalized and is not currently in effect. Although 322 ha (806 ac) of BLM land are potentially available for water-spreading basins (or water percolation ponds), no ponds have been constructed recently.

Proposed and approved sand and gravel mining poses a significant and imminent threat to the San Bernardino kangaroo rat. Two sand mining operations collectively threaten approximately 410 ha (1,025 ac) of alluvial scrub habitat in the Santa Ana River (Lilburn 1997a and 1997b, P&D Technologies 1988, Service unpub. GIS maps 1998). Based on the distribution of soils and vegetative cover, all of the approved and proposed project areas are estimated to be occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1998). The area potentially affected by sand mining activities represents approximately 20 percent of the population along the Santa Ana River (Service unpub. GIS maps 1998).

Additional impacts will occur due to a large pipeline project (Metropolitan Water District Inland Feeder) (P&D Technologies 1992). Approximately 60 ha (150 ac) of alluvial scrub in the Santa Ana River are likely to be impacted by this project. Based on the distribution of soils and vegetative cover, a minimum of 24 ha (60 ac) of this project area are estimated to be occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). This project has been reviewed and certified under the CEQA and, therefore, poses an imminent threat. The area that will be directly impacted by this pipeline project represents approximately 1 percent of the Santa Ana River population.

Other activities that threaten the San Bernardino kangaroo rat in this region include the closure of Norton Air Force Base (San Bernardino County) and the proposed development of this site into the San Bernardino International Airport (U.S. Air Force 1993). Approximately 132 ha (331 ac) are estimated to be occupied by the San Bernardino kangaroo rat on Norton Air Force Base (Service unpub. GIS maps, 1998). The area at risk represents approximately 6 percent of the estimated Santa Ana River population. The area estimated to be occupied by the San Bernardino kangaroo rat on Norton Air Force Base would be reduced by approximately 2 to 5 percent (U.S. Air Force Conservation Management Plan, 1997).

Lytle and Cajon Creeks

The second largest documented population of the San Bernardino kangaroo rat occurs along Lytle and Cajon creeks, from near Interstate 15 downstream on both drainages for approximately 8 km (5 mi) (McKernan 1997, Service unpub. GIS maps, 1998). The amount of estimated occupied habitat in this area encompasses about 2,787 ha (6,967 ac) (Service unpub. GIS maps, 1998), of which approximately 456 ha (1,140 ac) are known to be occupied by the San Bernardino kangaroo rat (McKernan 1997). Approximately 10 percent of the estimated occupied habitat is directly at risk due to the combined activities of the San Bernardino County Flood Control District, San Bernardino County Parks and Recreation, and sand and gravel mining. In addition to areas directly at risk, a minimum of 560 ha (1,400 ac) (20 percent) of habitat has been degraded because of the location of flood control berms and the resultant shielding of habitat from fluvial events

(Service unpub. GIS maps, 1998). Therefore, based on an evaluation of soils and vegetative cover, a minimum of 30 percent of the estimated occupied habitat in this area is at risk (Service unpub. GIS maps 1997).

Sand and gravel mining poses a significant threat to the San Bernardino kangaroo rat. Based on information provided by Sunwest Materials, they own approximately 373 ha (932 ac) and are planning expansion of their operations. Expansion of their operations is anticipated to directly impact approximately 168 ha (420 ac) of estimated occupied habitat. In addition to potential direct impacts, continuation of this sand mining operation in its current location will continue to indirectly impact a minimum of 60 ha (150 ac) of estimated occupied habitat through disruption of fluvial processes needed to maintain habitat quality. Therefore, based on an evaluation of soils and vegetative cover, a minimum of 8 percent of the estimated occupied habitat in this area is at risk (Service unpub. GIS maps 1997).

The construction of a levee and parking lot for Glen Helen Regional Park by San Bernardino County Flood Control District (District) continues to impact approximately 22 ha (55 ac) of habitat by precluding scouring events and the reestablishment of alluvial scrub vegetation. Given the attributes of the area, the entire site was likely occupied by the San Bernardino kangaroo rat prior to construction of the levee and parking lot. The levee also threatens habitat occupied by the San Bernardino kangaroo rat on the opposite side of Cajon Creek due to the alteration of the local hydrological system. The levee likely will divert flood flows into the opposite bank and cause erosion of the Calmat conservation bank, which was established to help conserve listed and sensitive species in the area. The total amount of occupied habitat anticipated to be lost is, at a minimum, 44 ha (110 ac) (Service unpub. info. 1998). The combined impacts of the parking lot and associated levee amounts to approximately 2 percent of the estimated occupied habitat in this area.

San Jacinto River

The third largest remaining population of San Bernardino kangaroo rat occurs in Riverside County. Here, the vast majority of alluvial flood plain has been impacted by flood control activities, agricultural and urban development, and sand and gravel mining. The amount of estimated occupied habitat in this area encompasses approximately 310 ha (775 ac) (Service unpub. GIS maps, 1998), of which approximately 140 ha (350 ac) are known to be occupied by the San Bernardino kangaroo rat (McKernan 1997). A minimum of 41 percent of estimated occupied habitat is at risk due to the combined activities of the Corps, Riverside County Flood Control, sand mining operations, Eastern Municipal Water District, and OHV use.

Flood control activities that impact this species include grading of occupied habitat. Evidence of past, extensive grading that appears to have been related to flood control activities exists throughout the remaining alluvial scrub vegetation within the flood control berms along the San Jacinto River in the vicinity of the City of San Jacinto (Arthur Davenport, Service pers. obs. 1995). Flood control structures that impact this species include concrete channels and flood confining berms. The construction of a concrete channel appears to have isolated a small population of San Bernardino kangaroo rats located along Bautista Creek from the rest of the population along the San Jacinto River. The construction of berms into the flood plain is detrimental to the San Bernardino kangaroo rat in that the berms cause a loss of habitat by increasing the frequency and severity of scouring and land erosion. Based on an examination of this area (Service unpub. GIS maps, 1998), a minimum of 80 ha (200 ac) (20 percent) is at risk due to this factor.

Continuing, intermittent, agricultural activities, such as dry-land farming along the edges of the San Jacinto River in the vicinity of Hemet and the City of San Jacinto also impact the San Bernardino kangaroo rat. Patches of suitable or occupied habitat occurring outside the flood control berms are occasionally disced due to agricultural activities (Arthur Davenport, Service pers. obs. 1995). Discing adversely affects the subspecies by destroying the animals' burrows and degrading habitat.

Urban and commercial development into the flood plain of the San Jacinto River also continue to threaten the San Bernardino kangaroo rat. Although flood control berms are currently in place, suitable or occupied habitat occurs outside the berms. Although degraded due to agricultural activities, conservation and enhancement of suitable or occupied habitat outside the berms are critical to the maintenance of the species along the San Jacinto River because the habitat provides a source population for recolonization of habitat within the berms following flood events. Urban development is proceeding adjacent to the San Jacinto River as indicated by the processing of three related Tract Maps (Nos. 28770, 28771, and 28772) (43 ha (107 ac)) by the Riverside County Planning Department (Riverside County Planning Department 1998). Thus, the opportunity for conserving this subspecies along the San Jacinto River appears to be diminishing.

The San Bernardino kangaroo rat is also impacted by the maintenance and expansion of spreading basins within its habitat. Maintenance of spreading basins results in the degradation of habitat and mortality of San Bernardino kangaroo rats that occur along the margins (Arthur Davenport, Service pers. obs. 1995). Similarly, the expansion of spreading basins results in a direct loss of suitable or occupied habitat. Eastern Municipal Water District has proposed reconstructing previously authorized experimental groundwater recharge facilities in the San Jacinto River (Corps 1997). This project would likely directly impact approximately 2.6 ha (6.5 ac) of early successional alluvial scrub, and approximately 2 percent of the estimated occupied habitat in this area.

Sand and gravel mining threaten the San Bernardino kangaroo rat in the San Jacinto River area. The operations of sand mining continue to impact occupied habitat. One mine site consists of 94 ha (235 ac) of leased land and occurs entirely in the flood plain of the San Jacinto River (Corps 1996, Pre-discharge Notification 96–00397–RRS; KCT Consultants, Inc. 1998). Mining activities have impacted approximately 32 ha (80 ac) and are proposed to expand into an additional 34 ha (86 ac) (KCT Consultants, Inc. 1998). Based on the distribution of soils and vegetative cover, a minimum of 40 ha (100 ac) of the project site will be degraded. Therefore, this project would likely directly impact approximately 10 percent of the estimated occupied habitat in the San Jacinto River area.

OHV use in the San Jacinto River degrades habitat occupied by the San Bernardino kangaroo rat (Arthur Davenport, Service pers. obs. 1997, 1998). Significant areas of potential and occupied habitat are degraded due to extensive OHV use in this area. In addition, areas that would revegetate following flood events, and therefore provide temporary use for the San Bernardino kangaroo rat, are essentially devegetated due to vehicle activity. A minimum of 40 ha (100 ac)(10 percent of the estimated occupied habitat) is at risk due to this activity.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This factor is not known to be applicable.

C. *Disease or predation.* Disease is not known to be affecting the San Bernardino kangaroo rat at this time. However, fragmentation of habitat is likely to promote higher levels of predation by urban-associated animals (e.g., domestic cats) as the interface between natural habitat and urban areas is increased (Church and Lawton 1987). Domestic cats are known to be predators of native rodents (Hubbs 1951, George 1974), and predation by cats has been documented for the San Bernardino kangaroo rat (McKernan, pers. comm., 1994).

D. *The inadequacy of existing regulatory mechanisms.* The decline of the San Bernardino kangaroo rat has occurred despite existing laws and regulations that could contribute to the protection of the animal and its habitat. Existing regulatory mechanisms that may provide some protection for the San Bernardino kangaroo rat include: (1) CEQA and National Environmental Policy Act (NEPA); (2) the California Natural Community Conservation Planning Program; (3) the Surface Mining Control and Reclamation Act (SMCARA); (4) the Act in those cases where the San Bernardino kangaroo rat occurs in habitat occupied by other listed species; (5) the California Endangered Species Act (CESA); (6) conservation provisions under the Federal Clean Water Act; (7) land acquisition and management by Federal, State, or local agencies or by private groups and organizations; and (8) local laws and regulations.

The majority of the known populations of the San Bernardino kangaroo rat occur on privately owned land. Local lead agencies responsible under CEQA and NEPA have made determinations that have, or would, adversely affect this taxon and its habitat. Examples of projects that have been completed or are currently undergoing the review process under CEQA and/or NEPA that could impact this species include Seven Oaks Dam, State Route 30 Improvement Project, Metropolitan Water District Inland Feeder Pipeline, Calmat Company, Sunwest Materials, Robertson's Ready Mix, and San Jacinto Aggregates. Past, present, and proposed mitigation for impacts to this species and its habitat have been inadequate to stop or reverse its decline at the regional level. CEQA decisions are also subject to over-riding social and economic considerations.

In 1991, the State of California established a Natural Community Conservation Planning Program (NCCP) to address conservation needs throughout the State. The initial focus of the program is the coastal sage scrub community. Within this program, the California Department of Fish and Game (CDFG) included the long-term conservation of alluvial scrub, which is in part occupied by the San Bernardino kangaroo rat. However, participation in NCCP is voluntary. San Bernardino and Riverside counties have signed planning agreements (Memoranda of Understanding (MOUs)) to develop multispecies plans that meet NCCP criteria, but have not enrolled in the NCCP program in the interim. The MOU's do not provide protection to candidate species during the planning process.

Reclamation of mined areas in the State of California is required under SCMARA. The County of San Bernardino also requires that mining companies submit a reclamation plan for County approval. The primary purpose of these ordinances is to provide for erosion control measures and to restore slopes to a moderate slope. However, reclamation is not likely to resolve the problem of maintaining or mitigating for the loss of species or ecosystem functions in a biologically meaningful way because of project (and mitigation) related changes in topography and altered hydrology. In this regard, Calmat has utilized the red-line mining method, which attempts to maintain streambed equilibrium and associated fluvial geomorphology. The feasibility of artificially creating and maintaining a viable alluvial scrub plant and animal community suitable for the long-term conservation of the San Bernardino kangaroo rat and associated species has yet to be demonstrated.

The BLM designated an Area of Critical Environmental Concern (ACEC) in the Santa Ana River in 1994. The ACEC is composed of three parcels of land that total 304 ha (760 ac). The purpose of the ACEC is to protect and enhance the habitat of federally listed plant species occurring in the area, such as Santa Ana River wooly-star (*Eriastrum densifolium* ssp. *sanctorum*), and sensitive species such as the San Bernardino kangaroo rat, while providing for the administration of valid existing rights (BLM 1996). Although the establishment of the ACEC is important in regards to conservation of sensitive habitats and species in this area, the administration of valid existing rights conflicts with BLM's conservation abilities in this area. Existing rights include a withdrawal of Federal lands in this area for water conservation through an act of Congress, February 20, 1909 (Pub. L. 248). The entire ACEC is included in this withdrawn land and may be available for water conservation measures such as the construction of percolation basins, subject to compliance with the Act.

The San Bernardino kangaroo rat is not protected under the CESA. The Federal and State Acts together can afford some measure of protection to the San Bernardino kangaroo rat in those areas where the species coexists with other species already listed as threatened or endangered. Santa Ana River wooly-star and slender-horned spineflower are listed as endangered under the Act and the CESA, and the coastal California gnatcatcher (*Polioptila californica californica*) is listed as threatened under the Act. All three species can occur in habitats similar to those preferred by the San Bernardino kangaroo rat. However, the distribution of *D. leptoceras* and *E. densifolium* ssp. *sanctorum* is spotty and discontinuous, and only overlaps with a small portion of the habitat occupied by the San Bernardino kangaroo rat. The coastal California gnatcatcher, although known to occur within alluvial scrub habitat, has largely been extirpated from San Bernardino County within the range of the San Bernardino kangaroo rat and, therefore, occurrence with the listed species provides little ancillary protection. In Riverside County, coastal California gnatcatchers are not currently known to occur at any sites occupied by the San Bernardino kangaroo rat.

The San Bernardino kangaroo rat could potentially be affected by projects requiring a permit from the Corps under section 404 of the Clean Water Act. Although the objective of the Clean Water Act is to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (Pub. L. 92–500), no specific provisions exist that adequately address the need to conserve unlisted species. A majority of the remaining populations of kangaroo rats occur outside areas delineated as waters of the United States and, therefore, are not regulated. Moreover, numerous activities for which the Corps potentially has jurisdiction, including sand and gravel mining and flood control projects, have proceeded without their overview (see Factor A of the ''Summary of Factors Affecting the Species'' section of this rule).

As a result of Fish and Wildlife Coordination Act activities, the Corps, in 1988, initiated a section 7 consultation on *Eriastrum densifolium* ssp. *sanctorum* for the proposed Seven Oaks Dam project on the Santa Ana River. About 310 ha (775 ac) of alluvial scrub habitat has been designated for preservation as mitigation for impacts to *Eriastrum densifolium* ssp. *sanctorum* resulting from the construction of the dam. Approximately 176 ha (440 ac) of

this area appears to be currently suitable for the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). However, the preserved area represents only approximately 4 percent of the alluvial scrub found in this area. In addition, based on recent information provided by the Corps, the majority of this conserved habitat will not, in contrast to previous determinations, receive scouring events (Corps 1998). Thus, the mitigation preserve, while providing some benefit, is likely not adequate to conserve the subspecies.

Local and County zoning designations are subject to change and do not specifically address the conservation and management needs of the San Bernardino kangaroo rat. However, numerous jurisdictions in western Riverside and San Bernardino counties are beginning a multi-species habitat conservation planning process, including coastal sage scrub-associated species, and benefit to the kangaroo rat may result. However, commitments for funding, implementation of the plan, and resultant, appropriate changes in land-use regulations to protect potential preserves during the planning process have not been made.

The Riverside County Habitat Conservation Agency is implementing an approved habitat conservation plan for the federally endangered Stephens' kangaroo rat that involves the establishment of permanent preserves in western Riverside County (Riverside County Habitat Conservation Agency 1996). Because the San Bernardino kangaroo rat occupies a largely different habitat type than that of the Stephens' kangaroo rat, the conservation plan for the Stephens' kangaroo rat will not benefit the San Bernardino kangaroo rat. Despite extensive surveys, no current records of San Bernardino kangaroo rats occur within any of the reserves established for the Stephens' kangaroo rat (Arthur Davenport, Service pers. comm. 1997).

E. *Other natural or manmade factors affecting its continued existence.* Habitat for the San Bernardino kangaroo rat has been severely reduced and fragmented by development and related activities in the San Bernardino and San Jacinto Valleys. Habitat fragmentation results in loss of habitat, reduced habitat patch size, and an increasing distance between patches of habitat. As noted by Andren (1994) in a discussion of highly fragmented landscapes, reduced habitat patch size and isolation will exacerbate the effect of habitat loss on a species' persistence. That is, the loss of species, or decline in population size, will be greater than expected from habitat loss alone. The loss of native vertebrates, including rodents, due to habitat fragmentation is well documented (Soulé *et al.* 1992, Andren 1994, Bolger *et al.* 1997).

Isolated populations are subject to extirpation by manmade or natural events, such as floods and drought. Furthermore, small populations may experience a loss of genetic variability and experience inbreeding depression (Lacy 1997). Contributing to the fragmentation of San Bernardino kangaroo rat habitat are railroad tracks, roads, and flood control channels. These structures appear to function as movement barriers to the San Bernardino kangaroo rat, preventing movement between areas of suitable habitat.

All remaining population segments are at risk due to their small size and isolation. This is especially true for the four smallest populations (i.e., City Creek, Reche Canyon, Etiwanda, and South Bloomington). Urbanization occurs throughout most of the San Bernardino kangaroo rat's range and the remaining larger blocks of occupied habitat (i.e., Santa Ana River, Lytle/Cajon, and San Jacinto River) now function independently of each other. This isolation of occupied patches places the entire population of San Bernardino kangaroo rat at risk because recolonization of suitable habitat following local extirpation has been precluded. The extirpation of populations from local catastrophes, such as flooding, is becoming more probable as urban development further constricts the remaining populations to the active portion of the flood plain. The largest remaining populations are now essentially restricted entirely to flood plain habitats and vulnerable to extirpation by naturally occurring events.

Flood control structures alter both the magnitude and distribution of flooding. In the absence of flood scouring, sediments and organic matter accumulate over time, contributing to senescence of the alluvial scrub community and its conversion to coastal sage scrub or chaparral (Smith 1980, Wheeler 1991, Jigour and McKernan 1992). The dense canopy of these communities does not provide the open environment required by the San Bernardino kangaroo rat, thereby reducing the habitat suitability for the species (Beatley 1976, McKernan 1997). Within the active channels, the confined flood events scour too frequently to maintain suitable San Bernardino kangaroo rat habitat.

The intentional destruction of areas occupied by declining species continues to be an issue of serious concern and is a potential threat to the San Bernardino kangaroo rat. The propensity of some individuals to destroy habitat occupied by declining species, in an apparent effort to remove environmental concerns, is underscored by the illegal destruction of areas occupied by federally listed species. Based on information available to the Service, such activities frequently occur within the range of the San Bernardino kangaroo rat (Service unpub. info. 1998). The illegal destruction of habitat occupied by the Stephens' kangaroo rat (*Dipodomys stephensi*), a similar animal that occurs within the range of the San Bernardino kangaroo rat, is representative of the threats facing this subspecies.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this subspecies in developing this final rule. The remaining populations at City Creek (8 ha (20 ac)), Etiwanda (2 ha (5 ac)), Reche Canyon (2 ha (5 ac)), and South Bloomington (0.8 ha (2 ac)) are extremely small, isolated, subject to the indirect effects of urban development (e.g., predation due to house cats), likely prone to inbreeding depression, and therefore have little chance of long-term survival without intensive management. The three largest remaining populations (i.e., Santa Ana River (2,090 ha (5,224 ac)), Lytle and Cajon washes (2,787 ha (6,967 ac)), and the San Jacinto River (401 ha (1,002 ac))), are also endangered. The Santa Ana River population is endangered due to the disruption of the hydrological system, and activities such as sand and gravel mining and water development projects. The Lytle and Cajon wash population is endangered due to disruption of the hydrological system and activities such as encroaching urban development, sand and gravel mining, and flood control. The San Jacinto River population is endangered due to its near total anthropogenic restriction to the active flood plain, and activities such as urban development, sand and gravel mining, water development, and OHV activity. In addition, all of these populations are at risk due to future development projects because there is no conservation plan in place that ensures their preservation in the wild. Therefore, the Service finds that the action to list the San Bernardino kangaroo rat as endangered is warranted. Because of these factors, even in the absence of additional future impacts, the San Bernardino kangaroo rat is now in danger of extinction throughout all or a significant portion of

its range. Threatened status is not appropriate considering the extent of loss and degradation of the animal's habitat and the vulnerability of the remaining populations.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is designated to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the San Bernardino kangaroo rat. According to the Service's regulations (50 CFR 424.12(a)(1)), designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for the San Bernardino kangaroo rat is not prudent because an increase in the degree of threat could result. This subspecies is found in fragmented habitat composed of various sage scrub shrub vegetation in the presence of sandy soils. As stated under Factor E of the ''Summary of Factors Affecting the Species'' section, intentional destruction of areas occupied by listed species occurs frequently within the range of the San Bernardino kangaroo rat. In addition, as detailed in the emergency rule listing the San Bernardino kangaroo rat (63 FR 3840), threats of intentional grading directed specifically at habitat for the San Bernardino kangaroo rat have been documented. The designation of critical habitat, including the publication of maps providing precise locations, would bring unnecessary attention to those areas of the range that are occupied by this species and would encourage acts of vandalism or intentional destruction of habitat. This action also could lead to an increase in activities (such as discing or blading) by landowners who do not want listed species on their property. The possible misperception that critical habitat designation on private lands necessarily imposes restrictions on private landowners would be counterproductive and would render cooperative efforts with landowners to recover species more difficult.

Moreover, the designation of critical habitat for the San Bernardino kangaroo rat is not prudent due to the lack of benefit to the species. Section 7 of the Act requires that Federal agencies ensure that any action authorized, funded, or carried out not result in the destruction or adverse modification of critical habitat. Although this requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, it is the only mandatory legal consequence of a critical habitat designation. The Act's section 7 implementing regulations define ''jeopardizing the continued existence of'' and ''destruction or adverse modification of'' in virtually identical terms. ''Jeopardize the continued existence of'' means engage in an action ''that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' ''Destruction or adverse modification'' means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species' continued existence.

The Service considers all suitable habitat associated with Lytle and Cajon washes and the Santa Ana River to be essential for the conservation of the San Bernardino kangaroo rat. Without these areas, recovery of the San Bernardino kangaroo rat would not be possible. Given that the suitable habitat is considered occupied, all Federal activities that would impact habitat at these locales would require consultation under section 7 of the Act. Accordingly, any activity that would be determined to cause an adverse modification to critical habitat also likely would jeopardize the continued existence of this subspecies given its restricted distribution and imperiled status. Therefore, the designation of critical habitat would have no net benefit to the conservation of the species in these areas.

The same argument applies to the population of San Bernardino kangaroo rats associated with the San Jacinto River, except for a large area of unoccupied habitat that may be needed for conservation of this animal. However, the area of unoccupied habitat is in private ownership. Designation of critical habitat provides no limitations or constraints on private landowners if there is no Federal involvement and, as such, provides this species with no additional conservation benefit beyond listing. This area is characterized as a broad, relatively flat, valley that is essentially bisected by the channelized San Jacinto River. Therefore, urban and industrial development can likely proceed and encroach upon the area needed for conservation of the San Bernardino kangaroo rat without the need of Federal permits (e.g., per section 404 of the Clean Water Act). Because the designation of critical habitat in this area would also have minimal or no net benefit to the conservation of the San Bernardino kangaroo rat given the potential intentional destruction threat, conservation of the animal would be better served through the recovery planning and implementation process.

The Service acknowledges that critical habitat designation, in some situations, may provide limited value to a species by identifying areas important for the conservation of the species and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit a species by alerting Federal action agencies to potential issues and allowing them to evaluate proposals that may affect these areas. However, in this case, given the familiarity of the distribution of the San Bernardino kangaroo rat to local planning agencies and regulatory agencies such as the Corps, and its close relationship to areas identified as waters of the United States, deriving any benefit from designation of critical habitat is unlikely. Additionally the increased risk of adverse public reaction from designation of critical habitat exceeds any potential benefits to the species from such designation. Conservation of the San Bernardino kangaroo rat would be accomplished more efficiently through the recovery

process and the jeopardy prohibition of section 7.

As for all the known remaining populations (City Creek (8 ha (20 ac)), Etiwanda (2 ha (5 ac)), Reche Canyon (2 ha (5 ac)), and South Bloomington (0.8 ha (2 ac), designation of critical habitat would not assist in conservation of these groups because of their critically small size and complete isolation from the three remaining, relatively large groups (i.e., Lytle and Cajon washes, Santa Ana, and San Jacinto) due to urban development. These fragmented and isolated portions of the overall population will need continual high intensity management to sustain them.

Accordingly, the Service concludes that any benefit from designation of critical habitat is far outweighed by the increase in the degree of threat to the subspecies. Therefore, designation of critical habitat for the San Bernardino kangaroo rat is not prudent.

The Service will continue in its efforts to obtain more information on the San Bernardino kangaroo rat biology and ecology, including essential habitat characteristics particularly in regard to stream flow regimes, current and historical distribution, and existing and potential sites that can contribute to conservation of the species. The information resulting from this effort will be used to identify measures needed to achieve conservation of the species, as defined under the Act. Such measures could include, but are not limited to, development of conservation agreements with the State, other Federal agencies, local governments, private landowners, and organizations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants and animals are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with the San Bernardino kangaroo rat or its habitat include the Corps and the Environmental Protection Agency due to their permit authority under section 404 of the Clean Water Act. The Federal Aviation Administration has jurisdiction over areas with potentially suitable San Bernardino kangaroo rat habitat in the vicinity of Redlands Municipal Airport and Norton Air Force Base in San Bernardino County. The Federal Highway Administration will likely be involved through potential funding of highway construction projects near Devore, Rancho Cucamonga, Rialto, and San Bernardino (San Bernardino County). Because the San Bernardino kangaroo rat occurs on Norton Air Force Base (San Bernardino County), the U.S. Air Force will likely be involved through the transfer of Federal lands to a non-Federal entity and the conversion of this area to a civilian airport. The BLM has jurisdiction over a portion of the habitat occupied by the San Bernardino kangaroo rat along the Santa Ana River. The Forest Service will likely be involved because populations of the San Bernardino kangaroo rat occur within or near the boundaries of the Cleveland National Forest and San Bernardino National Forest. The Bureau of Reclamation may be involved through the potential funding of water reclamation and flood control projects. The Bureau of Indian Affairs may be involved with this taxon at Soboba Indian Reservation (Riverside County). The Federal Housing Administration could potentially be involved through loans for housing projects in the region. The Federal Energy Regulatory Commission could be involved in projects affecting existing or proposed transmission lines in the Santa Ana River or Etiwanda Creek areas.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practical at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing on proposed and ongoing activities within a species' range, and to assist the public in identifying measures needed to protect the species. The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., bird watching, sightseeing, photography, camping, hiking);

(3) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break; and

(4) Road kills or injuries to the San Bernardino kangaroo rat by vehicles on designated public roads.

The Service believes that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Take of San Bernardino kangaroo rat, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable Federal and State fish and wildlife conservation laws and regulations;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken San Bernardino kangaroo rats;

(3) Unlawful destruction or alteration of San Bernardino kangaroo rat habitat by discing, grading, sand or gravel mining, flooding, vehicle operation, or other activities that result in the destruction of vegetative composition, substrate composition, or other intentional activity that impacts breeding, feeding, or availability of cover;

(4) Application of pesticides/herbicides in violation of label restrictions;

(5) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities will constitute a violation of section 9 or to obtain approved guidelines for actions within the kangaroo rat habitat should be directed to the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

Reasons for Effective Date

The Service is concerned that the issuance of the final rule for the San Bernardino kangaroo rat will result in the destruction of habitat essential for maintaining the remaining populations of this animal if not made effective upon publication. There are a number of projects poised for development that would both directly and indirectly impact this animal. Because of the immediate threat posed by these activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3), so that the protections implemented under the emergency rule will not lapse.

National Environmental Policy Act

The Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section (4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of references cited in this rule is available upon request from the Carlsbad Field Office of the U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this final rule is Arthur Davenport of the Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Kangaroo rat, San Bernardino.	*Dipodomys merriami parvus.*	U.S.A. (CA)	NA	E	645	NA	NA
*	*	*	*	*	*	*	

Dated: September 15, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–25545 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 63, No. 185
Thursday, September 24, 1998

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RUS Specification for Telecommunications Cable Splicing Connectors

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction, by rescinding RUS Bulletin 345–54, RUS Specification for Telephone Cable Splicing Connectors, PE–52, and codifying the revised specification, RUS Specification for Telecommunications Cable Splicing Connectors. The revised specification will update the relevant engineering and technical requirements for telecommunications splicing connectors including provisions for mechanical fiber optic splicing connectors.

DATES: Comments concerning this proposed rule must be received by RUS or be postmarked no later November 23, 1998.

ADDRESSES: Comments should be mailed to Orren E. Cameron III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1598, Washington, DC 20250–1598. RUS requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 2835, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1598 Washington, DC 20250–1598 between 8 a.m. and 4 p.m., Monday through Friday, except holidays, (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Charlie I. Harper, Jr., Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1598, Washington, DC 20250–1598, telephone (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order.

In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and, (3) administrative proceedings are required to be exhausted prior to initiating litigation against the Department. (See 7 U.S.C. 6912).

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and therefore, the Regulatory Flexibility Act does not apply to this rule. This proposed rule involves standards and specifications, which may increase the short-term direct costs to the RUS borrower. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this proposed rule were approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35, as amended) under control number 0572–0059. Comments concerning these requirements should be directed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory analysis, USDA, RUS, Stop 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) excludes RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Unfunded Mandates

This proposed rule contains no federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus this proposed rule is not subject to the Unfunded Mandates Reform Act.

Background

RUS issues publications titled ''Bulletin'' which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure RUS financing. RUS issues standards and specifications for the construction of telecommunications facilities financed with RUS loan funds. RUS is proposing to rescind Bulletin 345–54, ''RUS

Specification for Telephone Cable Splicing Connectors, PE–52,'' and to codify the revised standard at 7 CFR 1755.521, ''RUS Specification for Telecommunications Cable Splicing Connectors.''

RUS Bulletin 345–54 (PE–52) contains mechanical and environmental requirements, desired design features, and test methods for evaluation of copper cable splicing connectors. Because of technological advancements made in materials used to fabricate copper cable splicing connectors and test methods used to demonstrate the functional reliability of copper cable splicing connectors over the past 25 years, the current mechanical and environmental performance requirements and test methods for evaluating the reliability of copper cable splicing connectors specified in the current specification have become outdated. To allow RUS borrowers to take advantage of these improved materials and test methods, the current specification will be revised to update the mechanical and environmental performance requirements and test methods used to evaluate the reliability of copper cable splicing connectors.

The current specification does not include a section for evaluating the mechanical, electrical, and environmental reliability of mechanical fiber optic splicing connectors because at the time the specification was written, no such requirements were needed because no such type of splicing connectors existed. Since that time, splicing connectors designed for use with fiber optic cables have been fabricated. Since RUS borrowers are providing telecommunication services over fiber optic cables, the current specification will be revised to include end product performance requirements and test methods used to evaluate the mechanical, electrical, and environmental reliability of splicing connectors designed for use with fiber optic cables.

List of Subjects in 7 CFR Part 1755

Loan programs-telecommunications, Reporting and recordkeeping requirement, Rural areas, Telecommunications.

For reasons set out in the preamble, RUS proposes to amend Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION.

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entry RUS Bulletin 345–54 from the table.

3. Section 1755.98 is amended by adding the entry 1755.521 to the table in numerical order to read as follows:

§ 1755.98 List of telephone standards and specifications included in other 7 CFR parts.

* * * * *

Section	Issue date	Title
*	*	*
1755.521	[Effective date of final rule]	RUS Specification for Telecommunications Cable Splicing Connectors.
*	*	*

4. Section 1755.521 is added to read as follows:

§ 1755.521 RUS specification for telecommunications cable splicing connectors.

(a) *Scope.* (1) The purpose of this specification is to inform manufacturers and users of copper cable splicing connectors and mechanical fiber optic splicing connectors of the engineering and technical requirements that are considered necessary for satisfactory performance in rural outside plant environments. Included are the relevant electrical, mechanical, optical, and environmental requirements, desired design features, and test methods for evaluation of copper cable splicing connectors and fiber optic splicing connectors.

(2) All connectors purchased after this specification takes effect, for projects involving RUS loan funds subject to this specification, must have been accepted by RUS Technical Standards Committee ''A'' (Telecommunications).

(i) Connectors that have been previously accepted by Technical Standards Committee ''A'' (Telecommunications) prior to the effective date of this specification must qualify to this specification. Manufacturers will be given up to nine months to qualify to this specification after the effective date.

(ii) All changes in design of connectors must be submitted to RUS for acceptance. RUS will be the sole authority on what constitutes a design change.

(3) American Society for Testing and Materials Specifications (ASTM) G 21–90, Practice for Determining Resistance of Synthetic Polymeric Materials to Fungi; ASTM A 276–91a, Specification for Stainless and Heat-Resisting Steel Bars and Shapes; and ASTM D 4566–94, Standard Test Methods for Electrical Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable, referenced in this section are pending approval of incorporation by reference by the Office of the Federal Register. Copies of ASTM standards are available for inspection during normal business hours at RUS, room 2843, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001. Copies are available from ASTM, 100 Barr Harbor Drive, W. Conshohocken, Pennsylvania 19428–2959, telephone number (610) 832–9585.

(4) Electronics Industries Association Standards (EIA)–455–4A, Fiber Optic Connector/Component Temperature Life; EIA–455–6A, Cable Retention Test Procedure for Fiber Optic Cable Interconnecting Devices; EIA–455–21, Mating Durability of Fiber Optic Interconnecting Devices; EIA–455–34, Interconnection Device Insertion Loss Test; and EIA–455–171, Attenuation by Substitution Measurement—for Short-Length Multimode Graded-Index and Single-Mode Optical Fiber Cable Assemblies, referenced in this section are pending approval of incorporation by reference by the Office of the Federal Register. Copies of EIA standards are available for inspection during normal business hours at RUS, room 2843, U.S. Department of Agriculture, 1400 Independence Avenue, SW.,

Washington, DC 20250–1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001. Copies are available from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number (303) 792–2181.

(5) Electronic Industries Association/Telecommunications Industries Association Standards (EIA/TIA)–455–3A, Procedure to Measure Temperature Cycling Effects on Optical Fibers, Optical Cable, and Other Passive Fiber Optic Components; EIA/TIA–455–12A, Fluid Immersion Test for Fiber Optic Components; and EIA/TIA–455–107, Return Loss for Fiber Optic Components, referenced in this section are pending approval of incorporation by reference by the Office of the Federal Register. Copies of EIA/TIA standards are available for inspection during normal business hours at RUS, room 2843, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001. Copies are available from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number (303) 792–2181.

(6) Telecommunications Industries Association/Electronics Industries Association Standards (TIA/EIA)–455–5B, Humidity Test Procedure for Fiber Optic Components; and TIA/EIA–455–11B, Vibration Test Procedure for Fiber Optic Components and Cables, referenced in this section are pending approval of incorporation by reference by the Office of the Federal Register. Copies of TIA/EIA standards are available for inspection during normal business hours at RUS, room 2843, U.S. Department of Agriculture, Washington DC 20250–1598 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC. Copies are available from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number (303) 792–2181.

(b) *Materials.* (1) The plastic components used in splicing connectors shall be resistant to chemical attack, fungus growth, and growth of contaminating films as specified in ASTM G 21–90. Metallic materials used in splicing connectors shall have a corrosion resistance equivalent to nickel-chrome stainless steel in accordance with ASTM A 276–91a.

(2) All splicing connectors shall be filled.

(3) The manufacturer shall demonstrate that a quality assurance program, satisfactory to RUS, is in place to guarantee all material and product specifications are met. The program shall include the following:

(i) Incoming inspection of raw materials;

(ii) In-process inspection of the splice components;

(iii) Final inspection of the splice product;

(iv) Calibration procedures for all test equipment used in the qualification of the product; and

(v) Recall procedures in the event out-of-calibration equipment is identified.

(c) *Performance criteria and test procedures for copper cable splicing connectors.*—(1) *General Information.* (i) Copper cable splicing connectors have the function of splicing one or more combinations of No. 19 through No. 26 American Wire Gauge (AWG) copper conductors. Cable used for these tests shall be RUS accepted.

(ii) The manufacturer shall specify the wire gauge range for the connector or connectors submitted to RUS for acceptance. The stripping of conductor insulation shall not be permitted.

(iii) The manufacturer shall specify the splicing configuration for the connector, i.e., inline, butt, tap, or other.

(iv) The manufacturer shall perform adequate inspections and tests to demonstrate that copper cable splicing connectors and their components comply with RUS requirements.

(v) Unless otherwise specified, all tests shall be performed at a temperature of 24 ± 3°C (75 ± 5°F) and a relative humidity (RH) of up to 55 percent (%).

(2) *Test samples.* (i) Unless otherwise specified, all test samples shall be assembled for each connector type as follows:

(A) Largest specified gauge wire connected with largest specified gauge wire;

(B) Smallest specified gauge wire connected with smallest specified gauge wire; and

(C) Smallest specified gauge wire connected with largest specified gauge wire. For connectors which can connect more than 2 wires, assemble the greatest number of smallest gauge wires connected with one of the largest gauge wires.

(ii) For each test required, 5 samples from each of the categories in paragraph (c)(2)(i) of this section shall be tested. A total of 15 samples will be needed for each test.

(iii) The test results for each sample shall be submitted in tabulated form.

(3) *Connection resistance test.* (i) Thirty (30) 4 inch (in.) [102 millimeter (mm)] pieces shall be cut from appropriate gauged wire and assembled in the connectors in accordance with paragraph (c)(2) of this section using the connector manufacturer's instructions. For resistance measurements, expose the copper conductors of the test leads by removing 0.5 in. to 1 in. (12 mm to 25 mm) of insulation from the end of the test leads.

(ii) Fifteen (15) 8 in. (203 mm) pieces shall be cut from the appropriate gauged wire for use as control wire samples.

(iii) The resistance of each test sample and a corresponding control wire shall be measured and recorded. The resistance of each test sample shall not exceed the resistance of the corresponding control wire sample by more than 7 percent.

(iv) Each test sample shall be held and each connector shall be twisted 90 degrees around the wire axis once in each direction. After twisting, the resistance of the test sample shall be measured and recorded. The resistance of each test sample shall not exceed the resistance of the corresponding control wire sample by more than 9 percent.

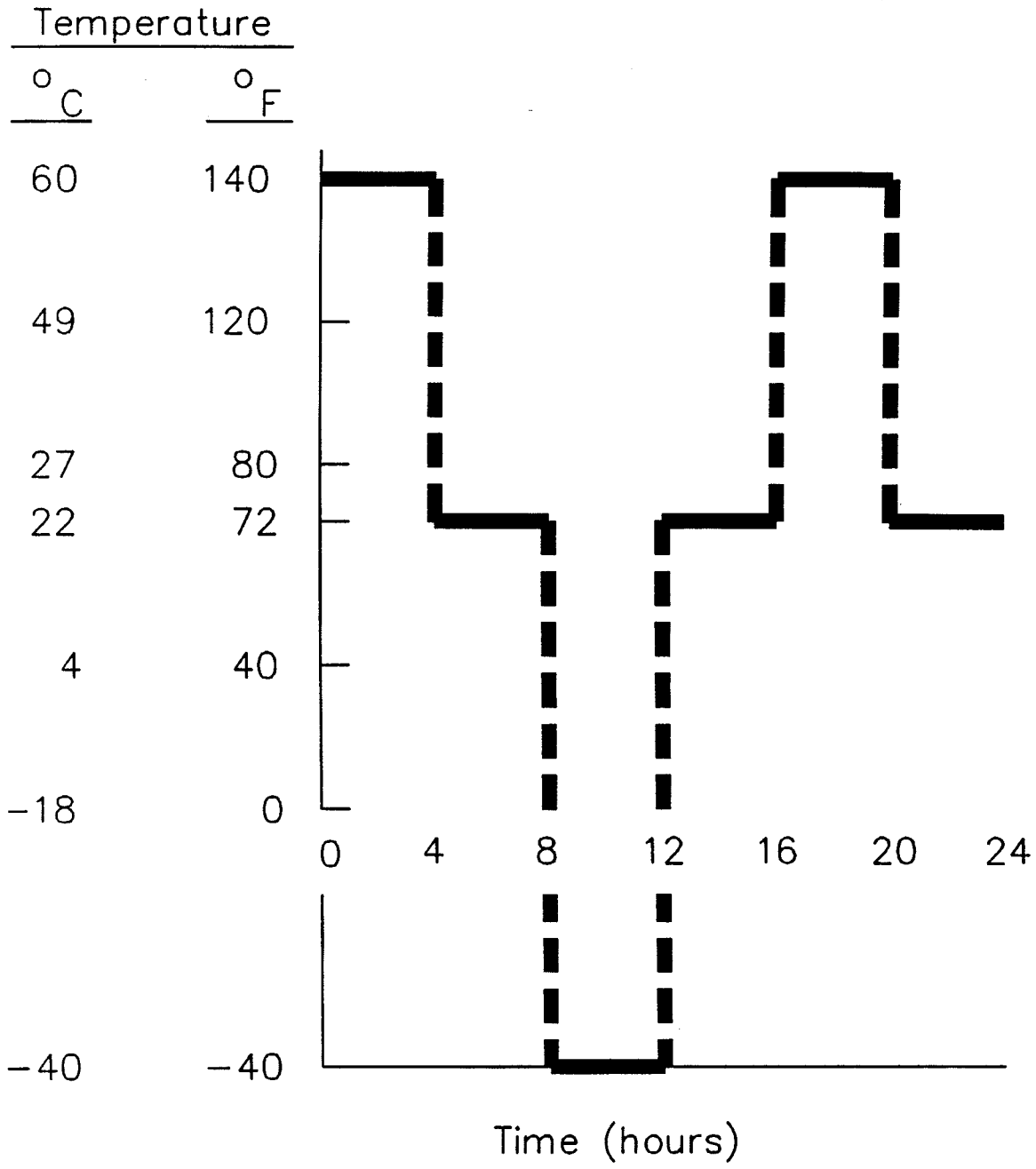
(4) *Heat-cold cycling test.* (i) After completion of the connection resistance test, the test samples shall be subjected to the heat-cold cycling test.

(ii) The test samples shall be placed in an environmental test chamber and exposed to the temperature cycle of Figure 1 for five complete cycles. The step function nature of the temperature changes may be achieved by insertion and removal of the test samples from the chamber. The soak time at each temperature shall be four hours. The test samples shall be removed from the test chamber at the conclusion of the five-cycle period and shall be allowed to return to room temperature. Figure 1 is as follows:

BILLING CODE 3410–15–P

FIGURE 1

HEAT–COLD CYCLING



(iii) No measurements shall be made at this time.

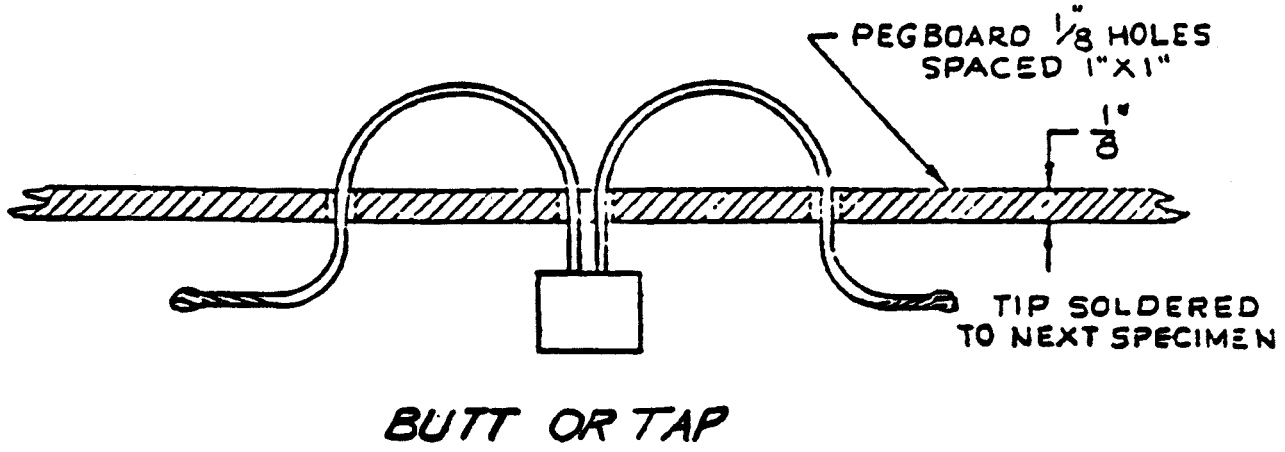
(5) *Vibration*. (i) After the completion of the heat-cold cycling test, the test samples shall be subjected to the vibration test.

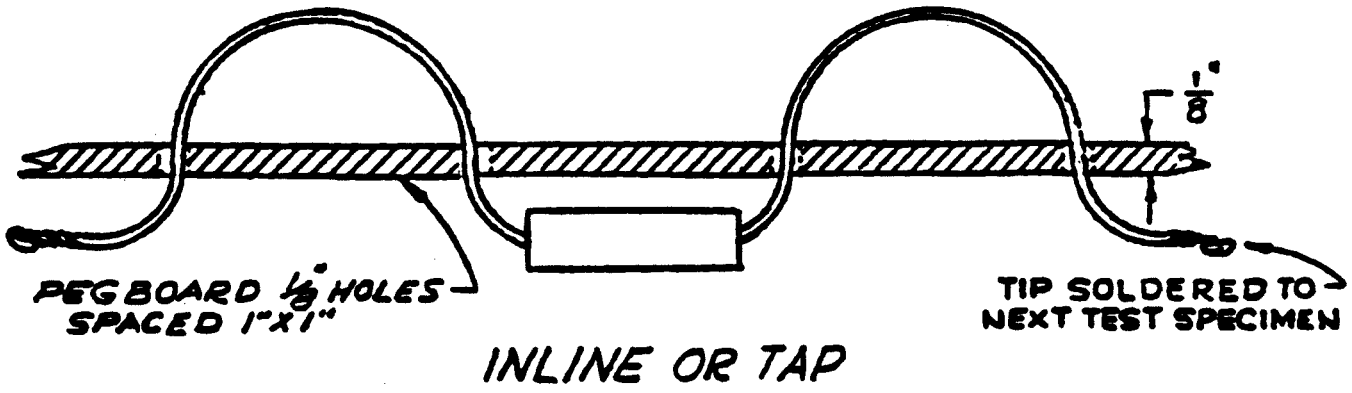
(ii) A vibration machine shall be used which produces a simple harmonic motion having .06 inch (1.52 mm) maximum total excursion, cycling from 10 to 55 to 10 Hertz within 1 minute. A monitoring circuit shall be used which is capable of detecting momentary opens of 10 microseconds or longer.

(iii) Each test sample shall be supported by a pegboard as indicated in Figure 2, which is attached to the vibration machine. The test samples and monitoring circuit shall be electrically connected in series. Wires shall not be cut short. Figure 2 is as follows:

Figure 2

Vibration Test Setup

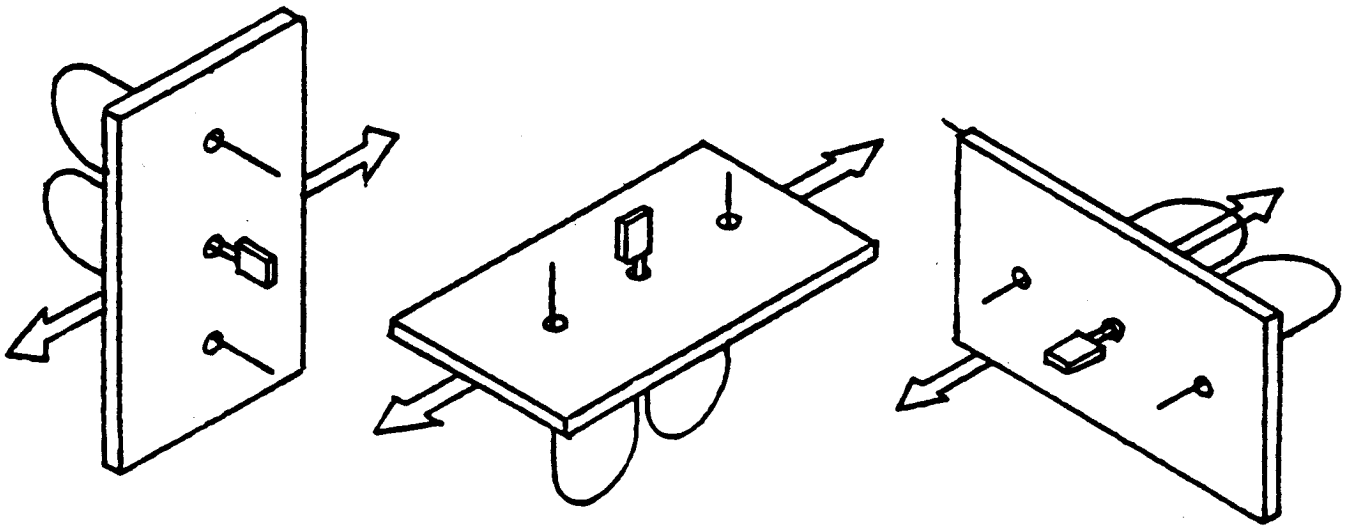




(iv) The test samples shall be vibrated for a total of 3 hours, 1 hour in each of the 3 mutually exclusive planes as indicated in Figure 3. The direct current (dc) through the test samples shall be monitored for any fluctuations or momentary opens. Fluctuations or momentary opens shall be less than or equal to 10 microseconds. Figure 3 is as follows:

Figure 3

Vibration in Three Mutually Exclusive Planes



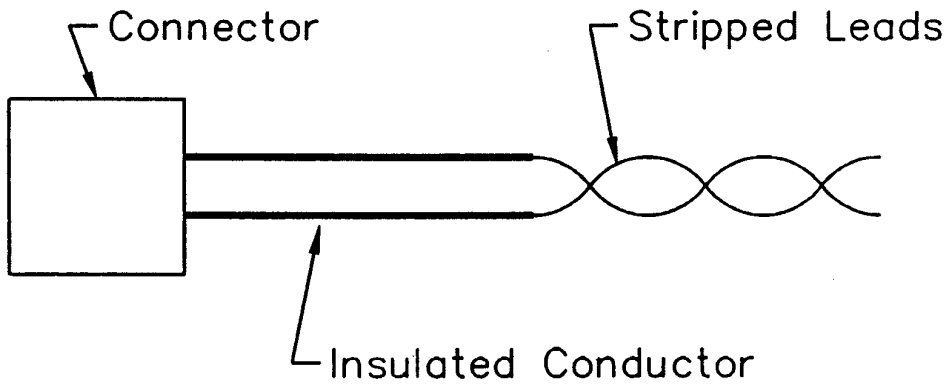
(v) After completion of the vibration test, the test samples shall be removed from the vibration machine and the connection resistance of each test sample shall be measured. The resistance of each test sample shall not exceed the resistance of the corresponding control wire sample by more than 13 percent.

(vi) The test samples may be discarded after completion of the vibration test.

(6) *Insulation resistance—humidity cycle.* (i) Thirty (30) 15 in. (381 mm) pieces shall be cut from the appropriate gauged wire and assembled in the connectors in accordance with paragraph (c)(2) of this section using the connector manufacturer's instructions. For insulation resistance measurements, expose the copper conductors of the test leads by removing 0.5 in. to 1 in. (12 mm to 25 mm) of insulation from the ends of the test leads. The exposed copper conductors of the test leads shall be twisted together as indicated in Figure 4 as follows:

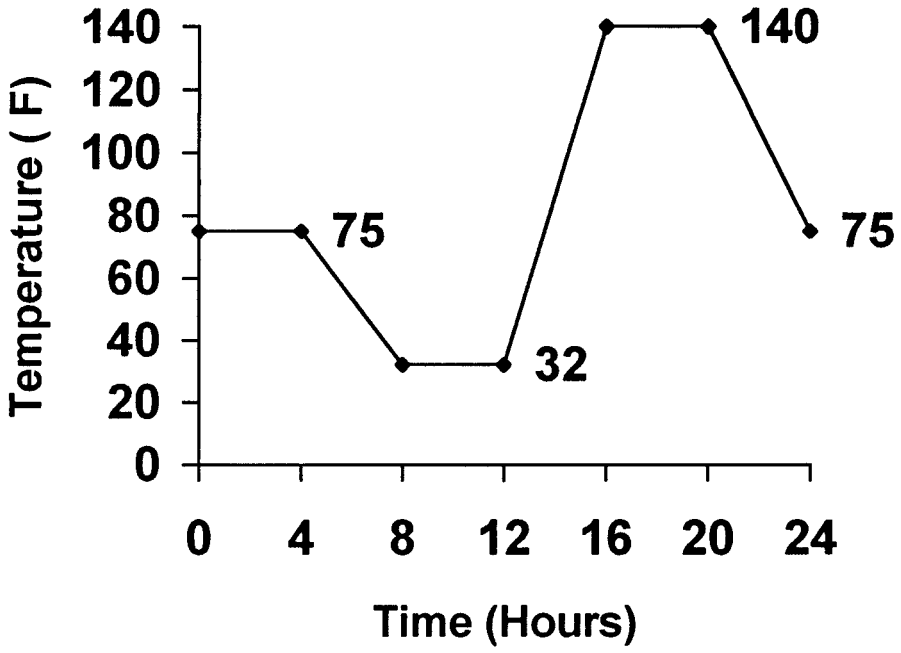
Figure 4

Insulation Resistance
Test Sample Preparation



(ii) The test samples shall be placed in an environmental test chamber at 95 ± 3% RH and temperature cycled per Figure 5 for a period of 30 days. Figure 5 is as follows:

FIGURE 5
HUMIDITY TEMPERATURE CYCLE



Note: Relative Humidity = 95% +/- 3%

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(iii) After the test samples have been allowed to stabilize at room temperature and humidity, the insulation resistance of the test sample leads to ground shall be greater than or equal to 100,000 megohms when tested in accordance with ASTM D 4566–94 using a test voltage of 250 volts dc.

(7) *Insulation resistance—water soak:* (i) Thirty (30) 15 in. (381 mm) pieces shall be cut from the appropriate gauged wire and assembled in the connectors in accordance with paragraph (c)(2) of this section using the connector manufacturer's instructions. For insulation resistance measurements, expose the copper conductors of the test leads by removing 0.5 in. to 1 in. (12 mm to 25 mm) of insulation from the ends of the test leads. The exposed copper conductors of the test leads shall be twisted together as indicated in Figure 4.

(ii) A solution of distilled or tap water and sodium chloride (5 percent by weight) shall be prepared and placed in a glass container.

(iii) The connectors of the test samples shall be immersed in the solution except for the twisted test leads of the test samples. A copper electrode shall be inserted into the solution.

(iv) After the system (immersed connectors and solution) has stabilized for 2 hours, the first insulation resistance measurement of the test sample leads to the copper electrode shall be taken. The insulation resistance shall be performed in accordance with ASTM D 4566–94 using 100 volts dc.

(v) The test samples shall be removed from the solution after 72 hours and allowed to stabilize at room temperature and humidity for an additional 72 hours. The procedure shall be repeated for a total of 5 cycles. Insulation resistance measurements of the test sample leads to the copper electrode shall be taken for each day that the test samples are immersed in solution. Report resistance readings in megohms. The insulation resistance shall be performed in accordance with ASTM D 4566–94 using 100 volts dc.

(vi) The insulation resistance of the test sample leads to the copper electrode shall be greater than or equal to 100 megohms.

(8) *Dielectric breakdown (dry).* (i) Thirty (30) 15 in. (381 mm) pieces shall be cut from the appropriate gauged wire and assembled in the connectors in accordance with paragraph (c)(2) of this section using the connector manufacturer's instructions. For dielectric breakdown measurements, expose the copper conductors of the test leads by removing 0.5 in. to 1 in. (12 mm to 25 mm) of insulation from the ends of the test leads. The exposed copper conductors of the test leads shall be twisted together.

(ii) An alternating current (ac) power source capable of applying 8,000 volts in 500 volt root-mean-squared per second (rms/s) steps shall be used. The unit shall be equipped with a circuit breaker to disconnect the power source at breakdown and a voltmeter to indicate the rms voltages.

(iii) The high voltage lead of the power source shall be attached to the test sample lead and the ground voltage lead of the power source shall be attached to ground. The voltage shall be applied to the test sample in 500 volt rms/s steps until either breakdown or 8,000 volts rms is reached. The dielectric strength shall be recorded in rms voltage at the point of breakdown. Breakdown occurring at less than 2,500 volts rms shall constitute a failure.

(iv) The dielectric breakdown test shall be repeated for all the remaining test samples prepared in accordance with paragraph (c)(8)(i) of this section. The test results shall be reported for each test sample.

(9) *Dielectric breakdown (wet).* (i) Thirty (30) 15 in. (381 mm) pieces shall be cut from the appropriate gauged wire and assembled in the connectors in accordance with paragraph (c)(2) of this section using the connector manufacturer's instructions. For dielectric breakdown measurements, expose the copper conductors of the test leads by removing 0.5 in. to 1 in. (12 mm to 25 mm) of insulation from the ends of the test leads. The exposed copper conductors of the test leads shall be twisted together.

(ii) A solution of distilled or tap water and sodium chloride (5 percent by weight) shall be prepared and placed in a glass container.

(iii) An alternating current (ac) power source capable of applying 8,000 volts in 500 volt root-mean-squared per second (rms/s) steps shall be used. The unit shall be equipped with a circuit breaker to disconnect the power source at breakdown and a voltmeter to indicate the rms voltages.

(iv) The connectors of the test samples shall be immersed in the solution except for the twisted test leads of the test samples. Insert a copper ground electrode into the solution. The high voltage lead of the power source shall be attached to the test sample lead and the ground voltage lead of the power source shall be attached to ground. The voltage shall be applied to the test sample in 500 volt rms/s steps until either breakdown or 8,000 volts rms is reached. The dielectric strength shall be recorded in rms voltage at the point of breakdown. Breakdown occurring at less than 2,500 volts rms shall constitute a failure.

(v) The dielectric breakdown test shall be repeated for all the remaining test samples prepared in accordance with paragraph (c)(9)(i) of this section. The test results shall be reported for each test sample.

(10) *Current Cycle:* (i) Twenty (20) 4 in. (102 mm) pieces shall be cut from the appropriate gauged wire and assembled in the connectors in accordance with paragraph (c)(2) of this section using the connector manufacturer's instructions. For the current cycling, only the first two types of samples specified in paragraph (c)(2)(i) of this section shall be used for a total of ten (10) samples to be tested. For the current cycling test, expose the copper conductors of the test leads by removing 0.5 in. to 1 in. (12 mm to 25 mm) of insulation from the ends of the test leads.

(ii) A rack with mounting lugs spaced 5 in. (127 mm) apart shall be used for the test. The test leads of the first five (5) test samples shall be carefully bent and straightened so that the test samples lie approximately midway between the mounting lugs. The test leads between the mounting lugs shall be under no tension. The ends of the test leads shall be soldered to the mounting lugs. The test setup shall be as shown in Figure 6. Figure 6 is as follows:

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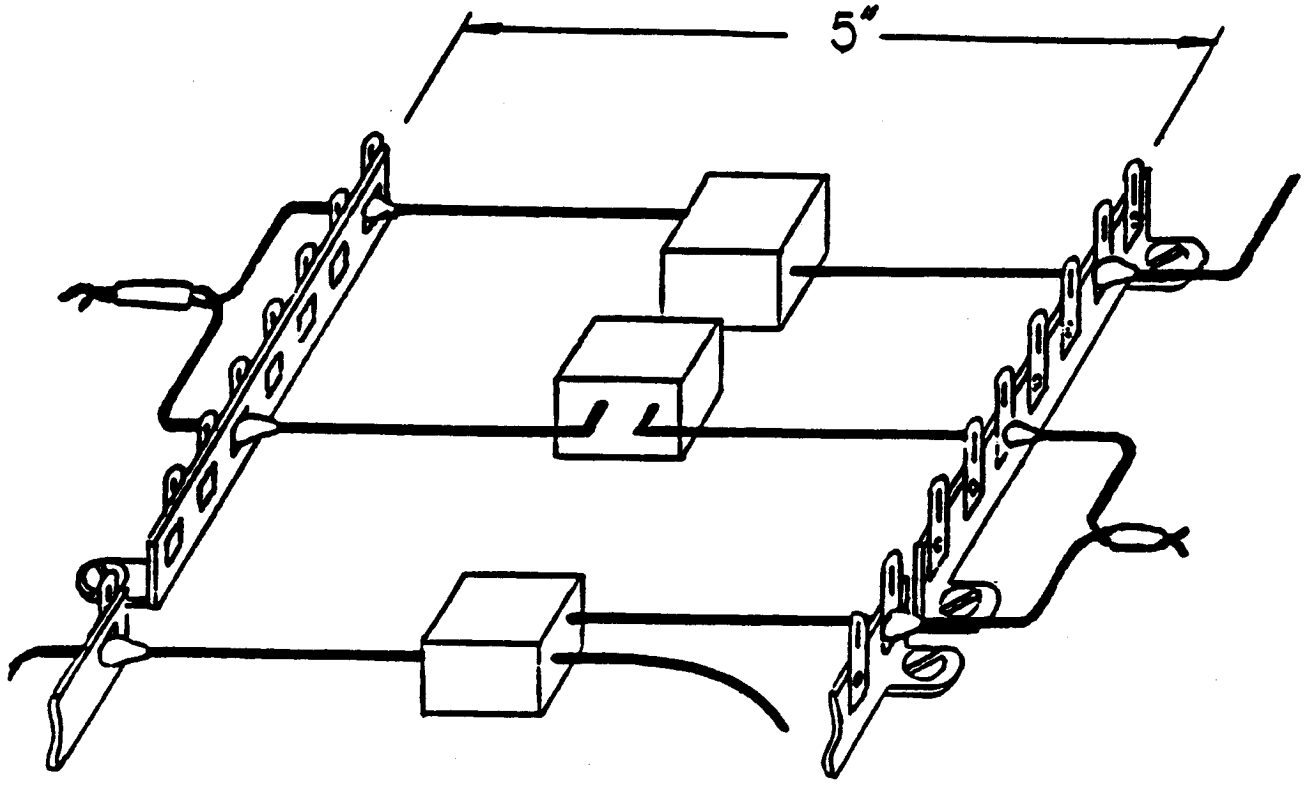
Figure 6

Current Cycle Test



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(iii) The first set of five (5) test samples shall be connected in series with an ammeter and a power source. The power source shall be adjusted to the ''Initial'' current specified in Table 1. The voltage drop across each test sample at the mounting lugs shall be measured. The power source shall then be adjusted to the ''Test'' current specified in Table 1. The ''Test'' current shall be applied to the test samples for 45 minutes and then off for 15 minutes. The application of the ''Test'' current for a period of 45 minutes on and a period of 15 minutes off shall constitute one (1) cycle. Fifty (50) current cycles shall be applied to the test samples.

TABLE 1.—TEST CURRENTS

Wire size (AWG)	''Initial'' and ''Final'' current (amps)	Test current (amps)
19	11	14
22	9	11
24	4.5	5.6
26	3	3.8

(iv) At the completion of the fifty (50) cycles, the current on the test samples shall be reduced to the ''Final'' current indicated in Table 1. The voltage drop across each test sample at the lug shall be measured and compared with the initial measurements specified in paragraph (c)(10)(iii) of this section. An increase in the voltage drop greater than 5 percent for each test sample shall constitute failure.

(v) The second set of five (5) samples shall be tested in accordance with the procedures specified in paragraphs (c)(10)(iii) and (c)(10)(iv) of this section. The connectors shall be tested using the appropriate current for the specific wire size indicated in Table 1.

(11) *Tensile test.* (i) Thirty (30) 10 in. (254 mm) pieces shall be cut from appropriate gauged wire and assembled in the connectors in accordance with paragraph (c)(2) of this section using the connector manufacturer's instructions.

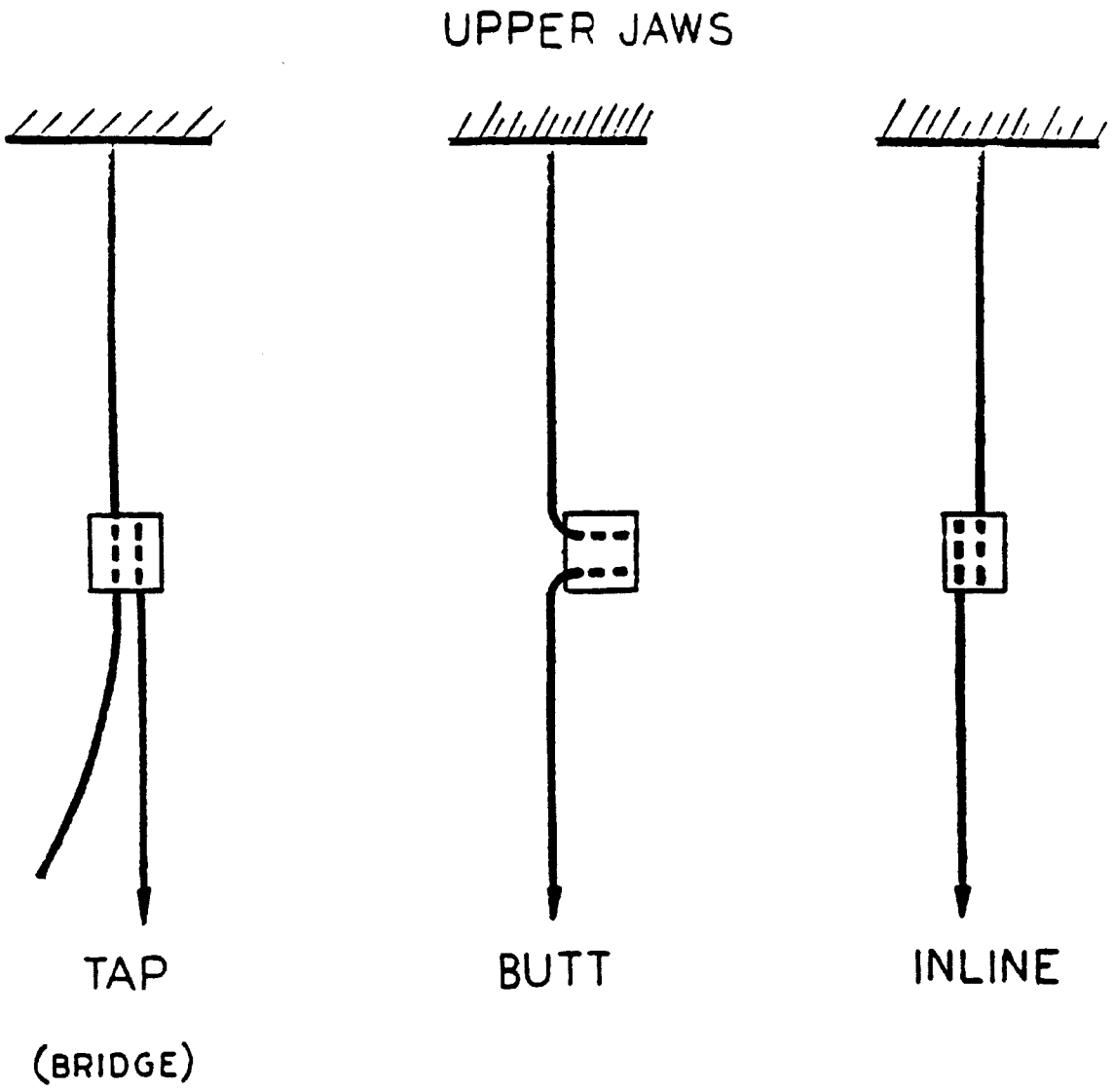
(ii) Three (3) samples of each control wire gauge shall be tested using a tensile machine with a jaw separation speed of 2 in. (51 mm) per minute, to determine average breaking strength of each control wire gauge.

(iii) Each test sample assembled in accordance with paragraph (c)(11)(i) of this section shall be tested for either ''Pull-out'' or ''Break'' using a tensile machine with a jaw separation speed of 2 in. (51 mm) per minute. The test setup for the ''Pull-out'' or ''Break'' test shall be in accordance with Figure 7. The ''Pull-out'' or ''Break'' shall not be less than 60 percent of the average breaking strength of each control wire size recorded in paragraph (c)(11)(ii) of this section. For the five (5) test samples that include the largest and smallest gauge wires, the ''Pull-out'' or ''Break'' measurement shall be compared to the smallest control wire gauge breaking strength recorded in paragraph (c)(11)(ii) of this section. Figure 7 is as follows:

BILLING CODE 3410–15–P

Figure 7

Tensil Test



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(d) *Performance criteria and test procedures for mechanical fiber optic splices*—(1) *Mechanical fiber optic splices shall be classified according to their functions listed below.* (i) Passive splicing—mechanically joining two fibers.

(ii) Tunable splicing—mechanically joining two fibers using an active loss measuring system for adjusting splice elements for the lowest loss during assembly.

(iii) Mass splicing—mechanically joining multiple fibers simultaneously.

(2) A mechanical fiber optic splice shall be so constructed that when assembled it shall have a resistance to optical decoupling. The mechanical splice assembly shall not optically decouple at less than a specified value of axial tension.

(3) Optical requirements for multimode and single mode optical splices shall be in accordance with Table 2. Methods of test to determine insertion and return loss shall be in accordance with EIA–455–34, EIA–455–171, or EIA/TIA–455–107.

TABLE 2.—OPTICAL REQUIREMENTS; MECHANICAL FIBER OPTIC SPLICES

Splice type	Single mode		Multimode
	Insertion loss [Decibels (dB)]	Return Loss (dB)	Insertion Loss (dB)
Passive	0.20	−35	0.15
Tunable	0.05	−35	0.15
*Mass	0.50	−35	0.15

*Loss results for mass splicing techniques must be averaged.

(4) Mechanical fiber optic splices shall be capable of resisting mechanical stresses associated with installation and service without impairment of the splice integrity.

(5) Single mode and multimode mechanical fiber optic splices shall be tested for mechanical reliability in accordance with the test methods specified in Table 3. After each mechanical test, the single mode and multimode mechanical fiber optic splices shall be in accordance with the requirements specified in Table 2 of paragraph (d)(3) of this section.

TABLE 3.—MECHANICAL TESTS; MECHANICAL FIBER OPTIC SPLICES

Test	Procedure	Requirement
Re-coupling durability (if appropriate)	EIA–455–21	25 Cycles.
Fiber Retention	EIA–455–6A	0.45 Kilograms Force (1.0 Pounds).
Vibration	TIA/EIA–455–11B	10–55 Hertz, 10 Grams.

(6) Single mode and multimode mechanical fiber optic splices shall be tested for environmental reliability in accordance with the test methods specified in Table 4. After each environmental test, the single mode and multimode mechanical fiber optic splices shall be in accordance with the requirements specified in Table 2 of paragraph (d)(3) of this section.

TABLE 4.—ENVIRONMENTAL TESTS; MECHANICAL FIBER OPTIC SPLICES

Test	Procedure	Requirement
Humidity	TIA/EIA–455–5B	>90% Relative Humidity, 40°C, 240 Hours.
Thermal Cycling	EIA/TIA–455–3A	−40°C to 80°C, 100 Cycles.
Water Immersion	EIA/TIA–455–12	40° C, 240 Hours.
Material Aging	EIA–455–4A	84° C, 2000 Hours.

(e) *Packaging, identification, and documentation.* (1) The packaging shall include identification of the manufacturer, splice model number, and date of manufacture. All necessary parts shall be shipped in one container unless significant advantages to the user will result otherwise.

(2) Complete documentation shall be included with the packaging to provide the following information:

(i) Use and application;

(ii) Set-up and assembly;

(iii) Testing;

(iv) Repair;

(v) Field installation;

(vi) Auxiliary Equipment; and

(vii) Storage Instructions.

(f) *RUS acceptance procedure.* (1) The tests described in this specification are required for acceptance of product designs and major modifications of accepted designs. All modifications shall be considered major unless otherwise declared by RUS. These tests are intended to demonstrate the capability of the manufacturer to produce splice components which meet service requirements of RUS Telecommunications borrowers.

(2) For initial acceptance the manufacturer shall:

(i) Certify that the product fully complies with each paragraph of this specification, and submit supporting test data;

(ii) Submit catalog numbers for the splice;

(iii) Submit quality assurance data which is representative of at least three production lots and which demonstrate the reliability of an ongoing quality assurance program;

(iv) Certify whether the product complies with the domestic origin manufacturing provisions of the ''Buy American'' Requirement of the Rural Electrification Act of 1938 (7 U.S.C 903 note), as amended (the ''REA Buy American Provision'');

(v) Submit at least three user testimonials concerning field performance of the product;

(vi) Submit descriptive information concerning the splice;

(vii) Submit assembly and usage instructions for the splice;

(viii) Submit product identification information;

(ix) Submit information concerning the packaging and shipment of the splice to customers;

(x) Submit an Occupational Safety and Health Administration (OSHA) Material Safety Data Sheet for the appropriate splice components;

(xi) Submit one production sample of the splice;

(xii) Submit one sample of a completed splice;

(xiii) Agree to provide plant inspections by RUS; and

(xiv) Provide any other nonproprietary data deemed necessary by the Chief, Outside Plant Branch (Telecommunications).

(3) Requalification of a manufacturer's product shall be required every 2 years after initial acceptance of that product. In order for RUS to consider a manufacture's request that a product be requalified, the manufacturer shall certify, that the product:

(i) Fully complies with each paragraph of this specification; and

(ii) Does or does not comply with the domestic origin manufacturing provisions of the REA ''Buy American'' provisions. The required certifications shall be dated within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addressed to: Chairman, Technical Standards Committee ''A'' (Telecommunications), Telecommunications Standards Division, Rural Utilities Service, 1400 Independence Ave, SW, STOP 1598, Washington, DC 20250–1598.

Dated: September 17, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–25575 Filed 9–23–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1780

RIN 2550–AA04

Rules of Practice and procedure

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of proposed rulemeking.

SUMMARY: The Office of Federal Housing Enterprise Oversight is proposing to adopt a regulation that establishes the rules of practice and procedure to be followed when OFHEO conducts hearings on the record. The proposed regulation implements the provisions of title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, regarding hearings on the record in certain enforcement actions against the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or directors or executive officers of the Enterprises. The proposed regulation would provide OFHEO personnel, the Enterprises, the Enterprises' directors and executive officers and other interested parties with the guidance necessary to prepare for and participate in such hearings.

DATES: Written comments regarding the Notice of Proposed Rulemaking must be received on or before December 23, 1998.

ADDRESSES: Send written comments to Anne E. Dewey, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Alternatively, comments may be submitted via E-mail to RegComments@ofheo.gov.

FOR FURTHER INFORMATION CONTACT: David A. Felt, Associate General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–3750 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Supplementary Information is organized according to this table of contents:

I. Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), established the Office of Federal Housing Enterprise Oversight (OFHEO) as an independent office within the Department of Housing and Urban Development (HUD) to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are adequately capitalized and operate in a safe and sound manner. Included among the express statutory authorities of the Director of OFHEO (Director) is the authority to issue regulations to carry out the duties of the Director,[1] to conduct hearings relating to the issuance of cease-and-desist orders and the assessment of civil money penalties.[2] Prior to issuing a cease-and-desist order, OFHEO must conduct hearings on the record and provide the subjects of the order with notice and the opportunity to participate in such hearings.[3] Prior to imposing civil money penalties, OFHEO must provide notice and the opportunity for a hearing to the persons subject to the penalties. The 1992 Act grants responsibility for developing the rules of practice and procedure governing issuance of these orders and penalties, including the conduct of hearings, to OFHEO.[4] Fannie Mae and Freddie Mac are Government-sponsored enterprises with important public purposes. These purposes include providing liquidity to the residential mortgage market and increasing the availability of mortgage credit benefiting low- and moderate-income families, rural areas, central cities, and areas that are underserved by lending institutions. The Enterprises engage in two principal businesses: investing in residential mortgages and guaranteeing residential mortgage securities. The securities they guarantee and the debt instruments they issue are not backed by the full faith and credit of the United States.[5] Despite the absence of such Federal backing, prices of Enterprise debt securities reflect a market perception that the U.S. Government would not permit the Enterprises to default. This perception principally arises from the public purposes of the Enterprises, their Federal charters, their potential access to a U.S. Treasury line of credit and the statutory exemptions of their debt and mortgage-backed securities from otherwise mandatory investor protection provisions.[6] This perception

[1] 1992 Act, section 1319G(a) (12 U.S.C. 4526(a)).

[2] 1992 Act, sections 1371, 1376 (12 U.S.C. 4631, 4636).

[3] 1992 Act, sections 1371, 1376(c) (12 U.S.C. 4631(c), 4636(c)).

[4] 1992 Act, section 1313 (12 U.S.C. 4513).

[5] Sections 301(4), 306(h)(2), Federal Home Loan Mortgage Corporation Act (12 U.S.C. *note* (b)(3, 4) to 1451, 1455(h)(2)); sections 301(4), 304(b), Federal National Mortgage Association Charter Act (12 U.S.C. 1716(3, 4), 1719(b); and section 1302(4), 1992 Act (12 U.S.C. 4501(4)).

[6] *See, e.g.*, 12 U.S.C. 24 (authorizing unlimited investment by national banks in obligations of, or issued by, the Enterprises); 12 U.S.C. 1455(g), 1719(d), 1723c (exempting Enterprise securities from oversight from Federal regulators); 15 U.S.C. 77r–1(a) (preempting State law that would treat Enterprise securities differently from obligations of the United States for investment purposes); and 15

Continued

is bolstered by concern that the insolvency of either of the Enterprises would have serious consequences for the nation's housing markets and financial system.

II. Regulation Development

In designing the structure and substance of the proposed rules, OFHEO reviewed the rules of practice and procedure of other financial safety and soundness regulatory agencies; specifically, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration and the Farm Credit Administration. OFHEO also reviewed the rules of practice and procedure established by the Secretary of HUD. OFHEO reviewed the rules of practice and procedure of these other agencies because, like OFHEO, each such agency is authorized to issue cease-and-desist orders and to impose civil money penalties. The proposed regulation is based upon OFHEO's analysis of comparable rules and the requirements of the 1992 Act.

The practice and procedure rules of the various agencies reviewed by OFHEO differed from each other in many respects, which reflected the differences in the missions of those agencies. Likewise, the proposed regulation is not precisely patterned upon one agency's approach, but incorporates elements from each that are best suited to OFHEO's mission and organizational structure.

III. Synopsis of Proposed Regulation

The 1992 Act requires OFHEO to conduct its hearings pertaining to cease-and-desist orders and civil money penalties in accordance with the Administrative Procedure Act (APA)[7] (which is codified in chapter 5 of title 5 of the Untied States Code).[8] Thus, the proposed rules of practice and procedure supplement the APA provisions governing agency adjudications and include provisions unique to OFHEO's mission. These proposed rules apply not only to enforcement hearings, but also to any other adjudication required by statute to be determined on the record after opportunity for hearing.

The proposed regulation includes provisions relating to prehearing procedures and activities, the conduct of the hearing itself, and the qualifications and disciplinary rules for practice before OFHEO. The proposed regulation establishes that hearings are open to the public unless the Director determines that a public hearing would be contrary to the public interest. The proposed regulation also defines important terms used in the regulation and describes the authority of the Director and the presiding officer.

Under the proposed regulation, the Director commences the hearing process by issuing and serving a notice of charges on a respondent. A presiding officer, appointed by the Director, presides over the course of the hearing from the time of the appointment until the presiding officer files a recommended decision and order, along with the hearing record, with the Director for a final decision. During the course of the hearing, the presiding officer controls virtually all aspects of the proceeding. The presiding officer determines the hearing schedule, presides over any prehearing conferences, rules on motions, discovery, and evidentiary issues and ensures that the proceeding is fair, equitable, and impartial. The presiding officer does not, however, have the authority to make a ruling that disposes of the proceeding. Only the Director has the authority to dismiss the proceeding or make a final determination of the merits of the proceeding.

Under this proposed regulation, the parties to the proceeding have the right to present evidence and witnesses at the hearing and have the right to examine and cross-examine the witnesses. At the completion of the hearing, the parties may submit proposed findings of fact and conclusions of law and a proposed order. The presiding officer then submits the complete record to the Director for consideration and action. The record includes the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order. The record also includes all prehearing and hearing transcripts, exhibits, rulings, motions, briefs and memoranda and all supporting papers filed in connection with the hearing. The Director shall issue a final ruling within 90 days of the date the Director serves notice on the parties that the record is complete and the case has been submitted for final decision.

Subpart D of this proposed regulation contains rules governing practice by parties or their representatives before OFHEO. This proposed subpart addresses the imposition of sanctions by the presiding officer or the Director against parties or their representatives in an adjudicatory proceeding under this part. This subpart also covers other disciplinary sanctions—censure, suspension or disbarment—against individuals who appear before OFNEO in a representational capacity either in an adjudicatory proceeding under part 1780 or in any other matters connected with presentations to OFHEO relating to a client's or other principal's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of OFHEO are not subject to disciplinary proceedings under this subpart.

IV. Regulatory Impact

Executive Order 12612, Federalism

Executive Order 12612 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. ''Federalism implications'' is defined to specify regulations or actions that have substantial, direct effects on the States, on the relationship or distribution of power between the national government and the States, or on the distribution of power and responsibilities between Federal and State government. OFHEO has determined that this proposed regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12866, Regulatory Planning and Review

OFHEO has determined that this proposed regulation is not a significant regulatory action as such term is defined in Executive Order 12866, has so indicated to the Office of Management and Budget (OMB) and was not notified by OMB that the proposed regulation must be reviewed by OMB.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the government. The proposed regulation meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed regulation does not include a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. Consequently, the proposed regulation does not warrant

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U.S.C. 77r–1(c) (exempting Enterprise securities from State securities laws).

[7] 1992 Act, section 1373(a)(3)(42 U.S.C. 4633(a)(3)).

[8] 5 U.S.C. 500–559.

the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a proposed regulation that has a significant economic impact on a substantial number of small entities must include an initial regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impacts of the proposed regulation under the Regulatory Flexibility Act. The proposed regulation does not have a significant economic impact on a substantial number of small entities, since it is applicable only to the Enterprises, which are not small entities. Therefore, OFHEO's General Counsel acting under delegated authority has certified that the proposed regulation would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that regulations involving the collection of information receive clearance from OMB. The proposed regulation contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

List of Subjects in 12 CFR Part 1780

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set forth in the preamble, OFHEO proposes to amend 12 CFR part 1780 as follows:

PART 1780—RULES OF PRACTICE AND PROCEDURE

1. Revise the heading for part 1780 to read as set forth above.

2. Revise the authority citation for part 1780 to read as follows:

Authority: 12 U.S.C. 4513, 4631–4641.

Subpart E also issued under 28 U.S.C. 2461 note.

Subpart E—[Amended]

3. Redesignate §§ 1780.70 and 1780.71 as §§ 1780.80 and 1780.81, respectively.

4. Add subparts A through D to part 1780 to read as follows:

Subpart A—General Rules

Subpart B—Prehearing Proceedings

Subpart C—Hearing and Posthearing Proceedings

Subpart D—Rules of Practice Before the Office of Federal Housing Enterprise Oversight

Subpart A—General Rules

§ 1780.1 Scope.

This subpart prescribes rules of practice and procedure applicable to the following adjudicatory proceedings:

(a) Cease-and-desist proceedings under sections 1371 and 1373, title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (12 U.S.C. 4631 and 4633).

(b) Civil money penalty assessment proceedings against the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), or any executive officer or director of any Enterprise under sections 1373 and 1376 of the 1992 Act (12 U.S.C. 4633 and 4636).

(c) All other adjudications required by statute to be determined on the record after opportunity for hearing, except to the extent otherwise provided in the regulations specifically governing such an adjudication.

§ 1780.2 Rules of construction.

For purposes of this part—

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party's representative of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 1780.3 Definitions.

For purposes of this part, unless explicitly stated to the contrary—

(a) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order than a regulation;

(b) *Decisional employee* means any member of the Director's or the presiding officer's staff who has not engaged in an investigation or prosecutorial role in a proceeding and who may assist the Director or the presiding officer, respectively, in preparing orders, recommended decisions, decisions and other documents under this subpart.

(c) *Director* means the Director of OFHEO.

(d) *Enterprise* means the Federal National Mortgage Association and any affiliate thereof and the Federal Home Loan Mortgage Corporation and any affiliate thereof.

(e) *OFHEO* means the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(f) *Party* means OFHEO and any person named as a party in any notice.

(g) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency, or other entity or organization.

(h) *Presiding officer* means an administrative law judge or any other person designated by the Director to conduct a hearing.

(i) *Representative of record* means an individual who is authorized to represent a person or is representing himself and who has filed a notice of appearance in accordance with § 1780.72.

(j) *Respondent* means any party other than OFHEO.

(k) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(l) The *1992 Act* is Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act).

§ 1780.4 Authority of the Director.

The Director may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of any act that could be done or ordered by the presiding officer.

§ 1780.5 Authority of the presiding officer.

(a) *General rule.* All proceedings governed by this subpart shall be conducted in accordance with the provisions of 5 U.S.C. chapter 5. The presiding officer shall have complete charge of the hearing, conduct a fair and impartial hearing, avoid unnecessary delay and assure that a record of the proceeding is made.

(b) *Powers.* The presiding officer shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue Subpoenas and subpoenas *duces tecum* and revoke, quash, or modify such subpoenas;

(6) Take and preserve testimony under oath;

(7) Rule on motions and other procedural matters appropriate in an adjudicatory proceeding, except that only the Director shall have the power to grant any motion to dismiss the proceeding or make a final determination of the merits of the proceeding;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, exclude, limit, or otherwise rule on evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Recuse himself upon motion made by a party or on his own motion;

(14) Prepare and present to the Director a recommended decision as provided in this part; and

(15) Do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 1780.6 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Director, in his discretion, determines that holding an open hearing would be contrary to the public interest. The Director may make such determination *sua sponte* at any time by written notice to all parties.

(b) *Motion for closed hearing.* Within 20 days of service of the notice of charges, any party may file with the presiding officer a motion for a private hearing and any party may file a pleading in reply to the motion. The presiding officer shall forward the motion and any reply, together with a recommended decision on the motion, to the Director, who shall make a final determination. Such motions and replies are governed by § 1780.25.

(c) *Filing documents under seal.* OFHEO's counsel of record, in his discretion may file any document or part of a document under seal if such counsel makes a written determination that disclosure of the document would be contrary to the public interest. The presiding officer shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 1780.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice by the Director shall be signed by at least one representative of record in his individual name and shall state that representative's address and telephone number and the names, addresses the telephone numbers of all other representatives of record for the person making the filing or submission.

(b) *Effect of signature.* (1) By signing a document, the representative of record or party certifies that—

(i) The representative of record or party has read the filing of submission of record;

(ii) To the best of his knowledge, information and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith, nonfrivolous argument for the extension, modification, or reversal of existing law; and

(iii) The filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the presiding officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any representative or party shall constitute a certification that to the best of his knowledge, information, and belief, formed after reasonable inquiry, his statements are well-grounded in fact and are warranted by existing law or a good faith, nonfriviolous argument for the extension, modification, or reversal of existing law and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 1780.8 Ex parte communications.

(a) *Definition.* (1) Ex parte communication means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that take place between—

(i) An interested person outside OFHEO (including the person's representative); and

(ii) The presiding officer handling that proceeding, the Director, a decisional employee assigned to that proceeding, or any other person who is or may reasonably be expected to be involved in the decisional process.

(2) A communication that does not concern the merits of an adjudicatory proceeding, such as request for status of

the proceeding, does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice commencing the proceeding is issued by the Director until the date that the Director issues his final decision pursuant to § 1780.55, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an ex parte communication. The Director, presiding officer, or a decisional employee shall not knowingly make or cause to be made an ex parte communication.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by any person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within 10 days of receipt of service of the ex parte communication, to file response thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or representative for party who makes an ex parte communications, or who encourages or solicits another to make any such communications, may be subject to any appropriate sanction or sanctions imposed by the Director or the presiding officer, including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue that is the subject of the prohibited communication.

(e) *Consultations by presiding officer.* Except to the extent required for the disposition of ex parte matters as authorized by law, the presiding officer may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate.

(f) *Separation of functions.* An employee or agent engaged in the performance of investigative or prosecuting functions for OFHEO in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or Director review under § 1780.55 of the recommended decision, except as witness or counsel in public proceedings.

§ 1780.9 Filing of papers.

(a) *Filing.* Any papers required to be filed shall be addressed to the presiding officer and filed with OFHEO, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.

(b) *Manner of filing.* Unless otherwise specified by the Director or the presiding officer, filing shall be accomplished by:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Director or the presiding officer. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.* (1) *Form.* All papers must set forth the name, address and telephone number of the representative or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. all papers filed must be doubled-spaced and printed or typewritten on 8½×11-inch paper and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 1780.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name OFHEO and of the filing party, the title and docket number of the proceeding and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Director or the presiding officer, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 1780.10 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers or serving a subpoena shall serve a copy upon the representative of record for each party to the proceeding so represented and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 1780.9(c).

(c) *By the Director or the presiding officer.* (1) All papers required to be served by the Director or the presiding officer upon a party who has appeared in the proceeding in accordance with § 1780.72 shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 1780.72, the Director or the presiding officer shall make service by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoenas may be made:

(1) By person service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party; or

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method reasonably calculated to give actual notice.

(e) *Area of service.* Service in any State, commonwealth, possession, territory of the United States or the District of Columbia on any person doing business in any State, commonwealth, possession, territory of the United States or the District of Columbia, or on any person as otherwise permitted by law, is effective

without regard to the place where the hearing is held.

(f) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is taken thereon. The proof shall show the date and manner of service and may be written acknowledgment of service by declaration of the person making service or by certificate of a representative of record. Failure to make proof of service shall not affect the validity of service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 1780.11 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday or Federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is 10 days or less, not including any additional time allowed for in paragraph (c) of this section, intermediate Saturdays, Sundays and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective—

(i) In the case of personal service or same day reliable commercial delivery service, upon actual service;

(ii) In the case of U.S. Postal Service or reliable commercial overnight delivery service, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection; or

(ii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Director or the presiding officer in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits shall be calculated as follows:

(1) If service was made by first class, registered, or certified mail, or by delivery to the U.S. Postal Service for longer than overnight delivery service, add 3 calendar days to the prescribed period for the responsive filing.

(2) If service was made by U.S. Postal Service or reliable commercial overnight delivery service, add 1 calendar day to the prescribed period for the responsive filing.

(3) If service was made by electronic media transmission, add 1 calendar day to the prescribed period for the responsive filing, unless otherwise determined by the Director or the presiding officer, in the case of filing, or by agreement among the parties, in the case of service.

§ 1780.12 Change of time limits.

Except as otherwise provided by law, the presiding officer may, for good cause shown, extend the time limits prescribed above or prescribed by any notice or order issued in the proceedings. After the referral of the case to the Director pursuant to § 1780.53, the Director may grant extensions of the time limits for good cause shown. Extensions may be granted on the motion of a party after notice and opportunity to respond is afforded all nonmoving parties or on the Director's or the presiding officer's own motion.

§ 1780.13 Witness fees and expenses.

Witness (other than parties) subpoenaed for testimony or deposition shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage shall be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where OFHEO is the party requesting the subpoena. OFHEO shall not be required to pay any fees to or expenses of any witness not subpoenaed by OFHEO.

§ 1780.14 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to OFHEO's counsel of record written offers or proposals for settlement of a proceeding without prejudice to the rights of any of the parties. No such offer proposal shall be made to any OFHEO representative other than OFHEO's counsel of record. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 1780.15 OFHEO's right to conduct examination.

Nothing contained in this part limits in any manner the right of OFHEO to conduct any examination, inspection, or visitation of any Enterprise or affiliate, or the right of OFHEO to conduct or continue any form of investigation authorized by law.

§ 1780.16 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

Subpart B—Prehearing Proceedings

§ 1780.20 Commencement of proceeding and contents of notice of charges.

Proceedings under this subpart are commenced by the issuance of a notice of charges by the Director, which must be served upon the respondent. Such notice shall state all of the following:

(a) The legal authority for the proceeding and for OFHEO's jurisdiction over the proceeding;

(b) A statement of the matters of fact or law showing that OFHEO is entitled to relief;

(c) A proposed order or prayer for an order granting the requested relief;

(d) The time, place and nature of the hearing;

(e) The time within which to file an answer;

(f) The time within which to request a hearing; and

(g) The address for filing the answer and/or request for a hearing.

§ 1780.21 Answer.

(a) *When.* Unless otherwise specified by the Director in the notice, respondent shall file an answer within 20 days of service of the notice.

(b) *Content of answer.* An answer must respond specifically to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of

information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice that is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of such respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, OFHEO's counsel of record may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the presiding officer shall file with the Director a recommended decision containing the finding and the relief sought in the notice. Any final order issued by the Director based upon a respondent's failure to answer is deemed to be an order issued upon consent.

§ 1780.22 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within 10 days after service of the amended notice, whichever period is longer, unless the Director or presiding officer orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 1780.23 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized representative constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Director a recommended decision containing the findings and the relief sought in the notice.

§ 1780.24 Consolidation and severance of actions.

(a) *Consolidation.* On the motion of any party, or on the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

1780.25 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the presiding officer directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the presiding officer, except that following the filing of a recommended decision, motions must be filed with the Director.

(d) *Responses.* (1) Except as otherwise provided herein; any party may file a written response to a motion within 10 days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Director. The presiding officer shall not rule on any order oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 1780.31 and 1780.32.

§ 1780.26 Discovery.

(a) *Limits on discovery.* Subject to the limitations set out in paragraphs(b), (d), and (e) of this section, a party to a proceeding under this subpart may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term ''documents'' may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained or translated, if necessary, by the parties through detection devices into reasonably unable form, as well as written material of all kinds.

(b) *Relevance.* A party may obtain document discovery regarding any matter not privileged that has material relevance to the merits of the pending action. Any request to produce documents that calls for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly, burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to

be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § 1780.27.

(c) *Forms of discovery.* Discovery shall be limited to requests for production of documents for inspection and copying. No other form of discovery shall be allowed. Discovery by use of interrogatories is not permitted. This paragraph shall not be interpreted to require the creation of a document.

(d) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

(e) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing. No exception to this time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 1780.27 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. Copies of the request shall be served on all other parties. The request must identify the documents to be produced either by individual item or by category and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business of they shall be labeled and organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests more than 250 pages of copying, the requesting party shall pay for copying and shipping charges. Copying charges are at the current rate per page imposed by OFHEO at § 1710.22(b)(2) of this chapter for requests for documents filed under the Freedom of Information Act, 12 U.S.C. 552.[1] The party to whom the request is addressed may require payment in advance before producing the documents.

(c) *Obligation to update responses.* A party who has responded to a discovery request is not required to supplement the response, unless:

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect, and

(2) The additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(d) *Motions to strike or limit discovery requests.* (1) Any party that objects to a discovery request may, within 10 days of being served with such request, file a motion in accordance with the provisions of § 1780.25 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and § 1780.25 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within 5 days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberate process, attorney work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The presiding officer retains discretion to determine when the identification by category is insufficient.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within 10 days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 1780.25 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may, within 5 days of service of a motion for the issuance of a subpoena compelling production, file a written response to the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses to motions pursuant to this section has expired, the presiding officer shall rule promptly on all such motions. If the presiding officer determines that a discovery request, or any of its terms, calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he may deny or modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the presiding officer. Notwithstanding any other provision in this part, the presiding officer may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the presiding officer its intention to file a timely motion for interlocutory review of the presiding officer's order to produce the documents, until the motion for interlocutory review has been decided.

(h) *Enforcing discovery subpoenas.* If the presiding officer issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the presiding officer against a party who fails to produce or induces another to fail to produce subpoenaed documents.

§ 1780.28 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the presiding officer for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place and manner for production in response to the subpoena.

[1] At the time of publication OFHEO has not issued a final regulation governing release of information. Until the release of information regulation is final, charges shall be imposed at the rate specified in the proposed regulation, 60 FR 25170 (May 11, 1995).

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 1780.27. The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any State, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The presiding officer shall issue promptly any document subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be determined by the presiding officer.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties and any party may respond to such motion within 10 days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 1780.27 and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§ 1780.29 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section to the presiding officer for the issuance of a subpoena, including a subpoena *duces tecum,* requiring the attendance of the witness at a deposition. The presiding officer may issue a deposition subpoena under this section upon a showing that—

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness, or infirmity, or will be otherwise unavailable;

(ii) The witness' unavailability was not produced or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed anywhere within the United States and its possessions and territories in which that witness resides or has a regular place of employment or such other convenient place as the presiding officer shall fix.

(3) Subpoenas must be issued promptly upon request, unless the presiding officer determines that the request fails to set forth a valid basis under this section for its issuance. Before making a determination that there is no valid basis for issuing the subpoena, the presiding officer shall require a written response from the party requesting the subpoena or require attendance at a conference to determine whether there is a valid basis upon which to issue the requested subpoena.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies of all parties. Unless the presiding officer orders otherwise, no deposition under this section shall be taken on fewer than 10 days' notice to the witness and all parties. Deposition subpoenas may be served anywhere within the United States or its possessions or territories on any person doing business anywhere within the United States or its possessions or territories, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion under § 1780.25 with the presiding officer to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than 10 days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for objection might have been avoided if the objection had been presented timely. All questions, answers and objections must be recorded.

(2) Any party may move before the presiding officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence that, during the deposition, the witness has refused to submit.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or with any order of the presiding officer made upon motion under paragraph (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the presiding officer has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the presiding officer on a party who fails to comply with or induces a failure to comply with a subpoena issued under this section.

§ 1780.30 Interlocutory review.

(a) *General rule.* The Director may review a ruling of the presiding officer prior to the certification of the record to the Director only in accordance with the procedures set forth in this section.

(b) *Scope of review.* The Director may exercise interlocutory review of a ruling of the presiding officer if the Director finds that—

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any motion for interlocutory review shall be filed by a party with the presiding officer within 10 days of his ruling. Upon the expiration of the time for filing all responses, the presiding officer shall refer the matter to the Director for final disposition. In referring the matter to the Director, the presiding officer may indicate agreement or disagreement with the asserted grounds for interlocutory review of the ruling in question.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Director under this section suspends or stays the proceeding unless otherwise ordered by the presiding officer or the Director.

§ 1780.31 Summary disposition.

(a) *In general.* The presiding officer shall recommend that the Director issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that—

There is no genuine issue as to any material fact; or

(2) The movant is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such motion or within such time period as allowed by the presiding officer, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of material facts as to which the movant contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, written interrogatory responses, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the movant contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the movant. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his own motion, the presiding officer may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the presiding officer shall determine whether the movant is entitled to summary disposition. If the presiding officer determines that summary disposition is warranted, the presiding officer shall submit a recommended decision to that effect to the Director, under § 1780.53. If the presiding officer finds that the moving party is not entitled to summary disposition, the presiding officer shall make a ruling denying the motion.

§ 1780.32 Partial summary disposition.

If the presiding officer determines that a party is entitled to summary disposition as to certain claims only, he shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the presiding officer has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 1780.33 Scheduling of prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as the parties may agree, the presiding officer shall direct representatives for all parties to meet with him in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a ''scheduling conference.'' The identification of potential witnesses, the time for and manner of discovery and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The presiding officer may, in addition to the scheduling conference, on his own motion or at the request of any party, direct representatives for the parties to meet with him (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings;

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The presiding officer, in his discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at such party's expense.

(d) *Scheduling or prehearing orders.* Within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the presiding officer shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 1780.34 Prehearing submissions.

(a) Within the time set by the presiding officer, but in no case later than 10 days before the start of the hearing, each party shall serve on every other party the serving party's—

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(B) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 1780.35 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the presiding officer may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, commonwealth, possession, territory of the United States, or the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The Party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of or during a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the presiding officer.

(3) The presiding officer shall promptly issue any hearing subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue the subpoena in a modified form upon any conditions consistent with this subpart. Upon issuance by the presiding officer, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may responded to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but no more than 10 days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If an subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 1780.28(c). A party's right to seek court enforcement of a hearing subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

Subpart C—Hearing and Posthearing Proceedings

§ 1780.50 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted in accordance with 5 U.S.C. chapter 5 and so as to provide a fair and expeditious presentation of the relevant disputed issues. Except as limited by this subpart, each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* OFHEO's counsel of record shall present its case-in-chief first, unless otherwise ordered by the presiding officer or unless otherwise expressly specified by law or regulation. OFHEO's counsel of record shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order or presentation of their cases, but if they do not agree, the presiding officer shall fix the order.

(3) *Examination of witnesses.* Only one representative for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the presiding officer may permit more than one representative for the party presenting the witness to conduct the examination. A party may have one representative conduct the direct examination and another representative conduct re-direct examination of a witness, or may have one representative conduct the cross examination of a witness and another representative conduct the re-cross examination of a witness.

(4) *Stipulations.* Unless the presiding officer directs otherwise, all documents that the parties have stipulated as admissible shall be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing shall be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the presiding officer's own motion.

§ 1780.51 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedures Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact that may be judicially noticed by a United States district court and any material information in the official public records of any Federal or State government agency.

(2) All matters officially noticed by the presiding officer or the Director shall appear on the record.

(3) If official notice is requested of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a)(1) of this section, any document, including a report of examination, oversight activity, inspection, or visitation, prepared by OFHEO or by another Federal or State financial institutions regulatory agency is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or

other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the presiding officer's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear in the record.

(2) When an objection to a question or line of questioning is sustained, the examining representative of record may make a specific proffer on the record of what he expected to prove by the expected testimony of the witness. The proffer may be by representation of the representative or by direct interrogation of the witness.

(3) The presiding officer shall retain exhibits, adequately marked for identification, for the record and transmit, such exhibits to the Director.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing and that witness has testified in a deposition in accordance with § 1780.29, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the presiding officer may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 1780.52 Post hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the presiding officer shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the presiding officer proposed findings of fact, proposed conclusions of law and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the presiding officer, unless otherwise ordered by the presiding officer.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A posthearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document.

(3) Any party is deemed to have waived any issue not raised in proposed findings or conclusions timely filed by that party.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings and conclusions and proposed order are due. Reply briefs must be limited strictly to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a posthearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The presiding officer shall not order the filing by any party of any brief or reply brief supporting proposed findings and conclusions in advance of the other party's finding of its brief.

§ 1780.53 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § 1780.52(b), the presiding officer shall file with and certify to the Director, for decision, the record of the proceeding. The record must include the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits and rulings; and the motions, briefs, memoranda and other supporting papers filed in connection with the hearing. The presiding officer shall serve upon each party the recommended decision, recommended findings and conclusions, and proposed order.

(b) *Filing of index.* At the same time the presiding officer files with and certifies to the Director for final determination the record of the proceeding, the presiding officer shall furnish to the Director a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the presiding officer in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; and each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

§ 1780.54 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, recommended findings and conclusions, and proposed order under § 1780.53, a party may file with the Director written exceptions to the presiding officer's recommended decision, recommended findings and conclusions, or proposed order; to the admission or exclusion of evidence; or to the failure of the presiding officer to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (a) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Director if the party taking exception had an opportunity to raise the same objection, issue, or argument before the presiding officer and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in or omissions from the presiding officer's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the presiding officer's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception and the legal authority relied upon to support each exception. Exceptions and briefs in support shall not exceed a total of 30 pages, except by leave of the Director on motion.

(3) One reply brief may be submitted by each party within 10 days of service of exceptions and briefs in support of exceptions. Reply briefs shall not exceed 15 pages, except by leave of the Director on motion.

§ 1780.55 Review by Director.

(a) *Notice of submission to the Director.* When the Director determines that the record in the proceeding is complete, the Director shall serve notice upon the parties that the proceeding has been submitted to the Director for final decision.

(b) *Oral argument before the Director.* Upon the initiative of the Director or on the written request of any party filed with the Director within the time for filing exceptions under § 1780.54, the Director may order and hear oral argument on the recommended findings, conclusions, decision and order of the presiding officer. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Director's final decision. Oral argument before the Director must be transcribed.

(c) *Director's final decision.* (1) Decisional employees may advise and assist the Director in the consideration and disposition of the case. The final decision of the Director will be based upon review of the entire record of the proceeding, except that the Director may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Director shall render a final decision and issue an appropriate order within 90 days after notification of the parties that the case has been submitted for final decision, unless the Director orders that the action or any aspect thereof be remanded to the presiding officer for further proceedings. Copies of the final decision and order of the Director shall be served upon each party to the proceeding and upon other persons required by statute.

§ 1780.56 Exhaustion of administrative remedies.

To exhaust administrative remedies as to any issue on which a party disagrees with the presiding officer's recommendations, a party must file exceptions with the Director under § 1780.54. A party must exhaust administrative remedies as a precondition to seeking judicial review of any decision issued under this subpart.

§ 1780.57 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Director may not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the Director. The Direct may, in his discretion and on such terms as he finds just, stay the effectiveness of all or any part of an order of the Director pending a final decision on a petition for review of that order.

Subpart D—Rules of Practice Before the Office of Federal Housing Enterprise Oversight

§ 1780.70 Scope.

This subpart contains rules governing practice by parties or their representatives before OFHEO. This subpart addresses the imposition of sanctions by the presiding officer or the Director against parties or their representatives in an adjudicatory proceeding under this part. This subpart also covers other disciplinary sanctions—censure, suspension or disbarment—against individuals who appear before OFHEO in a representational capacity either in an adjudicatory proceeding under this part or in any other matters connected with presentations to OFHEO relating to a client's or other principal's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of OFHEO are not subject to disciplinary proceedings under this subpart.

§ 1780.71 Definitions.

Practice before OFHEO for the purposes of this subpart, includes, but not is limited to, transacting any business with OFHEO as counsel, representative or agent for any other person, unless the Director orders otherwise. Practice before OFHEO also includes the preparation of any statement, opinion, or other paper by a counsel, representative or agent that is filed with OFHEO in any certification, notification, application, report, or other document, with the consent of such counsel, representative or agent. Practice before OFHEO does not include work prepared for an Enterprise solely at its request for use in the ordinary course of its business.

§ 1780.72 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before OFHEO or a presiding officer.* (1) *By attorneys.* A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, commonwealth, possession, territory of the United States, or the District of Columbia and who is not currently suspended or disbarred from practice before OFHEO.

(2) *By nonattorneys.* An individual may appear on his own behalf. A member of a partnership may represent the partnership and a duly authorized officer, director, employee, or other agent of any corporation or other entity not specifically listed herein may represent such operations or other entity; provided that such officer, director, employee, or other agent is not currently suspended or disbarred from practice before OFHEO. A duly authorized officer or employee of any government unit, agency, or authority may represent that unit, agency, or authority.

(b) *Notice of appearance.* Any person appearing in a representative capacity on behalf of a party, including OFHEO, shall execute and file a notice of appearance with the presiding officer at or before the time such person submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the representative thereby agrees and represents that he is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the presiding officer, continue to accept service until a new representative has filed a notice of appearance or until the represented party indicates that he or she will proceed on a pro se basis. Unless the representative filing the notice is an attorney, the notice of appearance shall also be executed by the person represented or, if the person is not an individual, by the chief executive officer, or duly authorized officer of that person.

§ 1780.73 Conflicts of interest.

(a) *Conflict of interest in representation.* No representative shall represent another person in an adjudicatory proceeding if it reasonably appears that such representation may be limited materially by that representative's responsibilities to a third person or by that representative's own interests. The presiding officer may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel or other

representative represents two or more parties to an adjudicatory proceeding or also represents a nonparty on a matter relevant to an issue in the proceeding, that representative must certify in writing at the time of filing the notice of appearance required by § 1780.72—

(1) That the representative has personally and fully discussed the possibility of conflicts of interest with each such party and nonparty;

(2) That each such party and nonparty waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 1780.74 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed during the course of any proceeding when any party or representative of record has acted or failed to act in a manner required by applicable statute, regulation, or order, and that act or failure to act—

(1) Constitutes contemptuous conduct;

(2) Has caused some other party material and substantive injury, including, but not limited to, incurring expenses including attorney's fees or experiencing prejudicial delay;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has delayed the proceeding unduly.

(b) *Sanctions.* Sanctions that may be imposed include, but are not limited to, any one or more of the following:

(1) Issuing an order against a party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just;

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) The presiding officer, on the motion of any party, or on his own motion, may impose any sanction authorized by this section. The presiding officer shall submit to the Director for final ruling any sanction that would result in a final order that terminates the case on the merits or is otherwise dispositive of the case.

(2) No sanction authorized by this section, other than refusing to accept late papers, shall be imposed without prior notice to all parties and an opportunity for any representative or party against whom sanctions would be imposed to be heard. The presiding officer shall determine and direct the appropriate notice and form for such opportunity to be heard. The opportunity to be heard may be limited to an opportunity to respond verbally, immediately after the act or inaction in question is noted by the presiding officer.

(3) For purposes of interlocutory review, motions for the imposition of sanctions by any party and the imposition of sanctions shall be treated the same as motions for any other ruling by the presiding officer.

(4) Nothing in this section shall be read to preclude the presiding officer or the Director from taking any other action or imposing any other restriction or sanction authorized by any applicable statute or regulation.

§ 1780.75 Censure, suspension, disbarment and reinstatement.

(a) *Discretionary censure, suspension and disbarment.* (1) The Director may censure any representative or other individual or suspend or revoke the privilege to appear or practice before OFHEO of any representative or other individual if, after notice of and opportunity for hearing in the matter, that individual is found by the Director—

(i) Not to possess the requisite qualifications or competence to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have caused unfair and material injury or prejudice to another party, such as prejudicial delay or unnecessary expenses including attorney's fees;

(iv) To have engaged in, or aided and abetted, a material and knowing violation of the 1992 Act, the Federal Home Loan Mortgage Corporation Act, the Federal National Mortgage Association Charter Act or the rules or regulations issued under those statutes or any other law or regulation governing Enterprise operations;

(v) To have engaged in contemptuous conduct before OFHEO;

(vi) With intent to defraud in any manner, to have willfully and knowingly deceived, misled, or threatened any client or prospective client; or

(vii) Within the last 10 years, to have been convicted of an offense involving moral turpitude, dishonesty or breach of trust, if the conviction has not been reversed on appeal. A conviction within the meaning of this paragraph shall be deemed to have occurred when the convicting court enters its judgment or order, regardless of whether an appeal is pending or could be taken and includes a judgment or an order on a plea of *nolo contendere* or on consent, regardless of whether a violation is admitted in the consent.

(2) Suspension or revocation on the grounds set forth in paragraphs (a)(1)(ii), (iii), (iv), (v), (vi), and (vii) of this section shall only be ordered upon a further finding that the individual's conduct or character was sufficiently egregious as to justify suspension or revocation. Suspension or disbarment under this paragraph shall continue until the applicant has been reinstated by the Director for good cause shown or until, in the case of a suspension, the suspension period has expired.

(3) if the final order against the respondent is for censure, the individual may be permitted to practice before OFHEO, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in OFHEO's files.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any State, commonwealth, possession, territory of the United States or the District of Columbia; any accountant or other licensed expert whose license to practice has been revoked in any State, commonwealth, possession, territory of the United or the District of Columbia; any person who has been and remains suspended or barred from practice before the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Board, the Farm Credit Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission is also suspended automatically from appearing or practicing before OFHEO. A disbarment or suspension within the meaning of this paragraph shall be deemed to have occurred when the disbarring or suspending agency or tribunal enters its

judgment or order, regardless of whether an appeal is pending or could be taken and regardless of whether a violation is admitted in the consent.

(2) A suspension or disbarment from practice before OFHEO under paragraph (b)(1) of this section shall continue until the person suspended or disbarred is reinstated under paragraph (d)(2) of this section.

(c) *Notices to be filed.* (1) Any individual appearing or practicing before OFHEO who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall file promptly with the Director a copy thereof, together with any related opinion or statement of the agency or tribunal involved.

(2) Any individual appearing or practicing before OFHEO who is or within the last 10 years has been convicted of a felony or of a misdemeanor that resulted in a sentence of prison term or in a fine or restitution order totaling more than $5,000 shall file a notice promptly with the Director. The notice shall include a copy of the order imposing the sentence or fine, together with any related opinion or statement of the court involved.

(d) *Reinstatement.* (1) Unless otherwise ordered by the Director, an application for reinstatement for good cause may be made in writing by a person suspended or disbarred under paragraph (a)(1) of this section at any time more than 3 years after the effective date of the suspension or disbarment and, thereafter, at any time more than 1 year after the person's most recent application for reinstatement. An applicant for reinstatement under this paragraph (d)(1) of this section may, in the Director's sole discretion, be afforded a hearing.

(2) An application for reinstatement for good cause by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time, but not less than 1 year after the applicant's most recent application. An applicant for reinstatement for good cause under this paragraph (d)(2) may, in the Director's sole discretion, be afforded a hearing. However, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section have been removed by a reversal of the order of suspension or disbarment or by termination of the underlying suspension or disbarment, any person suspended or disbarred under paragraph (b)(1) of this section may apply immediately for reinstatement and shall be reinstated by OFHEO upon written application notifying OFHEO that the grounds have been removed.

(e) *Conferences.* (1) *General.* The presiding officer may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, disbarment or suspension, regardless of whether a proceeding for censure, disbarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(2) *Resignation or voluntary suspension.* In order to avoid the institution of or a decision in a disbarment or suspension proceeding, a person who practices before OFHEO may consent to censure, suspension or disbarment from practice. At the discretion of the Director, the individual may be censured, suspended or disbarred in accordance with the consent offered.

(f) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this part, provided that in proceedings to terminate an existing OFHEO suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof and that the Director may, in the Director's sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by OFHEO be limited to written submissions. All hearings held under this section shall be closed to the public unless the Director, on the Director's own motion or upon the request of a party, otherwise directs.

(g) *Sanctions for contemptuous conduct.* If, during the course of any proceeding, a presiding officer finds any representative or any individual representing himself to have engaged in contemptuous conduct, the presiding officer may summarily suspend that individual from participating in that or any related proceeding or impose any other appropriate sanction. Contemptuous conduct includes dilatory, obstructionist, egregious, contumacious, unethical, or other improper conduct at any phase of any adjudicatory proceeding.

Mark A. Kinsey,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 98–25527 Filed 9–23–98; 8:45 am]

BILLING CODE 4220–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–77–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–23, PA–30, PA–31, PA–34, PA–39, PA–40, and PA–42 Series Airplanes

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–04–27, which currently requires incorporating certain icing information into the FAA-approved airplane flight manual (AFM) of The New Piper Aircraft, Inc. (Piper) PA–23, PA–30, PA–31, PA–34, PA–39, PA–40, and PA–42 series airplanes. The Federal Aviation Administration (FAA) inadvertently omitted Piper Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes from the Applicability section of AD 98–04–27. The proposed AD would retain the requirement of incorporating the icing information into the AFM for all airplanes affected by AD 98–04–27, and would add the Piper Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes to the Applicability of that AD. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before November 5, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–77–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–77–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–77–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 98–04–27, Amendment 39–10339 (63 FR 7668, February 17, 1998), currently requires revising the Limitations Section of the FAA-approved airplane flight manual (AFM) to specify procedures that would specify the following for PA–23, PA–30, PA–31, PA–34, PA–39, PA–40, and PA–42 series airplanes:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit flight in severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

That action also proposed to require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Actions Since Issuance of Previous Rule

Since AD 98–04–27 became effective, the FAA has realized that it inadvertently omitted the Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes from the Applicability section of the AD.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that:

—The requirements of AD 98–04–27 should also apply to Piper Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes; and

—AD action should be taken to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other PA–23, PA–30, PA–31, PA–34, PA–39, PA–40, and PA–42 series airplanes of the same type design, the FAA is proposing AD action to supersede AD 98–04–27. The proposed AD would retain from AD 98–04–27 the requirement of incorporating certain icing information into the FAA-approved AFM for the affected airplanes, and would add Piper Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes to the Applicability section of the AD.

Cost Impact

The FAA estimates that 5,265 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 47.7 and 43.9) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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.

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–04–27, Amendment 39–10339 (63 FR 7668, February 17, 1998), and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 98–CE–77–AD; Supersedes AD 98–04–27, Amendment 39–10339.

Applicability: Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31P–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, and PA–42–1000 airplanes, all serial numbers, certificated in any category.

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

1. *For all affected airplanes, except for Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes:* Within 30 days after March 13, 1997 (the effective date of AD 98–04–27).

2. *For all Models PA–31P, PA–31T, PA–31T1, PA–31T2, and PA–31P–350 airplanes:* Within the next 30 days after the effective date of this AD.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) At the applicable compliance time presented in the Compliance section of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [Note: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as ×18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 17, 1998.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25480 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, 125, and 135

[Docket No. FAA–1998–4458; Notice No. 98–13]

RIN 2120–AG35

Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This document contains a correction to the NPRM published in the Federal Register (62 FR 45912) on August 27, 1998. The NPRM proposes to ban, in certain domestic operations, the transportation of devices designed to chemically generate oxygen, including devices that have been discharged and newly manufactured devices that have not yet been charged for the generation of oxygen, with limited exceptions.

FOR FURTHER INFORMATION CONTACT: David L. Catey, (202) 267–8166.

Correction of Publication

In proposed rule FR Doc. 98–23010, beginning on page 45912 in the **Federal Register** issue of August 27, 1998, make the following corrections:

On page 45912, in the first column, in the heading, ''[Docket No. 29318; Notice No. 98–12]'', should read ''[Docket No. FAA–1998–4458; Notice No. 98–13]''

In the **ADDRESSES** section on page 45912, in the first column, in the fifth line, the docket number ''FAA–98–29318'', should read ''FAA–1998–4458''.

In the Comments Invited section on page 45912, in the second column, last paragraph, first line, ''Docket No. 29318'', should read ''Docket No. FAA–1998–4458''.

Issued in Washington, DC on September 18, 1998.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 98–25557 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Temporary Licenses for Associated Persons, Floor Brokers, Floor Traders and Guaranteed Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing amendments to its rules governing the granting of a temporary license (TL) by the National Futures Association (NFA) to applicants for registration in the categories of associated person (AP), floor broker (FB), floor trader (FT), and guaranteed introducing broker (IBG). These amendments would authorize NFA, in appropriate cases, to grant a TL to an applicant despite a ''yes'' answer to a Disciplinary History question, which currently makes an applicant ineligible for a TL. The Commission is proposing these amendments so that it may approve certain registration rules submitted by NFA without creating any inconsistency between the Commission's rules and those of NFA.

DATES: Comments must be submitted on or before October 26, 1998.

ADDRESSES: Comments on the proposed rules should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to *secretary@cftc.gov*. Reference should be made to ''Temporary License Eligibility.''

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5439.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8a(1) of the Commodity Exchange Act (Act) was amended in 1983 to authorize the Commission to grant a TL to an applicant for registration for a period not to exceed six months, subject to such rules, regulations and orders as the Commission may adopt.[1] This amendment to the Act was intended to ''streamline and simplify the current registration procedures to enable the Commission to register fit persons more expeditiously.'' [2]

The Commission adopted Rules 3.40–3.43 on February 27, 1984, to implement this authority with respect to AP applicants [3] and simultaneously authorized NFA to perform the function of granting TLs to AP applicants in appropriate cases.[4] The Commission added Rules 3.44–3.47 to govern TLs for IBG applicants on December 16, 1986,[5] and amended Rules 3.11 and 3.40–3.43 to govern TLs for FB and FT applicants on April 9, 1993.[6] NFA adopted its own rules concerning TLs for APs and IBGs, which the Commission has approved.[7] The Commission's rules and the NFA's rules currently in effect provide that, except as described below, one of the conditions for obtaining a TL is that an applicant have no ''yes'' answers to the Disciplinary History questions on the registration application.[8] The exception concerns an applicant for registration as an AP, FB or FT whose previous registration in these capacities was terminated within the preceding 60 days. These applicants will receive a TL upon mailing of a new registration application (Form 8–R) if, among other things, the new registration application (1) contains no ''yes'' answers to the Disciplinary History questions, or (2)

[1] Futures Trading Act of 1982, Pub. L. 97–444, Section 223, 96 Stat. 2310 (1983).

[2] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 50 (1982).

[3] 49 FR 8208 (March 5, 1984). An AP is a natural person who (1) solicits or accepts customer orders for a futures commission merchant (FCM) or IB, (2) solicits a client's or prospective client's discretionary account for a commodity trading advisor, (3) solicits funds, securities or property for a participation in a commodity pool on behalf of a commodity pool operator, or (4) supervises any of the foregoing persons so engaged. Section 4k(1)–(3) of the Act; Commission Rule 1.3(aa).

[4] 49 FR 8226 (March 5, 1984).

[5] 51 FR 45759 (Dec. 22, 1986). An IBG is a person (except an individual who elects to be and is registered as an AP of an FCM) engaged in soliciting or accepting customer orders but *not* the margin funds related thereto and who enters into a guarantee agreement with an FCM. The guarantee agreement relieves the IBG of the need to raise its own capital and restricts it to introducing accounts only to its guarantor FCM. Section 1a(14) of the Act; Commission Rules 1.3(mm), 1.17(a)(2)(ii) and 1.57(a)(1).

[6] 58 FR 19575 (Apr. 15, 1993). The related delegation order to NFA was issued simultaneously and published at 58 FR 19657 (Apr. 15, 1993). An FB can trade for others or for his or her own account on or subject to the rules of any contract market; an FT can trade only for his or her own account on or subject to the rules of any contract market. Section 1a(8) and (9) of the Act; Commission Rule 1.3(n) and (x).

[7] NFA Rules 301 and 302, respectively.

[8] Commission Rules 3.40(a) and 3.44(a)(2). The no ''yes'' answer restriction extends to principals of an IBG as well. Commission Rule 3.44(a)(3). *See also* Commission Rules 3.11(c)(1)(ii)(D) and 3.11(c)(2)(ii) concerning an FT, or a person whose registration as an FT terminated within the preceding 60 days, seeking to become an FB.

none except those arising from a matter that already has been disclosed in connection with a previous registration application if registration was granted, or (3) the ''yes'' answer was disclosed more than 30 days previously in an amendment to the prior registration application.[9]

Rules authorizing the issuance of TLs were adopted so that apparently fit persons (*i.e.*, those who had not self-declared any derogatory information on their registration applications) could begin acting like registrants in certain categories while various background checks were conducted. For example, checking an individual's fingerprints through the Federal Bureau of Investigation database can take six to eight weeks. The Commission believes that providing TLs is appropriate in light of the time required to complete the various background checks on applicants for registration.

II. NFA Proposals

NFA has adopted and submitted for Commission approval amendments to NFA Rules 301 and 302, governing TLs for APs and IBGs, as well as new NFA Rule 303 to govern TLs for FBs and FTs. NFA's submission was made pursuant to Section 17(j) of the Act by letter dated August 25, 1997. In response to letters from the Commission's Division of Trading and Markets, NFA supplemented its submission by letters dated January 22, February 19 and August 11, 1998.[10]

NFA's rule amendments and the new rule would eliminate the no ''yes'' answer criterion as an absolute bar to issuance of a TL. NFA notes that it now may not grant TLs to new applicants (*i.e.*, those not registered within the preceding 60 days) with ''yes'' answers no matter how innocuous the disclosed matter may be, even if NFA has previously granted registration despite the ''yes'' answer. NFA believes that this restriction is no longer necessary because it has developed sufficient expertise exercising the authority granted to it in various Commission delegation orders to identify in an accurate and prompt manner those types of disciplinary matters that it would not use to disqualify an applicant from registration.

NFA represents that under its proposed approach it would use its authority to grant TLs to applicants with ''yes'' answers that (1) NFA had previously cleared, or (2) NFA knew that it intended to clear. NFA further represents that it only brings adverse actions in circumstances that are ''similar to those in which the Commission has instituted registration actions based upon disciplinary offenses'' and that, in evaluating whether any applicant should be granted a TL despite a ''yes'' answer to a Disciplinary History question, it will follow the recent guidance set forth by the Commission concerning the treatment of disciplinary histories of FBs, FTs and applicants for registration in either category.[11]

NFA's new rule and rule amendments would also affect applicants for AP, FB and FT registration applying within 60 days of their last registration. Currently, these applicants may receive TLs upon mailing of a new Form 8–R if they have no new ''yes'' answers to Disciplinary History questions. A new ''yes'' answer in these circumstances is an answer that the applicant has not previously disclosed or has disclosed for the first time within 30 days of the submitted application.

NFA represents that this ''no-new-yes'' answer requirement creates processing difficulties for NFA's automated registration processing system, the Membership Registration Receivables System (MRRS). NFA explained that, in order to process transfer TLs,[12] MRRS must compare the date of the application and the date of the applicant's last registration termination in order to determine if the 60-day requirement is met. Next, MRRS must determine whether the applicant has previously disclosed the ''yes'' answer. MRRS then compares the date of the current application to the date the applicant previously disclosed the ''yes'' answer to determine if the 30-day requirement is satisfied. NFA represents that the procedures for transferring registrations also can produce processing errors that must be manually reviewed and corrected, thus consuming a significant amount of staff resources.[13]

NFA proposes to eliminate the no-new-yes answer requirement from its Registration Rules. NFA believes that its proposal would enable it to achieve its regulatory goals more efficiently. NFA contends that, under this proposed approach, MRRS would operate more efficiently and staff resources could be redirected to facilitate the quick identification of transfer applicants who receive TLs despite problematic disciplinary history information. NFA represents that, when appropriate, it would promptly terminate such TLs and institute registration denial proceedings.

III. Proposed Commission Rule Amendments

Although the NFA rule amendments concerning TLs submitted for Commission approval remain subject to Commission review and possible further refinement, the Commission preliminarily views the NFA rule amendments positively. As noted above, however, the NFA rule amendments are not consistent with Commission rules issued under Section 8a(1) of the Act, and therefore, the Commission could not approve them pursuant to Section 17(j) of the Act.[14] Accordingly, in order to permit the Commission to approve the NFA rule amendments, the Commission is proposing to amend its rules governing TLs.[15] The Commission's rule amendments would eliminate the provision that NFA may not grant a TL to an AP, FB, FT or IBG applicant if the applicant's registration application contains a ''yes'' answer to a Disciplinary History question.[16] The Commission is also proposing to eliminate the no-new-yes answer requirement from its rules governing TLs of AP, FB and FT applicants whose

[9] Commission Rules 3.11(c)(1)(i)(C), 3.11(c)(1)(ii)(C) and 3.12(d)(1)(vi); NFA Rule 301(b)(1)(D). *See also* Commission Rule 3.44(a)(3) and NFA Rule 302(a)(3) concerning principals of an IBG.

[10] Copies of the NFA rules submitted for Commission approval may be obtained upon request from the Commission's Office of the Secretariat at the address listed above.

[11] *See* Commission Advisory 61–97 (Dec. 8, 1997), to which is attached a letter to Robert K. Wilmouth, NFA President, from Jean A. Webb, Secretary of the Commission, dated Dec. 4, 1997.

[12] The term ''transfer TL'' is used because the Commission's rules and similar NFA rules in this area were intended to permit an AP to move from one firm to another without an interruption. For example, an AP could leave Firm A on Friday, mail in his new Form 8–R with a sponsor certification from Firm B, and be at work for Firm B under a TL on Monday morning.

[13] As an example, NFA indicates that in 1996 there were 24 instances in which it did not grant TLs because of new ''yes'' answers. However, NFA ultimately granted registration to all but one of those individuals, while the remaining individual withdrew his application.

[14] Section 17(j) of the Act provides in pertinent part that ''A registered futures association shall submit to the Commission any change in or addition to its rules * * *. The Commission shall approve such rules, if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this Act or the regulations issued pursuant to this Act * * *.''

[15] The Commission anticipates that, if it determines to approve NFA's rule amendments discussed above, such approval will be made concurrent with adoption of final Commission rule amendments that are being proposed herein.

[16] In the case of an IBG applicant, the provision pertaining to principals of the applicant would be amended similarly. *See* proposed amendments to Rules 3.40(a) and 3.44(a) (2) and (3).

registration terminated within the preceding 60 days.[17]

There are two provisions of the Commission's rules where a ''yes'' answer to a Disciplinary History question will prevent granting of *registration,* not merely at TL. These circumstances pertain to: (1) a registered FT seeking to become registered as an FB (Commission Rule 3.11(c)(2)(ii)); and (2) an AP whose registration is terminated because of the revocation or withdrawal of the sponsor's registration and who becomes associated with a new sponsor (Commission Rule 3.12(i)).[18] Since these provisions are modeled upon those governing TLs, the Commission believes that it is appropriate to amend these provisions to remove the no ''yes'' answer restriction as well.

The Commission also wishes to note that certain of its rules related to TLs are not being amended. Commission rules provide that a TL shall terminate immediately upon notice to an applicant that the applicant failed to disclose relevant disciplinary history or to disclose that, following the submission of the application, an event has occurred leading to an affirmative response. Such a notice must also be provided to the applicant's sponsor (in the case of an AP applicant), the contract market that has granted trading privileges (in the case of an FB or FT applicant) or the guarantor FCM (in the case of an IBG applicant).[19] The Commission emphasizes that it is important for all applicants to continue to declare derogatory information as required by the registration forms since failure to do so can lead to termination of a TL and, if willful, to denial or conditioning of registration.[20]

The Commission further notes that it is not amending the provisions of its rules governing TLs for FB applicants that restrict such persons to operating as an FT while the applicant has a TL prior to being granted registration as an FB.[21]

[17] *See* proposed amendments to Commission Rules 3.11(c)(1)(i) and (c)(1)(ii), and 3.12(d)(1) and (d)(3).

[18] The AP situation could arise where, for example, one FCM merges into another, the merged FCM withdraws its registration and the surviving FCM absorbs the APs of the disappearing FCM.

[19] The notice concerning failure to disclose or the occurrence of an event leading to an affirmative response also applies to a principal of an IBG. Commission Rules 3.42(a)(8) and 3.46(a)(10).

[20] *See* Section 8a(2)(G) and (3)(G) of the Act.

[21] This restriction to acting only in the capacity of an FT during the pendency of the TL does not apply if the FB applicant was registered as an FB within the preceding 60 days. Commission Rule 3.41(a).

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect APs, FBs, FTs and IBGs. The Commission has previously determined to evaluate within the context of a particular rule proposal whether all or some FBs, FTs, and IBGs should be considered ''small entities'' for purposes of the RFA and, if so, to analyze the economic impact on FBs, FTs and IBGs of any such rule at that time.[22] The rule amendments proposed herein will not affect the requirements for filing an application for registration. If adopted, these amendments will permit certain persons to obtain a TL where it now is not possible and thus permit them to begin lawfully acting as industry professionals sooner. Accordingly, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While the proposed rule amendments have no burden, the group of rules (3038–0023) of which they are a part has the following burden:

Average Burden Hours Per Response.	15.76
Numberr of Respondents.	73,435
Frequency of Response.	Annually and on occasion.

Copies of the OMB approved information collection package associated with these rules may be obtained from Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 3

Brokers, Registration.

[22] *See* 47 FR 18618, 18620 (Apr. 30, 1982) (FBs); 48 FR 35248, 35276–35278 (Aug. 3, 1983) (IBGs); and 58 FR 19575, 19588 (Apr. 15, 1993) (FTs). With respect to APs, the Commission has previously stated that the RFA does not apply to APs because APs must be individuals under Section 4k of the Act and Rule 1.3(aa). *See* 48 FR 14933, 14954 n.115 (Apr. 6, 1983).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4d, 4e, 4k, 8a and 17 thereof, 7 U.S.C. 6d, 6e, 6k, 12a and 21, the Commission hereby proposes to amend Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23.

2. Section 3.11 is proposed to be amended by revising paragraphs (c)(1)(i)(A) and (c)(1)(i)(B), by removing paragraph (c)(1)(i)(C), by revising paragraphs (c)(1)(ii)(A), (c)(1)(ii)(B) and (c)(1)(ii)(C), by removing paragraph (c)(1)(ii)(D) and redesignating paragraph (c)(1)(ii)(E) as paragraph (c)(1)(ii)(D), and by revising paragraph (c)(2)(ii) to read as follows:

§ 3.11 Registration of floor brokers and floor traders.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) The person's registration as a floor broker is not suspended or revoked; and

(B) There is no pending adjudicatory proceeding against the person under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or § § 3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in § 3.51.

(ii) * * *

(A) The person's registration as a floor trader is not suspended or revoked; and

(B) There is no pending adjudicatory proceeding against the person under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in § 3.51.

(C) If such person is seeking registration as a floor broker, the person will be granted a temporary license to act in the capacity of floor trader only if the person's prior registration was not subject to conditions or restrictions.

* * * * *

(2) * * *

(ii) Any person registered as a floor trader whose registration is not subject

to conditions or restrictions and who continuously maintains trading privileges at any contract market that has made the certification required under § 3.40 will be registered as, and in the capacity of, a floor broker upon mailing to the National Futures Association of a Form 3–R completed and filed in accordance with the instructions thereto indicating the intention to change registration category, accompanied by evidence of the granting of trading privileges at the new contract market, if applicable.

* * * * *

3. Section 3.12 is proposed to be amended by revising paragraphs (d)(1)(iv) and (d)(1)(v), by removing paragraph (d)(1)(vi), by revising paragraphs (d)(3) and (i)(1)(v), by removing paragraph (i)(1)(vi) and redesignating paragraph (i)(1)(vii) as paragraph (i)(1)(vi), and by revising paragraph (i)(2) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith; and

(v) That the sponsor has received a copy of the notice of the institution of a proceeding if the applicant has certified, in accordance with paragraph (d)(1)(iv) of this section, that there is a proceeding pending against the applicant as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph.

* * * * *

(3) The certifications permitted by paragraphs (d)(1)(i) and (v) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the proprietor, if a sole proprietorship. The certifications permitted by paragraphs (d)(1)(ii)–(iv) of this section must be signed and dated by the applicant for registration as an associated person.

* * * * *

(i) * * *

(1) * * *

(v) That the new sponsor has received a copy of the notice of the institution of a proceeding if the applicant for registration has certified, in accordance with paragraph (i)(1)(iv) of this section, that there is a proceeding pending against the applicant as described in that paragraph or that the Commission has permitted the withdrawal of an application for registration as described in that paragraph; and

* * * * *

(2) The certifications required by paragraphs (i)(1)(i), (i)(1)(v), and (i)(1)(vi) of this section must be signed and dated by an officer, if the sponsor is a corporation, a general partner, if a partnership, or the proprietor, if a sole proprietorship. The certifications required by paragraphs (i)(1)(ii)–(iv) of this section must be signed and dated by the applicant for registration as an associated person.

* * * * *

4. Section 3.40 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.

* * * * *

(a) A Form 8–R, properly completed in accordance with the instructions thereto;

* * * * *

5. Section 3.44 is proposed to be amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

* * * * *

(a) * * *

(2) A Form 7–R properly completed in accordance with the instructions thereto;

(3) A Form 8–R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, all of whom would be eligible for a temporary license if they had applied as associated persons;

* * * * *

Issued in Washington, DC on September 21, 1998, by the Commission.

Jean A. Webb,

Secretary of Commission.

[FR Doc. 98–25622 Filed 9–23–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Concept Release Concerning Placement of Foreign Board of Trade Computer Terminals in the United States

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of Comment period.

SUMMARY: The Commodity Futures Trading Commission (Commission) published a concept release concerning the placement of foreign board of trade computer terminals in the United States on July 24, 1998 (63 FR 39779). Comments on the concept release were originally due on September 22, 1998. By letter dated September 16, 1998, Mr. Leo Melamed, Chairman Emeritus and Senior Policy Advisory of the Chicago Mercantile Exchange and Chairman of the Global Markets Advisory Committee Subgroup on Cross-Border Regulation of Electronic Trading, requested that the Commission extend the comment period for an additional two weeks. In addition, by letter dated September 17, 1998, Mr. Christopher K. Bowen, Senior Vice President and General counsel, on behalf of the New York Mercantile Exchange (''NYMEX''), requested that the Commission extend the comment period on the concept release for an additional fifteen days The Commission has determined to grant Mr. Melamed's and NYMEX's requests and the extended deadline for comments on the concept release is October 7, 1998.

DATES: Comments must be received on or before October 7, 1998.

ADDRESSES: Any person interested in submitting comments on the concept release should submit them by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*.

FOR FURTHER INFORMATION CONTACT: David M. Battan, Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5450.

Issued in Washington, DC on September 18, 1998 by the Commodity Futures Trading Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 98–25619 Filed 9–23–98; 8:45 am]

BILLING CODE 6351–01–M

Notices

Federal Register

Vol. 63, No. 185

Thursday, September 24, 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 Safety and Inspection Service

[Docket No. 98–053N]

National Advisory Committee on Microbiological Criteria for Foods; Renewal

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of Rechartering of Committee.

This notice announces the rechartering of the National Advisory Committee on Microbiological Criteria for Foods. The Committee is being renewed in cooperation with the Department of Health and Human Services (HHS). The establishment of the Committee was recommended by a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, ''An Evaluation of the Role of Microbiological Criteria for Foods.''

The Department of Agriculture (USDA) is charged with the enforcement of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and the Egg Products Inspection Act (EPIA). Under these Acts, USDA is responsible for the wholesomeness and safety of meat, poultry, and egg products intended for human consumption. Similarly, the Secretary of HHS is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act (FFDCA). Under this Act, HHS is responsible for ensuring the safety of human foods other than meat, poultry, and egg products and of animal feeds.

In order to continue to meet the responsibilities of FMIA, PPIA, EPIA, and FFDCA, the National Committee on Microbiological Criteria for Foods is being reestablished. The Committee will be tasked with advising and providing recommendations to the Secretaries on the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been processed using good manufacturing practices.

Reestablishment of this Committee is necessary and in the public interest because the development of a sound public policy in this area can best be accomplished by a free and open exchange of information and ideas among Federal, State, and local agencies, and other interested parties. This complexity of the issues to be addressed assures that more than one meeting will be required to accomplish the Committee's tasks.

Members will be appointed by the Secretary of USDA after consultation with the Secretary of HHS. Because of their interest in the matters to be addressed by this Committee, advice on membership appointments will be requested from the Department of Commerce's National Marine Fisheries Service and the Department of Defense's Veterinary Service Activity.

For additional information, please contact Ms. Amelia L. Wright, Advisory Committee Specialist, USDA, Food Safety and Inspection Service, Suite 6913 Franklin Court, 1400 Independence Avenue, SW, Washington, DC 20250–3700. Background materials are available for inspection by contacting Ms. Wright at (202) 501–7343.

Reba Evans,

Acting Deputy Assistant Secretary for Administration.

[FR Doc. 98–25573 Filed 9–23–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Routt Divide Blowdown Analysis; Medicine Bow-Routt National Forest, Hahns Peak/Bears Ears Ranger District, Routt County, Colorado

September 16, 1998.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Medicine Bow-Routt National Forest will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects the South Fork Salvage Analysis of a portion of the Routt Divide Blowdown outside the Mount Zirkel Wilderness Area on the Hahns Peak/Bears Ears Ranger District.

The purpose of this action is to implement the Land and Resource Management Plan 1997 Revision for the Routt National Forest in the South Fork Analysis Area, considering the effects, both short and expected long term, resulting from the Routt Divide Blowdown. Actions proposed by the Forest Service include (1) commercial salvage of the windthrown trees in Management Areas 5.11 and 5.13. Associated with this action will be road construction and reconstruction. (2) Silvicultural treatments of timber stands in Management Areas 5.11, 5.13, and 7.1 designed to increase the resistance of these stands to attack by spruce bark beetle. Associated with this action will be road construction and reconstruction.

Additionally, we are attempting to determine the levels of spruce bark beetle infestation and tree mortality that would threaten the wild river, recreational or winter range values in Management areas 1.5, 4.3, 5.41, and whether or not management actions might be effective in protecting those values. If potential spruce beetle attack would threaten those values, then we will determine the actions that would be appropriate to prevent or respond to a beetle epidemic.

There is a need to contribute toward meeting the needs of the nation for timber products in Management Areas 5.11 General Forest and Rangelands—Forest Vegetation Emphasis and 5.13 Forest Products. Within Management Area 1.5 there is a need to protect the Wild River characteristics. Within Management Area 4.3 there is a need to protect recreational opportunities. Within Management Areas 5.11 and 5.13 there is a need to restrict the outbreak of spruce bark beetles. Within Management Area 7.1 there is a need to reduce the risk of spruce bark beetle from spreading into the management area.

DATES: Public Scoping will begin with a mailing to people who expressed an interest in the North Fork Salvage Analysis, land owners within the Forest Service boundaries adjacent to the analysis area, and State, County, and local officials.

On October 7th and 19th, 1998 Forest Service specialists will host open houses for the public to discuss the South Fork Analysis at the Steamboat Springs, Colorado Forest Service Office, 925 Weiss Dr. from 2 pm until 6 pm.

A Draft Environmental Impact Statement is expected to be completed by December, 1998. After a 45 day comment period, a Final Environmental Impact Statement will be prepared for South Fork Analysis.

ADDRESSES: Public meetings on South Fork Analysis are scheduled for:

October 15, 1998, 5 pm at the Steamboat Springs USDA Forest Service Office;
October 21, 1998, 5 pm at the Saratoga, Wyoming USDA Forest Service Office;
October 27, 1998, 5 pm at the Clark, Colorado Moon Hill School House;
October 28, 1998, 5 pm at the USDA Forest Service Office in Walden, Colorado.
Responsible Official: Jerry E. Schmidt, Forest Supervisor, Medicine Bow—Routt National Forest, 2468 Jackson Street, Laramie, WY 82070.

FOR FURTHER INFORMATION CONTACT: Andy Cadenhead, Interdisciplinary Team Leader, Medicine Bow—Routt National Forest, 925 Weiss Dr, Steamboat Springs, CO 80487, (970) 870–2220.

SUPPLEMENTARY INFORMATION: The analysis area location is approximately 12 miles north of Steamboat Springs, Colorado, in portions of the following sections:

T9N,R83W; Sections 8, 9, 10, 15, 16, 17
T8N,R85W; Sections 1, 2, 3
T9N,R84W; Sections 1, 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

There are several management area prescriptions within the South Fork Analysis Area. These include: 1.32 Backcountry Non-Motorized Recreation With Winter Limited Motorized; 1.5 National River System—Wild Rivers, Designated and Eligible; 4.3 Dispersed Recreation; 5.11 General Forest and Rangelands—Forest Vegetation Emphasis; 5.13 Forest Products; 5.41 Deer and Elk Winter Range; and 7.1 Residential/Forest Interface.

Forest Service Mission; As set forth in law, the mission of the Forest Service is to achieve quality land management under the sustainable multiple use management concept. This concept is to meet the diverse needs of people. It includes advocating a conservation ethic in promoting the health, productivity, diversity and beauty of forests. It also includes listening to people and responding to their diverse needs in resource decisions. Another part of our job is to help communities and states wisely use the forests to promote rural economic development and a quality rural environment. Also included in the mission is developing and providing scientific and technical knowledge aimed at improving our capability to protect, manage, and use forests and rangelands.

Jerry E. Schmidt,

Forest Supervisor, Medicine Bow—Routt National Forest.

[FR Doc. 98–25540 Filed 9–23–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Routt Divide Blowdown Analysis; Medicine Bow-Routt National Forest, Hahns Peak/Bears Ears Ranger District, Routt County, Colorado

September 16, 1998.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Medicine Bow-Routt National Forest will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects the Buffalo Pass Analysis of a portion of the Routt Divide Blowdown outside the Mount Zirkel Wilderness Area on the Hahns Peak/Bears Ears Ranger District.

The purpose of this action is to implement the Land and Resource Management Plan 1997 Revision for the Routt National Forest in the Buffalo Pass Analysis Area, considering the effects, both short and expected long term, resulting from the Routt Divide Blowdown. Actions proposed by the Forest Service include Silvicutural treatments of timber stands in Management Areas 5.11, 5.13, and 7.1 designed to increase the resistance of these stands to attack by spruce bark beetle. Associated with this will be road construction and reconstruction.

Salvage and/or other treatments to kill or remove beetles in the blowdown in Management Area 4.2. Treatments in this management area would be accomplished without new road construction.

Additionally, the level of beetle infestation and tree mortality that threatens wild river, recreational, water quality or winter range values in Management Areas 1.32, 4.2, 4.3, 5.41, 3.23, 8.22 must be determined; once determined, appropriate management actions will be implemented to protect those values.

There is a need to contribute toward meeting the needs of the nation for timber products in management areas 5.11 and 5.13. Within Management Area 4.2, along the Buffalo Pass Road (FDR 60) and State Highway 40, there is a need to protect the scenic qualities of these corridors. Within Management Area 4.3 there is a need to protect recreational opportunities. Within Management Areas 5.11 and 5.13 there is a need to restrict an infestation of spruce bark beetles. Within Management Area 7.1 there is a need to reduce the risk of spruce beetle from spreading into the management area. Within Management Area 8.22 there is a need to protect the site vegetation and facilities. There is a need to test silvicultural treatments in spruce stands and monitor the response of these stands to spruce beetle populations.

DATES: Public Scoping will begin with a mailing to people who expressed an interest in the North Fork Salvage Analysis, land owners within the Forest Service boundaries adjacent to the analysis area, and State, County, and local officials.

On October 7th and 19th, 1998 Forest Service specialists will host open houses for the public to discuss the Buffalo Pass Analysis at the Steamboat Springs, Colorado Forest Service Office, 925 Weiss Dr. from 2:00 pm until 6:00 pm.

A Draft Environmental Impact Statement is expected to be completed by December, 1998. After a 45 day comment period, a Final Environmental Impact Statement will be prepared for Buffalo Pass Analysis.

ADDRESSES: Public meetings on Buffalo Pass Analysis are scheduled for:

October 15, 1998, 5 pm, at the Steamboat Springs USDA Forest Service Office;
October 21, 1998, 5 pm at the Saratoga, Wyoming USDA Forest Service Office;
October 27, 1998, 5 pm at the Clark, Colorado Moon Hill School House;
October 28, 1998, 5 pm at the USDA Forest Service Office in Walden, Colorado.

Responsible Official

Jerry E. Schmidt, Forest Supervisor, Medicine Bow—Routt National Forest, 2468 Jackson Street, Laramie, WY 82070.

FOR FURTHER INFORMATION CONTACT: Andy Cadenhead, Interdisciplinary Team Leader, Medicine Bow—Routt National Forest, 925 Weiss Dr, Steamboat Springs, CO 80487, (970) 870–2220.

SUPPLEMENTARY INFORMATION: The Buffalo Pass Analysis Area in northwest Colorado is that portion of the Medicine Bow—Routt National Forest lying adjacent to Steamboat Springs, Colorado on the north, northeast and southeast. The analysis area includes all or portions of the following sections:

T4NR83W, Sections 7–11, 15–22
T4NR84W, Sections 10–15, 23–24
T5NR84W, Sections 1–2, 11–14, 23–26, 35–36
T5NR83W, Sections 1–5, 8–17, 20–29, 32–36
T5NR82W, Sections 6–7, 18–19, 30
T6NR82W, Section 31
T6NR83W, Sections 1–5, 8–17, 20–29, 32–36
T6NR84W, Sections 11–12, 13–14, 23–26, 35–36
T7NR83W, Sections 1–5, 8–17, 20–29, 32–25
T7NR84W, Sections 1–28, 34–36
T7NR85W, Sections 12–13

There are a number of management area prescriptions within the Buffalo Pass Analysis Area. These Include 1.12 Wilderness, Primitive, 1.13 Wilderness, Semi-Primitive, 1.32 Backcountry Non-Motorized Recreation With Winter Limited Motorized, 3.23 Municipal Watersheds—Water Quality Emphasis, 3.31 Backcountry Recreation—Year-round Motorized, 4.2 Scenery, 4.3 Dispersed Recreation, 5.11 General Forest and Rangelands—Forest Vegetation Emphasis, 5.13 Forest Products, 5.41 Deer and Elk Winter Range, 7.1 Residential/Forest Interface, and 8.22 Ski Based Resorts: Existing/Potential.

Forest Service Mission: As set forth in law, the mission of the Forest Service is to achieve quality land management under the sustainable multiple use management concept. This concept is to meet the diverse needs of people. It includes advocating a conservation ethic in promoting the health, productivity, diversity and beauty of forests. It also includes listening to people and responding to their diverse needs in resource decisions. Another part of our job is to help communities and states wisely use the forests to promote rural economic development and a quality rural environment. Also included in the mission is developing and providing scientific and technical knowledge aimed at improving our capability to protect, manage, and use forests and rangelands.

Jerry E. Schmidt,

Forest Supervisor, Medicine Bow—Routt National Forest.

[FR Doc. 98–25541 Filed 9–23–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Agency: Economic Development Administration (EDA).

Title: Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance.

Agency Form Number: Not Applicable.

OMB Approval Number: 0610–0091.

Type of Request: Extension of a currently approved collection.

Burden: l,296 hours.

Average Hours Per Response: Approximately 8 hours.

Number of Respondents: Approximately 162 respondents.

Needs and Uses: This information collection is needed to determine whether a firm is eligible to apply for trade adjustment assistance. This assistance helps U.S. manufacturing firms injured by imports to develop strategies for competing in the global market place. The information submitted is a major phase in obtaining a firm's history, including sales, production and employment data (the firm provides quarterly unemployment security forms submitted to the state, a description of the products produced by such firm, tax returns and/or financial statements, a firm's decline in sales accounts, and brochures of such firm's production). The information collection provides an essential tool for firms to use in submitting the information required to demonstrate that they qualify for certification of eligibility. The information is required under Section 251 of the Trade Act of 1974, as amended.

Affected Public: Businesses, farms or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: September 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–25613 Filed 9–23–98; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Plant Capacity Utilization.

Form Number(s): MQ–C1.

Agency Approval Number: 0607–0175.

Type of Request: Revision of a currently approved collection.

Burden: 38,250 hours.

Number of Respondents: 17,000.

Avg Hours Per Response: 2.25 hours.

Needs and Uses: The Census Bureau conducts the Survey of Plant Capacity annually to provide information on the use of industrial capacity for manufactured products. Data are gathered from a sample of manufacturing plants in the United States. The survey form collects data on the value of plant production during actual operations and at ''full production'' and ''national emergency production'' levels. The Census Bureau mails out survey forms to collect the data. Companies are asked to respond to the survey within 30 days of the initial mailing.

Survey data are used in measuring inflationary pressures and capital flows, in understanding productivity determinants, and in analyzing and forecasting economic and industrial trends. The survey results are used by such agencies as the Federal Reserve Board, Federal Emergency Management Agency, International Trade Administration, and the Department of Defense.

This resubmission is to address proposed changes to the survey form. We plan to expand the collection of data on characteristics of work patterns to increase the usefulness of the survey data. We have also scaled back the

survey to request only fourth quarter data for one year, instead of fourth quarter data for two years.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 182, 224, and 225.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–25614 Filed 9–23–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 08/16/98–09/15/98

Firm name	Address	Date petition accepted	Product
Gerlin, Inc	170 Tubeway Drive, Carol Stream, IL 60188.	08/20/98	Butt Weld Fittings and Flanges of Stainless Steel.
Eric Scott Leather, Ltd	980 Rozier Street, Sainte Genevieve, MO 63670.	08/28/98	Leather Day Planners, Check Book Covers, Wallets, Executive Pads, Luggage Tags and Passport Cases.
Rainbow Piece Dye Works, Inc	20–21 Wagaraw Road, Fair Lawn, NJ 07410.	08/28/98	Dyeing and Finishing.
Randolph Engineering, Inc	26 Thomas Patton Drive, Randolph, MA 02368.	09/04/98	Wire Rimmed Sunglasses and Opthalmic Frames.
S.B. Electronics, Inc	131 South Main Street, Barre, VT 05641	09/04/98	Film/Foil Dielectric Capacitors in Valves.
Dolphin Manufacturing Company	2929 East Apache, Tulsa, OK 07110	09/14/98	Wooden Furniture for Display Purposes.
Kelltech Precision Machining, Inc	2009 Stone Avenue, San Jose, CA 95025.	09/15/98	Precision Machined Brackets.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of the business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 17, 1998.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 98–25543 Filed 9–23–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent and Trademark Office In-Process Telephone Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DoC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 23, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Cathy Kern, Director, Center for Quality Services, Crystal Park 1—Suite 812, 2011 Crystal Drive, Arlington, VA 22202, by telephone at (703) 305–4203, by facsimile transmission to (703) 308–8002, or by e-mail to cathy.kern@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent and Trademark Office (PTO) has established customer-focused goals and objectives in each business area. The Patent business area has established the following goal: Exceed Our Customer's Quality Expectations Through the Competencies and Empowerment of Our Employees. In addition, based on customer feedback, the following four objectives have been identified as key drivers of overall customer satisfaction: (1) direct the customer promptly to the proper office or person; (2) return telephone calls within one business day, or provide

another contact; (3) set forth clearly in written communications the technical, procedural, and legal position of the examiner; and (4) conduct a thorough search of all relevant information.

An internal review program, called an In-Process Review, has been established to focus on performance against the last two standards. To ensure that the internal reviews accurately reflect customer perceptions of quality, the PTO staff will conduct telephone interviews with customers following the same In-Process Review. The results from this review will enable the Patent business area to identify any discrepancies between the internal and customer perceptions of quality. In addition, this information will be used to develop training to address specific weaknesses.

The telephone surveys will be based on the patent applications reviewed by the PTO's Quality Assurance Specialists and Supervisory Patent Examiners. The PTO is drawing the survey sample from a respondent pool of 2,280 applications reviewed each year by the Quality Assurance Specialists and Supervisory Patent Examiners. This breaks down to 380 applications from each of the six Technology Centers that review patent applications. The PTO estimates that from this total of 380 applications, they will be able to successfully review 80 from each of the six technology centers. The PTO estimates that it will have a random sample of 480 applications.

II. Method of Collection

The survey will be conducted by telephone. A random sample is used to collect the data. Statistical methods will be followed.

III. Data

OMB Number: None.

Form Number: There are no forms associated.

Type of Review: New collection.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

Estimated Number of Respondents: 480 responses per year.

Estimated Time Per Response: It is estimated to take approximately 30 minutes to complete the telephone survey.

Estimated Total Annual Respondent Burden Hours: 240 hours per year.

Estimated Total Annual Respondent Cost Burden: $42,000 per year.

Title of form	Estimated time for response (minutes)	Estimated annual burden hours	Estimated annual responses
Patent and Trademark Office In-Process Telephone Survey	30	240	480
Totals	.....	240	480

Note: The PTO is pulling a random sample of 480 applications as part of the survey effort. Out of this sample, the PTO estimates that they will receive 408 completed surveys, or that they will receive 85% of the sample. This rate is based on previous telephone interviews that resulted in response rates ranging from 80–95%. Depending on the number of surveys completed, the burden to the public will range from 204 to 240 hours.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: September 20, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–25615 Filed 9–23–98; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

September 18, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 339/639 is being increased for special shift, reducing the limit for Categories 338/638 to account for the special shift being applied. In addition, the limit for 347/348/647/648 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67622, published on December 29, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 18, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive

issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on September 24, 1998, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	1,000,846 dozen.
339/639	1,143,774 dozen.
347/348/647/648	2,458,050 dozen of which not more than 1,148,820 dozen shall be in Categories 647/648.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–25611 Filed 9–23–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 18, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63524, published on December 1, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 18, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on September 24, 1998, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334/634	235,366 dozen.
338	4,878,542 dozen.
339	1,354,519 dozen.
340/640	636,540 dozen of which not more than 239,089 dozen shall be in Categories 340–D/640–D [2].
347/348	792,616 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–25610 Filed 9–23–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

September 18, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67628, published on December 29, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 18, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation

of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on September 24, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
347/348	1,244,440 dozen of which not more than 659,131 dozen shall be in Category 347 and not more than 512,658 dozen shall be in Category 348.
642	293,883 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–25612 Filed 9–23–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Off-Exchange Agricultural Trade Options.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0048, Off-Exchange Agricultural Trade Options, which is due to expire January 31, 1999. The Commission has removed the prohibition on off-exchange trade options on the agricultural commodities enumerated in the Commodity Exchange Act pursuant to a three-year pilot program. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be receive on or before [].

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Off-Exchange Agricultural Trade Options.

Control Number: 3038–0048.

Action: Extension.

Respondents: Agricultural Trade Option Merchants.

Estimated Annual Burden: 32,060.

Respondents	Regulation (17 CFR)	Estimated # of respondents	Annual responses	Est. avg. hours per response
ATMs	Parts 3 and 32	3,610	5,915	32,060

Issued in Washington, D.C. on September 21, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–25620 Filed 9–23–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Intent to Renew Information Collection 3038–0013: Exemptions from Speculative Limits.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0013, Exemptions from Speculative Limits, which is due to expire February 28, 1999. Section 4a(1) of the Commodity Exchange Act (Act) allows the Commission to set speculative limits in any commodity for futures delivery in order to prevent excessive speculation. Certain sections of the Act and/or the Commission's Regulations allow exemptions from the speculative limits for persons using the market for hedging and, under certain circumstances, for commodity pool operators and similar traders. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before November 23, 1998.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Exemptions from Speculative Limits

Control Number: 3038–0013

Action: Extension

Respondents: Traders

Estimated Annual Burden: 36

Respondents	Regulation (17 CFR)	Estimated number of respondents	Annual responses	Estimated average hours, per response
Traders	1.47, 1.40 and Part 150	12	12	36

Issued in Washington, DC on September 21, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–25621 Filed 9–23–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Chanute Air Force Base (AFB), Illinois

On April 28, 1998, the Air Force issued the Fourth Revised Supplemental Record of Decision (FRSROD) for the Disposal and Reuse of Chanute AFB, Illinois. The decisions included in this FRSROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of Chanute AFB, filed with the Environmental Protection Agency and made available to the public on July 19, 1991.

Chanute AFB closed on September 30, 1993, pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. Law. 100–526 (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission. The FEIS analyzed potential environmental impacts of the Air Force's disposal options by portraying a variety of potential land uses to cover a range of reasonably foreseeable future uses of the property and facilities by others.

The Air Force issued a ROD on July 21, 1992 which documented a series of decisions regarding the intended disposal of Government-owned property. Since that time the Air Force has modified the decisions in the ROD four times. This FRSROD modifies certain decisions made in the ROD and its supplements, thus completing the disposal decisions for Chanute AFB. The Air Force has decided to modify the method of disposal for Parcel O, and clarify the disposal of the phone system, roads, and rights of way.

The implementation of these conversion activities and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment.

Any questions regarding this matter should be directed to Mr. John P. Carr, Program Manager at (703) 696–5546. Correspondence should be sent to: AFBCA/DB, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–25596 Filed 9–23–98; 8:45 am]

BILLING CODE 3910–01–P

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 November 23, 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, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat Sherrill@ed.gov, or should be faxed to 202–708–9346.

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 that 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: September 21, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Evaluation of the National Star Schools Program.

Frequency: One time.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 364.

Burden Hours: 159.

Abstract: The Star Schools program has the purpose of encouraging improved instruction in mathematics, science, and foreign languages as well as other subjects through modern telecommunications technology. The purpose of this evaluation is to independently examine the implementation and administration of the program as a whole and of individual projects, as well as the program's outcomes and impact on schools, teachers, and students. Clearance is requested for two data collection efforts (1) a site teacher survey of 400 respondents and (2) a production teacher survey of 25 respondents. The Department uses the information to make grant awards.

[FR Doc. 98–25572 Filed 9–23–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–781–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

September 18, 1998.

Take notice that on September 14, 1998, ANR Pipeline Company, (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed under Sections 157.205 and 157.216(b) of the Commission's Regulations to abandon its North Sparta Meter Station, located in Kent County, Michigan all as more fully described in the request which is on file with the Commission and open to public inspection. The North Sparta Meter Station was previously used to deliver gas to Michigan Consolidated Gas Company (Mich Con). ANR states that Mich Con no longer needs service through the North Sparta Meter Station. ANR states further, that in place of receiving gas at the North Sparta Meter Station, Mich Con has been receiving deliveries at ANR's Sparta-Muskegon Meter Station.

ANR asserts that it will not terminate any service to Mich Con as a result of this proposed abandonment and that Mich Con has already disconnected its facilities from ANR's at the North Sparta Meter.

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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–25484 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–772–000]

Black Marlin Pipeline Company; Notice of Request Under Blanket Authorization

September 18, 1998.

Take notice that on September 10, 1998, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–772–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations (18 CFR 157.205, 157.216) under the Natural Gas Act (NGA) for authorization to abandon by sale to Houston Pipe Line Company (HPL) certain measuring and regulating facilities in Galveston County, Texas, under Black Marlin's blanket certificate issued in Docket No. CP89–2115–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Black Marlin proposes to abandon the measuring and regulating facilities at two interconnections between Black Marlin and HPL (HPL Texas City and HPL Grant Avenue Stations). It is stated that both interconnections were constructed under Commission authorization in Docket No. CP84–354–000 as part of a 13-mile extension of its pipeline system. It is asserted that Black Marlin proposes to sell the facilities to HPL in response to a request from HPL. It is further asserted that HPL will continue to use the facilities as part of its distribution system to serve its gas system and that there will be no loss of service to any customer. Black Marlin states that the proposal is not prohibited by its FERC gas tariff and that it has sufficient capacity without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 14 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,

Secretary.

[FR Doc. 98–25482 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–402–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1998.

Take notice that on September 15, 1998, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of October 15, 1998:

First Revised Sheet No. 264
Original Sheet No. 264A
First Revised Sheet No. 278
Original Sheet No. 278A
First Revised Sheet No. 304
Original Sheet No. 304A

Eastern Shore states that the purpose of this filing is to modify certain of Eastern Shore's pro forma service agreements to provide for specific types of volume-related discounts that may be granted by Eastern Shore. By making these modifications to Eastern Shore's form of service agreements, Eastern Shore seeks to reduce the need for filing individual discount agreements as ''material deviations'' when such discounts are volume-related.

Eastern Shore further states its proposed tariff revisions are consistent with the Commission's clarifications regarding discount agreements set forth in ''Order on Rehearing and

Clarification'' issued by the Commission in Natural Gas Pipeline Company of America, 82 FERC ¶61,298 (1998) (Natural). The Commission found that Natural must file all discounts which contain material deviations from the pro forma service agreements in Natural's tariff. Natural, 82 FERC at 62,179–80. Discount agreements containing variations from the pro forma service agreement (other than those specified in Order No. 582) must be on file and approved by the Commission—either by being reflected in the pro forma agreement in the tariff or by being filed individually as non-conforming service agreements. Id. at 62,180.

Eastern Shore states that it proposes to revise three (3) of its pro forma service agreements. Eastern Shore has specified a list of options which would allow Eastern Shore and its customers to agree upon specific types of volume-related discounts pursuant to the pro forma service agreement, without the filing of individual non-conforming service agreements. This language in the pro forma service agreement allows the parties to tailor the discount to specific market and business conditions by defining discounts which apply only to specific volumes, to volumes during specific periods, of time, to volumes at specific delivery point areas, zones or geographical area, or in relation to volumes actually transported. These revisions provide Eastern Shore and its customers the ability to agree upon discounted rates which reflect conditions in specific markets. Eastern Shore believes this approach provides commercial benefits to Eastern Shore's customers and is more administratively flexible and efficient for both Eastern Shore and its customers.

Finally, Eastern Shore states that copies have been mailed to all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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,

Secretary.

[FR Doc. 98–25488 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–10–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1998.

Take notice that on September 15, 1998, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of September 1, 1998.

ESGN states that the purpose of this instant filing is to track rate changes attributable to storage service purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS, respectively.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said 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 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate 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. Boerger,

Secretary.

[FR Doc. 98–25489 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–126–009]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1998.

Take notice that on September 15, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1 the following revised tariff sheets, with an effective date of August 31, 1998:

Substitute Ninteenth Revised Sheet No. 4
Substitute Eighth Revised Sheet No. 5
Substitute Fourth Revised Sheet No. 11B
Substitute Fifth Revised Sheet No. 27
Fifth Revised Sheet No. 49
Original Sheet No. 49A
Substitute Second Revised Sheet No. 74C
Substitute Original Sheet No. 75D

Iroquois states that the instant tariff sheets are filed to comply with the Commission's order issued in the captioned proceeding on August 31, 1998. Specifically, Sheet Nos 4, 5, 11B, 27, and 75C specify the effective date and refer to the August 31 letter order of the Commission. The remaining tariff sheets make additional changes required by that order.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–25483 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–194–007]

Northern Border Pipeline Company; Notice of Amendment

September 18, 1998.

Take notice that on September 17, 1998, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP95–194–007 an amendment pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, to amend its certificate issued at Docket No. CP95–194–000, *et al.* on August 1, 1997 in order to place certain compressor stations in-service prior to the in-service date of its Expansion/Extension Project, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Northern Border seeks to place Compressor Stations 3 and 5 in-service at the earliest possible date in order that construction at Compressor Stations 2 and 4 can be completed without impact to existing firm shippers. Northern Border states that Compressor Stations 3 and 5 will be subject to the accounting treatment authorized in ordering paragraph (H) of the August 1 Order.

Any person desiring to be heard or to make any protest with reference to said application, should on or before September 25, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (Rule 210, 211, or 214) and regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission, or its delegate, on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the certificate is required by the public convenience and necessity.

If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that an oral hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–25560 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–91–000]

Ozark Gas Transmission, L.L.C.; Notice of Tariff Filing

September 18, 1998.

Take notice that on September 4, 1998, Ozark Gas Transmission, L.L.C. (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of September 8, 1998:

Third Revised Sheet No. 5
Fourth Revised Sheet No. 46
Sheet No. 47

Ozark States that the tariff sheets are submitted pursuant to Section 154.1(d) of the Commission's Regulations to reflect a non-conforming agreement between Ozark and Sonat Exploration Company. Ozark proposes a September 8, 1998, effective date for these sheets, and has sought a waiver of the Commission's Regulations to permit this effective date.

Any person desiring to be heard or to protest said 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 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should have been filed in accordance with section 154.210 of the Commission's Regulations but will be considered if filed on or before September 22, 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,

Secretary.

[FR Doc. 98–25486 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97–13–002]

Tejas Gas Pipeline Company; Notice of Revised Operating Statement

September 18, 1998.

Take notice that on June 15, 1998, Tejas Gas Pipeline, LLC (Tejas) filed a revised Operating Statement in compliance with a Commission order issued in Docket No. PR97–13–001 on June 1, 1998. 83 FERC ¶ 61,245 (1998). Tejas proposes the following changes to its Operating Statement: (1) A new section under Article I which states that the Commission's rules and regulations, as well as the Operating Statement, will control in the event of any inconsistency between a service agreement and the Commission's rules and regulations; (2) a revised section 3(b)(i) to allow interstate shippers to change service nominations on four hours prior notice; and (3) a revised Section 18(a) which removes Tejas' discretionary right to cancel any and all terms under the Operating Statement.

The Revised Operating Statement describes the firm and Interruptible storage services provided by Tejas under Section 311 of the Natural Gas Policy Act. The Section 311 services commenced on August 15, 1997 at Tejas' West Clear Lake Storage Facility near Houston in Harris County, Texas, pursuant to Section 284.123(b) of the Commission's regulations.

Any person desiring to participate in this proceeding must 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 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions or protests must be filed with the Secretary of the Commission on or before October 5, 1998. Copies of the

petition are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–25487 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–788–000]

Williams Gas Pipeline Central, Inc.; Notice of Request Under Blanket Authorization

September 18, 1998.

Take notice that on September 16, 1998, Williams Gas Pipeline Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–788–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization (1) to replace and relocate the Kansas Gas Service Company, a division of ONEOK, Inc. (Kansas Gas) Gardner Junior High School meter setting and appurtenant facilities to the tap site, and (2) to abandon in place by sale to Kansas Gas approximately 285 feet of 2-inch lateral pipeline downstream of the relocated meter, all in Johnson County, Kansas, under the authorization issued in Docket No. CP82–479–000,[1] 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.

The estimated construction cost is approximately $57,217, which will be reimbursed by Kansas Gas through firm transportation.

Williams states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission 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 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.

[1] *See*, 20 FERC ¶ 62,592 (1982).

David P. Boergers,

Secretary.

[FR Doc. 98–25485 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL96–74–002, et al.]

Enron Power Marketing, Inc. v. El Paso Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 18, 1998.

Take notice that the following filings have been made with the Commission:

1. Enron Power Marketing, Inc. v. EL Paso Electric Company

[Docket Nos. EL96–74–002 and EL97–8–002]

Take notice that on June 12, 1998, El Paso Electric Company (EPE), tendered for filing revisions to the open access transmission tariff of its FERC Electric Tariff, Original Volume No. 1.

Comment date: October 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Company

[Docket Nos. ER95–1775–003 and OA96–116–000]

Take notice that on September 15, 1998, Tampa Electric Company (Tampa Electric), tendered for filing a refund report in compliance with the Commission's letter order issued June 10, 1998, approving the settlement agreement in Docket Nos. ER95–1775–000, OA96–116–000, and OA96–116–001.

Copies of the refund report have been served on affected customers, the Florida Public Service Commission, and the Georgia Public Service Commission.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Mid-Continent Area Power Pool

[Docket No. ER98–3454–000]

Take notice that on September 14, 1998, Mid-Continent Area Power Pool tendered for filing Notice of Withdrawal of its filing made on June 22, 1998 of ''Schedule R: Redispatch Service,'' as amended on June 25, 1998.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. FPL Energy Power Marketing, Inc.

[Docket No. ER98–3566–000]

Take notice that on September 15, 1998, FPL Energy Power Marketing, Inc. (FPL PM), amended its filing in this docket to seek an effective date of October 1, 1998.

FPL PM hereby requests that instead of the date requested in the September 4th filing, the tariff be made effective on October 1, 1998.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. International Energy Ventures, Inc.

[Docket No. ER98–4264–000]

Take notice that on September 11, 1998, International Energy Ventures, Inc. (IEV) filed an amended petition with the Commission for acceptance of IEV Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations, and name change of International Energy Group, Inc. from its previous filing.

IEV intends to engage in wholesale electric power and energy purchases and sales as a marketer. IEV is not in the business of generating or transmitting electric power.

Comment date: October 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER98–4534–000]

Take notice that on September 15, 1998, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Tampa Electric Company for Short-Term Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreement be permitted to become effective on August 1, 1998.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER98–4535–000]

Take notice that on September 15, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing Service Agreements to provide Non-Firm Point-To-Point Transmission Service and Firm Point-To-Point

Transmission Service to Griffin Energy Marketing, L.L.C., under the NU System Companies Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to Griffin Energy Marketing, L.L.C.

NUSCO requests that the Service Agreements become effective September 18, 1998.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. PP&L, Inc.

[Docket No. ER98–4536–000]

Take notice that on September 15, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), tendered for filing a Service Agreement dated September 4, 1998 with Aquila Power Corporation (Aquila) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds Aquila as an eligible customer under the Tariff.

PP&L requests an effective date of September 15, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Aquila and to the Pennsylvania Public Utility Commission.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Unitil Power Corporation

[Docket No. ER98–4538–000]

Take notice that on September 15, 1998, in accordance with Section 35.13, 18 CFR 35.13, Unitil Power Corporation (Unitil) submitted for filing a amended System Agreement among Unitil Power Corporation, Concord Electric Company and Exeter & Hampton Electric Company to establish the terms and conditions and the rate formula for Interim Transition Service and Interim Default Service that Unitil Power Corporation (UPC) will provide to Concord Electric Company and Exeter & Hampton Electric Company. The Amended System Agreement also provides for the divestiture of UPC's power supply portfolio as a means of quantifying stranded costs.

Unitil requests that the Amended System Agreement be permitted to become effective March 1, 1999.

Copies of the filing were served upon the Public Utilities Commission of the State of New Hampshire.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No.ER98–4539–000]

Take notice that on September 15, 1998, the Reliability Committee established under the terms of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA), and PJM Interconnection, L.L.C. (PJM), jointly tendered for filing, pursuant to section 205 of the Federal Power Act, revised pages to the RAA to amend Article 2 and add a new section 6.4.3 to the RAA. The revisions to the RAA address the role of the PJM Board of Managers (PJM Board) under the RAA. The Commission's acceptance of the revisions is intended to resolve the complaint proceeding in Docket No.

PJM and the Reliability Committee request a waiver of the provisions of the Commission's regulations in 18 CFR 35.13.

PJM and the Reliability Committee request an effective date of September 1, 1998.

Copies of this filing were served upon all PJM members, all state regulatory commissions in the PJM control area, and all parties to Docket No. EL98–60–000.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company Kentucky Utilities Company

[Docket No. ER98–4540–000]

Take notice that on September 15, 1998, Louisville Gas and Electric Company (LG&E), and Kentucky Utilities Company (KU) (Applicants or Companies), tendered for filing a joint market-based sales service rate schedule (Rate MBSS), that will be the market-based rate schedule under which the Companies will henceforth (upon Commission approval) conduct all market-based rate transactions, and grant certain waivers and authorizations.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Idaho Power Company

[Docket No. ER98–4541–000]

Take notice that on September 15, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and The Montana Power Trading & Marketing Company.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER98–4542–000]

Take notice that on September 15, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission, an executed Service Agreement for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and PG&E Energy Trading-Power, L.P. under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PP&L, Inc.

[Docket No. ER98–4543–000]

Take notice that on September 15, 1998, PP&L, Inc. (PP&L), filed with the Federal Energy Regulatory Commission (Commission) an Electric Generation Supplier Coordination Tariff applicable to entities licensed to serve retail electricity customers under the Commonwealth of Pennsylvania's retail access program (EGSs). The purpose of this Tariff is to permit PP&L to provide EGSs with certain services subject to the Commission's jurisdiction under the Federal Power Act, which will facilitate the ability of EGSs to meet their obligations as transmission customers and load serving entities under the PJM Open Access Transmission Tariff and related agreements of the Pennsylvania-New Jersey-Maryland Interconnection LLC.

PP&L states that a copy of this filing has been provided to the Pennsylvania Public Utility Commission and to each signatory of the Joint Petition for Full Settlement of PP&L, Inc.''s Restructuring Plan and Related Court Proceedings in Pennsylvania Public Utility Commission Docket No. R–00973954.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Long Island Lighting Company

[Docket No. ER98–4544–000]

Take notice that on September 15, 1998, the Long Island Power Authority (Authority) on behalf of its subsidiary, Long Island Lighting Company (LIPA), d/b/a LIPA tendered for filing Notices of Cancellation of Rate Schedules 10, 11, 14–16, 18, 24, 30, 33–45, 52, 53, and 55–57 filed with the Federal Energy Regulatory Commission by LILCO.

The Authority requests that the Commission deem that these Notices of

Cancellation were effective as of May 29, 1998, the date of LIPA's purchase of LILCO. The cancellation is attributable to the purchase of LILCO by the Authority, a corporate municipal instrumentality and political subdivision of the State of New York. LILCO, now doing business as LIPA, is now a ''municipality'' within the meaning of Section 201(f) of the Federal Power Act and is no longer required to file or maintain its contracts as rate schedules with the Commission. The underlying contracts are not being terminated.

Notice of the proposed cancellation and the appropriate rate schedule designation has been served upon the following:

Rate Schedule No. 10—Central Hudson Gas and Electric Corporation
Rate Schedule No. 11—Orange and Rockland Utilities
Rate Schedule No. 14—Central Hudson Gas and Electric Corporation
Rate Schedule No. 15—Village of Freeport, New York
Rate Schedule No. 16—Central Hudson Gas and Electric Corporation
Rate Schedule No. 18—New England Power Pool / New York Power Pool
Rate Schedule No. 24—Orange and Rockland Utilities
Rate Schedule No. 30—Rockville Centre, New York
Rate Schedule No. 33—NU Operating Companies
Rate Schedule No. 34—New York Power Authority / Brookhaven National Laboratory
Rate Schedule No. 35—Connecticut Light and Power Company / Western Massachusetts Electric Company
Rate Schedule No. 36—Village of Greenport, New York
Rate Schedule No. 37—New England Power Company
Rate Schedule No. 38—Boston Edison Company
Rate Schedule No. 39—Connecticut Light and Power Company
Rate Schedule No. 40—New York Power Authority
Rate Schedule No. 41—Nassau County Public Utility Agency
Rate Schedule No. 42—Suffolk County Electric Agency
Rate Schedule No. 43—Consolidated Edison Company of New York, Incorporated
Rate Schedule No. 44—Consolidated Edison Company of New York, Incorporated
Rate Schedule No. 45—Consolidated Edison Company of New York, Incorporated
Rate Schedule No. 52—Consolidated Edison Company of New York, Incorporated
Rate Schedule No. 53—NU Operating Companies
Rate Schedule No. 55—Montaup Electric Company
Rate Schedule No. 56—Associated Universities, Incorporated
Rate Schedule No. 57—Village of Freeport, New York

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Long Island Lighting Company

[Docket No. ER98–4545–000]

Take notice that on September 15, 1998, the Long Island Power Authority (LIPA) on behalf of its subsidiary, Long Island Lighting Company (LILCO), d/b/a LIPA tendered for filing Notices of Cancellation of the Power Sales Tariff filed with the Federal Energy Regulatory Commission (FERC or Commission) by LILCO on August 10, 1995 and the Open Access Transmission Tariff filed with the Commission by LILCO on July 9, 1996.

The Authority requests that the Commission deem that these Notices of Cancellation were effective as of May 29, 1998, the date of LIPA's purchase of LILCO. The cancellation is attributable to the purchase of LILCO by the Authority, a corporate municipal instrumentality and political subdivision of the State of New York. LILCO, now doing business as LIPA, is now a ''municipality'' within the meaning of Section 201(f) of the Federal Power Act and is no longer required to file or maintain its contracts as rate schedules with the Commission.

The underlying power sales contract is not being terminated. The Authority has adopted a superseding open access transmission tariff applicable to LIPA and has filed it with the Commission under the safe harbor procedures of Order No. 888. That filing is docketed as Docket No. NJ98–4–000.

Notice of the proposed cancellation has been served upon the following:

Electricity Consumers Resource Council
Northeast Utilities Service Company
New England Power Company
Niagara Mohawk Power Corporation
Morrison & Hecker, L.L.P.
Koch Energy Trading, Inc.
Bracewell & Patterson, L.L.P.
Duncan, Weinberg, Genzer & Pembroke
New York Public Service Commission
John & Hengerer
Enron Power Marketing, Inc.
Huber, Lawrence & Abell
New York State Electric & Gas Corporation
Engage Energy U.S., L.P.
Central Maine Power Company
Consolidated Edison Company of New York, Inc.
New York Power Authority
Dahlen, Berg & Company
Dynegy Power Services, Inc.
Electric Clearinghouse, Inc.
New York State Dep't of Public Service
New England Power Service Company
Enron Corporation
Swidler & Berlin
New York Mercantile Exchange
U.S. Generating Company
Municipal Electric Utilities Association of New York
Equitable Power Services Company
Duke Energy Trading & Marketing, LLC
Brickfield, Burchette & Ritts, P.C.
Electric Clearinghouse, Inc.
Rochester Gas & Electric Corporation
Vastar Power Marketing, Inc.
Fred Saffer & Associates
Cleary, Gottlieb, Steen & Hamilton
Vitol Gas & Electric LLC
Panenergy Power Services, Inc.
Noram Energy Services, Inc.
Couch, White, Brenner, Howard, et al.
Nixon, Hargrave, Devans & Doyle
Statoil Energy Trading, Inc.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Long Island Lighting Company

[Docket No. ER98–4546–000]

Take notice that on September 15, 1998, the Long Island Power Authority (LIPA) on behalf of its subsidiary, Long Island Lighting Company (LILCO), d/b/a LIPA tendered for filing Notices of Cancellation of Service Agreement Nos. 1 through 15 under LILCO's Open Access Transmission Tariff, FERC Electric Tariff No. 2.

The Authority requests that the Commission deem that these notices of cancellation were effective as of May 29, 1998, the date of LIPA's purchase of LILCO. The cancellation is attributable to the purchase of LILCO by the Authority, a corporate municipal instrumentality and political subdivision of the State of New York. LILCO, now doing business as LIPA, is now a ''municipality'' within the meaning of Section 201(f) of the Federal Power Act and is no longer required to file or maintain its contracts as rate schedules with the Commission. The underlying contracts are not being terminated.

Notice of the proposed cancellation and the appropriate rate schedule designation has been served upon the following:

Service Agreement No. 1 Public Service Electric and Gas Company
Service Agreement No. 2 Morgan Stanley Capital Group, Inc.
Service Agreement No. 3 Aquila Power Corporation

Service Agreement No. 4 Nissequogue Cogen Partners
Service Agreement No. 5 Western Power Services, Inc.
Service Agreement No. 6 ProMark Energy, Inc.
Service Agreement No. 7 PECO Energy Company
Service Agreement No. 8 The Energy Exchange Group
Service Agreement No. 9 Constellation Power Source, Inc.
Service Agreement No. 10 Williams Energy Services Company
Service Agreement No. 11 KIAK Partners
Service Agreement No. 12 New York Power Authority
Service Agreement No. 13 CNG Power Service Corporation
Service Agreement No. 14 PP&L, Inc.
Service Agreement No. 15 SCANA Energy Marketing, Inc.

Comment date: October 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Otto N. Frenzel III

[Docket No. ID–3232–000]

Take notice that on August 26, 1998, Otto N. Frenzel III filed an application for authority to hold the following interlocking positions under Section 305(b) of the Federal Power Act, 16 U.S.C. § 825(b):

Director, Indianapolis Power & Light Company
Chairman of the Executive Committee and Director, National City Bank of Indiana

Comment date: October 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Andrew J. Paine, Jr.

[Docket No. ID–3233–000]

Take notice that August 26, 1998, Andrew J. Paine, Jr. filed an application for authority to hold the following interlocking positions under Section 305(b) of the Federal Power Act, 16 U.S.C. § 825(b):

Director, Indianapolis Power & Light Company
President, Chief Executive Officer and Director, NBD Bank, N.A.
Executive Vice President, First Chicago NBD Corporation Director, N.D. Bank (Florida)
Director and Chairman, NBD Indiana Properties, Inc.
Director, NBD Neighborhood Revitalization Corporation

Comment date: October 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Joseph D. Barnette, Jr.

[Docket No. ID–3234–000]

Take notice that on August 26, 1998, Joseph D. Barnette, Jr. filed an application for authority to hold the following interlocking positions under Section 305(b) of the Federal Power Act, 16 U.S.C. § 825(b):

Director, Indianapolis Power & Light Company
Director, Chairman and Chief Executive Officer, Bank One, Indiana, NA
Director, Chairman and Chief Executive Officer, Banc One Indiana Corporation
Director, President and Chief Executive Officer, Bank One, Illinois, NA
Director, American Fletcher Realty Corporation

Comment date: October 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–25563 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4517–000, et al.]

Ohio Edison Company and Pennsylvania Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 16, 1998.

Take notice that the following filings have been made with the Commission:

1. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–4517–000]

Take notice that on September 11, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Enserch Energy Services, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: October 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. The Washington Water Power Company

[Docket No. ER98–4518–000]

Take notice that on September 11, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with CNG Power Services Corporation, Vitol Gas & Electric LLC, Northern/AES Energy, LLC, Cinergy Services, Inc., and Aquila Power Corporation.

WWP requests the Service Agreements be given respective effective dates of August 12, 1998, August 27, 1998, August 28, 1998, August 28, 1998 and September 10, 1998.

Comment date: October 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER98–4519–000]

Take notice that on September 11, 1998, Virginia Electric and Power Company tendered for filing a letter agreement with Cinergy Services, Inc., providing for generation imbalance service.

Virginia Power requests that the Commission waive its notice of filing requirements to allow the agreement to take effect on September 11, 1998, the day on which it was filed.

Comment date: October 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER98–4520–000]

Take notice that on September 14, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission, Firm Transmission Service Agreements with Griffin Energy

Marketing, L.L.C., dated September 4, 1998, and Tractebel Energy Marketing, Inc., dated August 25, 1998 , and Non-Firm Transmission Service Agreements with Griffin, dated September 4, 1998 and Tractebel Energy Marketing, Inc., dated August 25, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of September 4, 1998, for the Agreements with Griffin, and August 25, 1998, for the Agreements with Tractebel, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Griffin, Tractebel, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ER98–4521–000]

Take notice that on September 14, 1998, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Noram Energy Services, Inc. for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

In order to comply with the Commission's filing requirements, an effective date of September 14, 1998 is requested.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER98–4522–000]

Take notice that on September 14, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with NorAm Energy Services, Inc., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy—Kansas and WestPlains Energy—Colorado.

The terms of the Service Agreements specify an effective date of August 31, 1998.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER98–4523–000]

Take notice that on September 14, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Tractebel Energy Marketing Inc. (Tractebel), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO requests that the Service Agreement become effective August 31, 1998.

NUSCO states that a copy of this filing has been mailed to Tractebel.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER98–4524–000]

Take notice that on September 14, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Tractebel Energy Marketing Inc. (Tractebel), under the NU System Companies' Sale for Resale Tariff No. 7, Market Based Rates.

NUSCO states that a copy of this filing has been mailed to Tractebel.

NUSCO requests that the Service Agreement become effective August 31, 1998.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER98–4525–000]

Take notice that on September 14, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, on behalf of The Connecticut Light and Power Company (CL&P) and Holyoke Water Power Company,(including its wholly-owned subsidiary, Holyoke Power and Electric Company), a Sales Agreement to provide dispatchable system power to the City of Holyoke Gas & Electric Department, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations.

NUSCO requests that the rate schedule become effective on November 1, 1998. NUSCO states that copies of the rate schedule have been mailed to the parties to the Agreement, and the affected state utility commission.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Orange and Rockland Utilities, Inc.

[Docket No. ER98–4526–000]

Take notice that on September 14, 1998, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement under which O&R will provide capacity and/or energy to Merchant Energy Group of the Americas, Inc. (MEGA).

O&R requests waiver of the notice requirement so that the service agreement with MEGA becomes effective as of August 26, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and MEGA.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Energy Marketing, Inc.

[Docket No. ER98–4527–000]

Take notice that on September 14, 1998, Niagara Mohawk Energy Marketing, Inc., filed a Notice of Succession advising the Federal Energy Regulatory Commission that Plum Street Energy Marketing, Inc., changed its name to Niagara Mohawk Energy Marketing, Inc., effective September 1, 1998. In accordance with Sections 35.16 and 131.51 of the Commission's Regulations (18 CFR 35.16 and 131.51), Niagara Mohawk Energy Marketing, Inc., adopted and ratified all applicable rate schedules filed with the Commission by Plum Street Energy Marketing, Inc.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Peco Energy Company

[Docket No. ER98–4528–000]

Take notice that on September 14, 1998, PECO Energy Company (PECO), filed a Service Agreement dated June 30, 1998 with Burlington Electric Department (BED) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds BED as a customer under the Tariff.

PECO requests an effective date of August 15, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to BED and to the Pennsylvania Public Utility Commission.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER98–4529–000]

Take notice that on September 14, 1998, Niagara Mohawk Power Corporation Notice of Cancellation of FERC Rate Schedule No. 206, effective date October 1, 1994, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon the following Enron Power Marketing, Inc.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER98–4530–000]

Take notice that on September 14, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Enron Power Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 1, 1998.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Peco Energy Company

[Docket No. ER98–4531–000]

Take notice that on September 14, 1998, PECO Energy Company (PECO) filed a Service Agreement dated July 22, 1998 with Tractebel Energy Marketing, Inc. (TEMI), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds TEMI as a customer under the Tariff.

PECO requests an effective date of August 11, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to TEMI and to the Pennsylvania Public Utility Commission.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. USGen New England, Inc. and New England Power Company

[Docket No. ER98–4532–000]

Take notice that on September 14, 1998, USGen New England, Inc. (USGenNE) and New England Power Company (NEP), tendered for filing a proposed amendment to USGenNE's Rate Schedule FERC No. 1 and NEP's Rate Schedule FERC No. 488, titled ''Amended and Restated Continuing Site/Interconnection Agreement.'' The agreement governs certain respective rights and obligations of USGenNE, as the owner of certain generating units, and NEP, as the owner and operator of the transmission system to which those generating units are interconnected. Generally, the agreement specifies the terms for the interconnection of the generating units to the regional transmission system in New England.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. PP&L, Inc.

[Docket No. ER98–4533–000]

Take notice that on September 14, 1998, PP&L, Inc. (PP&L), filed with the Commission an application to amend its Market-Based Rates Tariff, FERC Electric Tariff Revised Volume No. 5, to allow PP&L to sell electric energy and/or capacity at market-based rates to its affiliates.

PP&L requested waiver of Commission regulations to permit the tariff amendment to become effective on September 15, 1998.

PP&L stated that it served a copy of the foregoing on the Pennsylvania Public Utility Commission.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER98–4537–000]

Take notice that on September 14, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing an amendment to the existing firm transmission agreements under which Olin Brass and Winchester, Inc., is taking transmission service pursuant to our open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date for the amendment of September 1, 1998.

Comment date: October 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–25562 Filed 9–23–98; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION

Farmer Mac Risk-Based Capital

AGENCY: Farm Credit Administration.

ACTION: Notice of availability of study; comment period extension.

SUMMARY: On July 28, 1998, the Farm Credit Administration (FCA) published for public comment a Notice of Availability of Study concerning procedures for estimating the historical default and loss experience on agricultural real estate loans that meet the Federal Agricultural Mortgage Corporation (Farmer Mac) eligibility criteria, a required component of a risk-based capital standard. *See* 63 FR 40282, July 28, 1998. The comment period expired on September 15, 1998. In order to allow interested parties additional time to respond the FCA extends the comment period until January 4, 1999, and invites further public comment on the notice of availability.

DATES: Written comments should be received on or before January 4, 1999.

ADDRESSES: You may obtain a copy of the study by downloading from the FCA web page at www.fca.gov; or by submitting an electronic mail request for a copy to info-line@fca.gov; or by contacting George D. Irwin, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4280.

Submit your comments via electronic mail to ''reg-comm@fca.gov'' or in hard copy to George D. Irwin, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all comments received will be available for review by interested parties at the Farm Credit Administration offices in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: George D. Irwin, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4280, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On July 28, 1998, the FCA published a notice in the **Federal Register** that sought information and guidance from the public that may offer (1) Information that leads to additional relevant data sources; (2) suggestions that might improve use of the study in developing risk-based capital regulations; and (3) any other ideas that might lead to an improved credit risk component in the risk-based capital regulation being developed for Farmer Mac.

The FCA cautioned commenters that this study is based on currently available data, which we have found to be very limited. The FCA is making the study available at this time solely for informational purposes and to seek additional input. FCA may elect to use alternative approaches in developing the credit risk component of the risk-based capital regulations.

Several interested parties have advised the FCA that they need additional time to prepare thoughtful responses to the notice of availability. For this reason, the FCA hereby extends the comment period until January 4, 1999.

Dated: September 17, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–25503 Filed 9–23–98; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, September 29, 1998 at 10:00 A.M.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, October 1, 1998 at 10:00 A.M.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Election of Officers.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–25683 Filed 9–22–98; 11:30 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC office of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011630.

Title: Trinity/TBS Slot Agreement.

Parties: Trinity Shipping Line, S.A. (''Trinity''); TBS North America Liner, Ltd. (''TBS'').

Synopsis: The proposed Agreement would permit TBS to receive, transport, and provide terminal services for cargo moving on Trinity bills of lading in the trade between United States Gulf ports and ports in Ecuador and Peru.

Agreement No.: 232–011631.

Title: Contship/OMI Space Charter and Sailing Agreement.

Parties: Contship Containerlines Limited; Ocean Management Inc. d/b/a FESCO Australia North America Line.

Synopsis: The proposed Agreement would permit the parties to charter space to one another in the trade between United States Atlantic and Pacific Coast ports and ports in Australia, New Zealand, and the Islands of the South Pacific.

Agreement No.: 224–201060.

Title: Tampa-Carnival Cruise Terminal Agreement.

Parties: Tampa Port Authority; Carnival Corporation (Panama).

Synopsis: The proposed agreement provides for preferential berth privileges along with ancillary services connected with passenger facilities. The agreement runs through March 31, 2002.

By the order of the Federal Maritime Commission.

Dated: September 18, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–25506 Filed 9–23–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–17]

Helen Khadem d/b/a Worldwide Cargo Express/Trading; Order to Show Cause

This proceeding is instituted pursuant to sections 8, 11 and 23 of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. 1707, 1710 and 1721, and the Federal Maritime Commission's (''Commission'') regulations governing tariff and bonding requirements of non-vessel-operating common carriers, 46 CFR part 514.

Helen Khadem (''Khadem'') is a resident of the State of California. Since approximately May 1996, Khadem has registered Worldwide Cargo Express/Trading (''Worldwide'') with the California Secretary of State as a fictitious business name. Khadem maintains offices at 6279 E. Slauson Ave., Suite 101, Los Angeles, California 90040, from which premises she operates a business under the name Worldwide Cargo Express/Trading.

Based on complaints to the Commission, it appears that since at least February 1997, Khadem, doing business as Worldwide, has shipped or agreed to transport household goods, automobiles and personal effects in the foreign commerce of the United States. Evidence obtained during an investigation shows that for at least twelve (12) shipments known to the Commission, Worldwide collected goods and ocean freight from individual shippers, and then, in the capacity of a shipper, contracted with common carriers for the ocean transportation.[1] Worldwide was named as shipper on the ocean carrier bills of lading and export declarations and was responsible for the payment of the freight charges. The name of the actual shipper appears as a consignee or notify party on the ocean carrier bill of lading. In lieu of house bills of lading, Worldwide issues a bill of lading/pick-up order showing Worldwide as shipper, which is apparently used for pick-up and delivery of the cargo to the port.

Shipper/customer	Worldwide invoice No.	Date	Destination
Jake Wakstein	97206	1/5/98	London.

[1] Details of these twelve shipments are as follows:

Shipper/customer	Worldwide invoice No.	Date	Destination
Gary N. Manasseh	97212	1/21/98	London.
Richard J. Masom	97216	1/30/98	Auckland.
Guillermo/Victoria Wiesse	97218	1/30/98	Callao, Peru.
Barry Gray	97222	2/11/98	London.
Loretta M. Strickland	97223	2/17/98	Ramatuelle, France.
Patrick William	97224	2/18/98	Kingston.
Candle Light &	97225	2/16/98	Hong Kong.
Edgar Uy	97226	2/19/98	Cebu, Philippines.
SIMO	97227	2/19/98	Casablanca.
Rod Bustos	97230	2/23/98	Manilla.
Igor Nikitine	97231	2/25/98	Helsinki.

Section 8 of the 1984 Act, provides that no common carrier may provide service in United States foreign trades unless the carrier has first filed a tariff with the Federal Maritime Commission showing all of its rates, charges and practices. Section 23 of the 1984 Act further provides that each non-vessel-operating common carrier must furnish to the Commission a bond, proof of insurance or other surety, inter alia, to insure the financial responsibility of the carrier to pay any judgment for damages arising from its transportation-related activities. According to a review of records maintained by the Commission's Bureau of Tariffs, Certification and Licensing, no tariff or bond has been filed with the Commission in the name of Worldwide or Khadem. Therefore, it would appear that Helen Khadem, doing business as Worldwide Cargo Express/Trading, by providing and holding herself out to the public to provide transportation by water of cargo for compensation, has acted as a non-vessel-operating common carrier without a tariff or bond on file with the Commission, in violation of sections 8 and 23 of the 1984 Act.

Now therefore, it is ordered That pursuant to section 11 of the Shipping Act of 1984, Helen Khadem, doing business as Worldwide Cargo Express/Trading, show cause why she should not be found to have violated section 8 of the Shipping Act of 1984 by acting as a non-vessel-operating common carrier in each of the twelve (12) instances, specified above, without a tariff for such service on file with the Commission;

It is further ordered That pursuant to section 11 of the Shipping Act of 1984, Helen Khadem, doing business as Worldwide Cargo Express/Trading, show cause why she should not be found to have violated section 23 of the Shipping Act of 1984 by acting as a non-vessel-operating common carrier in each of the twelve (12) instances, specified above, without a bond for such service on file with the Commission.

It is further ordered that Helen Khadem, doing business as Worldwide Cargo Express/Trading, show cause why an order should not be issued directing Helen Khadem to cease and desist from providing or holding herself out to provide transportation as a non-vessel-operating common carrier between the United States and a foreign country unless and until such time as Khadem or Worldwide Cargo Express/Trading shall have filed a tariff and a bond for such service with the Commission.

It is further ordered that this proceeding is limited to the submission of affidavits of fact and memoranda of law;

It is further ordered that any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below;

It is further ordered that Helen Khadem is named a Respondent in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondent and any intervenors in support of Respondent no later than October 8, 1998;

It is further ordered that the Commission's Bureau of Enforcement be made a party to this proceeding;

It is further ordered that reply affidavits and memoranda of law shall be filed by the Bureau of Enforcement and any intervenors in opposition to Respondent no later than October 28, 1998;

It is further ordered that rebuttal affidavits and memoranda of law shall be filed by Respondents and intervenors in support no later than November 9, 1998;

It is further ordered that;

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing, together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case; and

(c) Any request for evidentiary hearing or oral argument shall be filed no later than November 9, 1998;

It is further ordered that notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondent;

It is further ordered that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's rules of practice and procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

Finally, it is ordered that pursuant to the terms of Rule 61 of the Commission's rules of practice and procedure, 46 CFR 502.61, the final decision of the Commission in this proceeding shall be issued by May 18, 1999.

Dated: September 18, 1998.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–25526 Filed 9–23–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 9, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Mortgage Investment Trust Corporation, Prairie Village, Kansas; to acquire voting shares of IFB Holdings, Inc., Chillicothe, Missouri, and thereby indirectly acquire voting shares of Investors Federal Bank, N.A., Chillicothe, Missouri.

Board of Governors of the Federal Reserve System, September 21, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25607 Filed 9–23–98; 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 October 19, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. United Financial Corp., Great Falls, Montana; to acquire an additional 24 percent, for a total of 25 percent, of the voting shares of Valley Bancorp, Inc., Phoenix, Arizona, and thereby indirectly acquire Valley Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, September 21, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25608 Filed 9–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of proposal to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-24971) published on pages 49696 and 49697 of the issue for September 17, 1998.

Under the Federal Reserve Bank of Chicago heading, the entry for ANB Corporation, Muncie, Indiana, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. ANB Corporation, Muncie, Indiana; through its subsidiary, American National Trust and Investment Management Company, Muncie, Indiana, to retain 15 percent of the voting shares of Indiana Trust and Investment Management Company, Mishawaka, Indiana, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Comments on this application must be received by October 2, 1998.

Board of Governors of the Federal Reserve System, September 21, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25604 Filed 9–23–98; 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; Correction

This notice corrects notices (FR Doc. 98-49696) published on page 49696 of the issue for September 17, 1998.

Under the Federal Reserve Bank of Kansas City heading, the entries for Davis Bancorporation, Inc., Davis, Oklahoma; First Centralia Bancshares, Inc., Centralia, Kansas; and Morrill Bancshares, Inc., Sabetha, Kansas, are revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Davis Bancorporation, Inc., Davis, Oklahoma; to acquire an additional 5.26 percent, for a total of 14.89 percent, of the voting shares of FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a thrift depository institution pursuant to § 225.28(b)(4) of Regulation Y.

2. First Centralia Bancshares, Inc., Centralia, Kansas; to acquire an additional 5.26 percent, for a total of 14.89 percent, of the voting shares of FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a thrift depository institution, pursuant to § 225.28(b)(4) of Regulation Y.

3. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire directly and indirectly an additional 15.78 percent, for a total of 44.67 percent, of the voting shares of FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a thrift depository institution, pursuant to § 225.28(b)(4) of Regulation Y.

Comments on these applications must be received by October 9, 1998.

Board of Governors of the Federal Reserve System, September 21, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25605 Filed 9–23–98; 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 October 9, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, and Onaga Bancshares, Inc., Overland Park, Kansas; each to acquire an additional 5.26 percent, for a total of 14.89 percent, of the voting shares of FBC Financial Corporation, Claremore, Oklahoma; and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, September 21, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25606 Filed 9–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System.*

TIME AND DATE: Approximately 3:00 p.m., Tuesday, September 29, 1998, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to the Federal Reserve System's retirement benefits.
2. Any items carried forward from a previously announced meeting.

* * * * *

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement of this meeting. (The Web site also includes procedural and other information about the meeting.)

Dated: September 22, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25752 Filed 9–22–98; 2:38 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System.*

TIME AND DATE: 2:30 p.m., Tuesday, September 29, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of the 1999 budget for the Office of Employee Benefits.
2. Any items carried forward from a previously announced meeting.

* * * * *

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for employees of the Federal Reserve System.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: September 22, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–25753 Filed 9–22–98; 2:38 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the paperwork Reduction act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Study of Medicare Home Health Practice Variations—NEW—The Office of the Assistant Secretary for Planning and Evaluation is proposing a study which will examine how patient, provider, agency, market and regulatory factors affect variations in home health practice. A sample of 56 Medicare-certified home health agencies (from eight states) will be studied. Within each of these agencies, 30 patients (with congestive heart failure or diabetes) will be sampled. The results will identify agency characteristics and behaviors that are related to differences in lengths of stay for patients with similar risk factors.—Respondents: For-profit, Non-profit Institutions; Burden Information for the Administrator Questionnaire—Number of Respondents: 56; Burden per Response: 36.2 minutes: Burden: 34

hours— Burden Information for the Care Provider Questionnaire—Number of Responses: 1680; Burden per Response: .95 hours; Burden: 1596 hours—Burden Information for Notification of Admission to an Inpatient Facility—Number of Responses: 1680; Burden per Response: 1.9 minutes; Burden: 54 hours—Burden Information for Care Provider Profile—Number of Responses: 280; Burden per Response: 2.5 minutes; Burden: 12 hours—Burden Information for Focus Groups—Number of Responses: 56; Burden per Response: 122.21 minutes; Burden: 114 hours—Burden Information for Case Studies—Number of Responses: 8; Burden per Response: 60 minutes; Burden: 8 hours—Total Burden: 1818 hours. OMB Desk Officer: Allison Eydt

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 30 days of this notice.

Dated: September 16, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–25507 Filed 9–23–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D–0141]

Compliance Policy Guide; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of Compliance Policy Guide (CPG) section 615.100 entitled ''Extralabel Use of New Animal Drugs in Food-Producing Animals (CPG 7125.06)'' to fulfill the commitment made by the agency in the preamble to the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA). The CPG was superseded by AMDUCA.

FOR FURTHER INFORMATION CONTACT: Judith A. Gushee, Center for Veterinary Medicine (HFV–236), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0150.

SUPPLEMENTARY INFORMATION: FDA is revoking CPG section 615.100 entitled ''Extralabel Use of New Animal Drugs in Food-Producing Animals (CPG 7125.06)'' to fulfill the commitment made by the agency in the preamble to AMDUCA, which published in the **Federal Register** of November 7, 1996 (61 FR 57732). The regulation eliminated the need for a broad CPG on the extralabel use of drugs in food-producing animals.

Dated: September 17, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25571 Filed 9–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 98F–0797]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp., has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with o-xylene as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215),Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

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 8B4625) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with o-xylene as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the 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: September 4, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–25570 Filed 9–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0058]

International Conference on Harmonisation; Guidance on Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled ''Q5A Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance describes the testing and evaluation of the viral safety of biotechnology products derived from characterized cell lines of human or animal origin, and outlines data that should be submitted in marketing applications.

DATES: Effective September 24, 1998. Submit written comments at any time.

ADDRESSES: 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. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane,

Rockville, MD 20857, 301–827–4573. Single copies of the guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Neil D. Goldman, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0377.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of May 10, 1996 (61 FR 21882), FDA published a draft tripartite guideline entitled ''Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin'' (Q5A). The notice gave interested persons an opportunity to submit comments by August 8, 1996.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on March 4, 1997.

In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The guidance describes approaches for evaluating the risk of viral contamination and the potential of the production process to remove viruses from biotechnology products derived from human or animal cell lines. The guidance emphasizes the value of many strategies including: (1) Thorough characterization/screening of the cell substrate starting material in order to identify which, if any, viral contaminants are present; (2) assessment of risk by a determination of the human tropism of the contaminants; (3) incorporation into the production process of studies that assess virus inactivation and removal steps; (4) careful design of viral clearance studies to avoid pitfalls and provide interpretable results; and (5) use of different methods of virus inactivation or removal in the same production process in order to achieve maximum viral clearance.

This guidance represents the agency's current thinking on viral safety evaluation of biotechnology products. 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.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, 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 may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at ''http://www.fda.gov/cder/index.htm'' or at CBER's World Wide Web site at ''http://www.fda.gov/cber/guidelines.htm''.

The text of the guidance follows:

Q5A Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin

I. Introduction

This document is concerned with testing and evaluation of the viral safety of biotechnology products derived from characterized cell lines of human or animal origin (i.e., mammalian, avian, insect), and outlines data that should be submitted in the marketing application/registration package. For the purposes of this document, the term virus excludes nonconventional transmissible agents like those associated with Bovine Spongiform Encephalopathy (BSE) and scrapie. Applicants are encouraged to discuss issues associated with BSE with the regulatory authorities.

The scope of the document covers products derived from cell cultures initiated from characterized cell banks. It covers products derived from in vitro cell culture, such as interferons, monoclonal antibodies, and recombinant deoxyribonucleic acid (DNA)-derived products including recombinant subunit vaccines, and also includes products derived from hybridoma cells grown in vivo as ascites. In this latter case, special considerations apply and additional information on testing cells propagated in vivo is contained in Appendix 1. Inactivated vaccines, all live vaccines containing self-replicating agents, and genetically engineered live vectors are excluded from the scope of this document.

The risk of viral contamination is a feature common to all biotechnology products derived from cell lines. Such contamination could have serious clinical consequences and can arise from the contamination of the source cell lines themselves (cell substrates) or from adventitious introduction of virus during production. To date, however, biotechnology products derived from cell lines have not been implicated in the transmission of viruses. Nevertheless, it is expected that the safety of these products with regard to viral contamination can be reasonably assured only by the application of a virus testing program and assessment of

virus removal and inactivation achieved by the manufacturing process, as outlined below.

Three principal, complementary approaches have evolved to control the potential viral contamination of biotechnology products:

(1) Selecting and testing cell lines and other raw materials, including media components, for the absence of undesirable viruses which may be infectious and/or pathogenic for humans;

(2) Assessing the capacity of the production processes to clear infectious viruses;

(3) Testing the product at appropriate steps of production for absence of contaminating infectious viruses.

All testing suffers from the inherent limitation of quantitative virus assays, i.e., that the ability to detect low viral concentrations depends for statistical reasons on the size of the sample. Therefore, no single approach will necessarily establish the safety of a product. Confidence that infectious virus is absent from the final product will in many instances not be derived solely from direct testing for their presence, but also from a demonstration that the purification regimen is capable of removing and/or inactivating the viruses.

The type and extent of viral tests and viral clearance studies needed at different steps of production will depend on various factors and should be considered on a case-by-case and step-by-step basis. The factors that should be taken into account include the extent of cell bank characterization and qualification, the nature of any viruses detected, culture medium constituents, culture methods, facility and equipment design, the results of viral tests after cell culture, the ability of the process to clear viruses, and the type of product and its intended clinical use.

The purpose of this document is to describe a general framework for virus testing, experiments for the assessment of viral clearance, and a recommended approach for the design of viral tests and viral clearance studies. Related information is described in the appendices and selected definitions are provided in the glossary.

Manufacturers should adjust the recommendations presented here to their specific product and its production process. The approach used by manufacturers in their overall strategy for ensuring viral safety should be explained and justified. In addition to the detailed data that is provided, an overall summary of the viral safety assessment would be useful in facilitating the review by regulatory authorities. This summary should contain a brief description of all aspects of the viral safety studies and strategies used to prevent virus contamination as they pertain to this document.

II. Potential Sources of Virus Contamination

Viral contamination of biotechnology products may arise from the original source of the cell lines or from adventitious introduction of virus during production processes.

A. Viruses That Could Occur in the Master Cell Bank (MCB)

Cells may have latent or persistent virus infection (e.g., herpesvirus) or endogenous retrovirus which may be transmitted vertically from one cell generation to the next, since the viral genome persists within the cell. Such viruses may be constitutively expressed or may unexpectedly become expressed as an infectious virus.

Viruses can be introduced into the MCB by several routes such as: (1) Derivation of cell lines from infected animals; (2) use of virus to establish the cell line; (3) use of contaminated biological reagents such as animal serum components; (4) contamination during cell handling.

B. Adventitious Viruses That Could Be Introduced During Production

Adventitious viruses can be introduced into the final product by several routes including, but not limited to, the following: (1) Use of contaminated biological reagents such as animal serum components; (2) use of a virus for the induction of expression of specific genes encoding a desired protein; (3) use of a contaminated reagent, such as a monoclonal antibody affinity column; (4) use of a contaminated excipient during formulation; and (5) contamination during cell and medium handling. Monitoring of cell culture parameters can be helpful in the early detection of potential adventitious viral contamination.

III. Cell Line Qualification: Testing for Viruses

An important part of qualifying a cell line for use in the production of a biotechnology product is the appropriate testing for the presence of virus.

A. Suggested Virus Tests for MCB, Working Cell Bank (WCB) and Cells at the Limit of In Vitro Cell Age Used for Production

Table 1 shows examples of virus tests to be performed once only at various cell levels, including MCB, WCB, and cells at the limit of in vitro cell age used for production.

1. Master Cell Bank

Extensive screening for both endogenous and nonendogenous viral contamination should be performed on the MCB. For heterohybrid cell lines in which one or more partners are human or nonhuman primate in origin, tests should be performed in order to detect viruses of human or nonhuman primate origin because viral contamination arising from these cells may pose a particular hazard.

Testing for nonendogenous viruses should include in vitro and in vivo inoculation tests and any other specific tests, including species-specific tests such as the mouse antibody production (MAP) test, that are appropriate, based on the passage history of the cell line, to detect possible contaminating viruses.

2. Working Cell Bank

Each WCB as a starting cell substrate for drug production should be tested for adventitious virus either by direct testing or by analysis of cells at the limit of in vitro cell age, initiated from the WCB. When appropriate nonendogenous virus tests have been performed on the MCB and cells cultured up to or beyond the limit of in vitro cell age have been derived from the WCB and used for testing for the presence of adventitious viruses, similar tests need not be performed on the initial WCB. Antibody production tests are usually not necessary for the WCB. An alternative approach in which full tests are carried out on the WCB rather than on the MCB would also be considered acceptable.

3. Cells at the Limit of In Vitro Cell Age Used for Production

The limit of in vitro cell age used for production should be based on data derived from production cells expanded under pilot-plant scale or commercial-scale conditions to the proposed in vitro cell age or beyond. Generally, the production cells are obtained by expansion of the WCB; the MCB could also be used to prepare the production cells. Cells at the limit of in vitro cell age should be evaluated once for those endogenous viruses that may have been undetected in the MCB and WCB. The performance of suitable tests (e.g., in vitro and in vivo) at least once on cells at the limit of in vitro cell age used for production would provide further assurance that the production process is not prone to contamination by adventitious virus. If any adventitious viruses are detected at this level, the process should be carefully checked in order to determine the cause of the contamination, and should be completely redesigned if necessary.

B. Recommended Viral Detection and Identification Assays

Numerous assays can be used for the detection of endogenous and adventitious viruses. Table 2 outlines examples for these assays. They should be regarded as assay protocols recommended for the present, but the list is not all-inclusive or definitive. Since the most appropriate techniques may change with scientific progress, proposals for alternative techniques, when accompanied by adequate supporting data, may be acceptable. Manufacturers are encouraged to discuss these alternatives with the regulatory authorities. Other tests may be necessary depending on the individual case. Assays should include appropriate controls to ensure adequate sensitivity and specificity. Wherever a relatively high possibility of the presence of a specific virus can be predicted from the species of origin of the cell substrate, specific tests and/or approaches may be necessary. If the cell line used for production is of human or nonhuman primate origin, additional tests for human viruses, such as those causing immunodeficiency diseases and hepatitis, should be performed unless otherwise justified. The polymerase chain reaction (PCR) may be appropriate for detection of sequences of thioe human viruses as well as for other specific viruses. The following is a brief description of a general framework and philosophical background within which the manufacturer should justify what was done.

1. Tests for Retroviruses

For the MCB and for cells cultured up to or beyond the limit of in vitro cell age used

for production, tests for retroviruses, including infectivity assays in sensitive cell cultures and electron microscopy (EM) studies, should be carried out. If infectivity is not detected and no retrovirus or retrovirus-like particles have been observed by EM, reverse transcriptase (RT) or other appropriate assays should be performed to detect retroviruses that may be noninfectious. Induction studies have not been found to be useful.

2. In Vitro Assays

In vitro tests are carried out by the inoculation of a test article (see Table 2) into various susceptible indicator cell cultures capable of detecting a wide range of human and relevant animal viruses. The choice of cells used in the test is governed by the species of origin of the cell bank to be tested, but should include a human and/or a nonhuman primate cell line susceptible to human viruses. The nature of the assay and the sample to be tested are governed by the type of virus which may possibly be present based on the origin or handling of the cells. Both cytopathic and hemadsorbing viruses should be sought.

3. In Vivo Assays

A test article (see Table 2) should be inoculated into animals, including suckling and adult mice, and in embryonated eggs to reveal viruses that cannot grow in cell cultures. Additional animal species may be used, depending on the nature and source of the cell lines being tested. The health of the animals should be monitored and any abnormality should be investigated to establish the cause of the illness.

4. Antibody Production Tests

Species-specific viruses present in rodent cell lines may be detected by inoculating test article (see Table 2) into virus-free animals and examining the serum antibody level or enzyme activity after a specified period. Examples of such tests are the mouse antibody production (MAP) test, rat antibody production (RAP) test, and hamster antibody production (HAP) test. The viruses currently screened for in the antibody production assays are discussed in Table 3.

C. Acceptability of Cell Lines

It is recognized that some cell lines used for the manufacture of product will contain endogenous retroviruses, other viruses, or viral sequences. In such circumstances, the action plan recommended for manufacture is described in section V. of this document. The acceptability of cell lines containing viruses other than endogenous retroviruses will be considered on an individual basis by the regulatory authorities, by taking into account a risk/benefit analysis based on the benefit of the product and its intended clinical use, the nature of the contaminating viruses, their potential for infecting humans or for causing disease in humans, the purification process for the product (e.g., viral clearance evaluation data), and the extent of the virus tests conducted on the purified bulk.

IV. Testing for Viruses in Unprocessed Bulk

The unprocessed bulk constitutes one or multiple pooled harvests of cells and culture media. When cells are not readily accessible (e.g., hollow fiber or similar systems), the unprocessed bulk would constitute fluids harvested from the fermenter. A representative sample of the unprocessed bulk, removed from the production reactor prior to further processing, represents one of the most suitable levels at which the possibility of adventitious virus contamination can be determined with a high probability of detection. Appropriate testing for viruses should be performed at the unprocessed bulk level unless virus testing is made more sensitive by initial partial processing (e.g., unprocessed bulk may be toxic in test cell cultures, whereas partially processed bulk may not be toxic).

In certain instances, it may be more appropriate to test a mixture consisting of both intact and disrupted cells and their cell culture supernatants removed from the production reactor prior to further processing. Data from at least three lots of unprocessed bulk at pilot-plant scale or commercial scale should be submitted as part of the marketing application/registration package.

It is recommended that manufacturers develop programs for the ongoing assessment of adventitious viruses in production batches. The scope, extent, and frequency of virus testing on the unprocessed bulk should be determined by taking several points into consideration, including the nature of the cell lines used to produce the desired products, the results and extent of virus tests performed during the qualification of the cell lines, the cultivation method, raw material sources, and results of viral clearance studies. In vitro screening tests, using one or several cell lines, are generally employed to test unprocessed bulk. If appropriate, a PCR test or other suitable methods may be used.

Generally, harvest material in which adventitious virus has been detected should not be used to manufacture the product. If any adventitious viruses are detected at this level, the process should be carefully checked to determine the cause of the contamination, and appropriate actions taken.

V. Rationale and Action Plan for Viral Clearance Studies and Virus Tests on Purified Bulk

It is important to design the most relevant and rational protocol for virus tests from the MCB level, through the various steps of drug production, to the final product including evaluation and characterization of viral clearance from unprocessed bulk. The evaluation and characterization of viral clearance plays a critical role in this scheme. The goal should be to obtain the best reasonable assurance that the product is free of virus contamination.

In selecting viruses to use for a clearance study, it is useful to distinguish between the need to evaluate processes for their ability to clear viruses that are known to be present and the desire to estimate the robustness of the process by characterizing the clearance of nonspecific ''model'' viruses (described later). Definitions of ''relevant,'' specific, and nonspecific ''model'' viruses are given in the glossary. Process evaluation requires knowledge of how much virus may be present in the process, such as the unprocessed bulk, and how much can be cleared in order to assess product safety. Knowledge of the time dependence for inactivation procedures is helpful in assuring the effectiveness of the inactivation process. When evaluating clearance of known contaminants, indepth, time-dependent inactivation studies, demonstration of reproducibility of inactivation/removal, and evaluation of process parameters should be provided. When a manufacturing process is characterized for robustness of clearance using nonspecific ''model'' viruses, particular attention should be paid to nonenveloped viruses in the study design. The extent of viral clearance characterization studies may be influenced by the results of tests on cell lines and unprocessed bulk. These studies should be performed as described in section VI. below.

Table 4 presents an example of an action plan in terms of process evaluation and characterization of viral clearance as well as virus tests on purified bulk, in response to the results of virus tests on cells and/or the unprocessed bulk. Various cases are considered. In all cases, characterization of clearance using nonspecific ''model'' viruses should be performed. The most common situations are Cases A and B. Production systems contaminated with a virus other than a rodent retrovirus are normally not used. Where there are convincing and well justified reasons for drug production using a cell line from Cases C, D, or E, these should be discussed with the regulatory authorities. With Cases C, D, and E, it is important to have validated effective steps to inactivate/remove the virus in question from the manufacturing process.

Case A: Where no virus, virus-like particle, or retrovirus-like particle has been demonstrated in the cells or in the unprocessed bulk, virus removal and inactivation studies should be performed with nonspecific ''model'' viruses as previously stated.

Case B: Where only a rodent retrovirus (or a retrovirus-like particle that is believed to be nonpathogenic, such as rodent A- and R-type particles) is present, process evaluation using a specific ''model'' virus, such as a murine leukemia virus, should be performed. Purified bulk should be tested using suitable methods having high specificity and sensitivity for the detection of the virus in question. For marketing authorization, data from at least three lots of purified bulk at pilot-plant scale or commercial scale should be provided. Cell lines such as Chinese hamster ovary (CHO), C127, baby hamster kidney (BHK), and murine hybridoma cell lines have frequently been used as substrates for drug production with no reported safety problems related to viral contamination of the products. For these cell lines in which the endogenous particles have been extensively characterized and clearance has been demonstrated, it is not usually necessary to assay for the presence of the noninfectious particles in purified bulk. Studies with nonspecific ''model'' viruses, as in Case A, are appropriate.

Case C: When the cells or unprocessed bulk are known to contain a virus, other than

a rodent retrovirus, for which there is no evidence of capacity for infecting humans (such as those identified by footnote 2 in Table 3, except rodent retroviruses (Case B)), virus removal and inactivation evaluation studies should use the identified virus. If it is not possible to use the identified virus, ''relevant'' or specific ''model'' viruses should be used to demonstrate acceptable clearance. Time-dependent inactivation for identified (or ''relevant'' or specific ''model'') viruses at the critical inactivation step(s) should be obtained as part of process evaluation for these viruses. Purified bulk should be tested using suitable methods having high specificity and sensitivity for the detection of the virus in question. For the purpose of marketing authorization, data from at least three lots of purified bulk manufactured at pilot-plant scale or commercial scale should be provided.

Case D: Where a known human pathogen, such as those indicated by footnote 1 in Table 3, is identified, the product may be acceptable only under exceptional circumstances. In this instance, it is recommended that the identified virus be used for virus removal and inactivation evaluation studies and specific methods with high specificity and sensitivity for the detection of the virus in question be employed. If it is not possible to use the identified virus, ''relevant'' and/or specific ''model'' viruses (described later) should be used. The process should be shown to achieve the removal and inactivation of the selected viruses during the purification and inactivation processes. Time-dependent inactivation data for the critical inactivation step(s) should be obtained as part of process evaluation. Purified bulk should be tested using suitable methods having high specificity and sensitivity for the detection of the virus in question. For the purpose of marketing authorization, data from at least three lots of purified bulk manufactured at pilot-plant scale or commercial scale should be provided.

Case E: When a virus that cannot be classified by currently available methodologies is detected in the cells or unprocessed bulk, the product is usually considered unacceptable since the virus may prove to be pathogenic. In the very rare case where there are convincing and well justified reasons for drug production using such a cell line, this should be discussed with the regulatory authorities before proceeding further.

VI. Evaluation and Characterization of Viral Clearance Procedures

Evaluation and characterization of due virus removal and/or inactivation procedures play an important role in establishing the safety of biotechnology products. Many instances of contamination in the past have occurred with agents whose presence was not known or even suspected, and though this happened to biological products derived from various source materials other than fully characterized cell lines, assessment of viral clearance will provide a measure of confidence that any unknown, unsuspected, and harmful viruses may be removed. Studies should be carried out in a manner that is well documented and controlled.

The objective of viral clearance studies is to assess process step(s) that can be considered to be effective in inactivating/removing viruses and to estimate quantitatively the overall level of virus reduction obtained by the process. This should be achieved by the deliberate addition (''spiking'') of significant amounts of a virus to the crude material and/or to different fractions obtained during the various process steps and demonstrating its removal or inactivation during the subsequent steps. It is not considered necessary to evaluate or characterize every step of a manufacturing process if adequate clearance is demonstrated by the use of fewer steps. It should be borne in mind that other steps in the process may have an indirect effect on the viral inactivation/removal achieved. Manufacturers should explain and justify the approach used in studies for evaluating virus clearance.

The reduction of virus infectivity may be achieved by removal of virus particles or by inactivation of viral infectivity. For each production step assessed, the possible mechanism of loss of viral infectivity should be described with regard to whether it is due to inactivation or removal. For inactivation steps, the study should be planned in such a way that samples are taken at different times and an inactivation curve constructed (see section VI.B.5.).

Viral clearance evaluation studies are performed to demonstrate the clearance of a virus known to be present in the MCB and/or to provide some level of assurance that adventitious viruses which could not be detected, or might gain access to the production process, would be cleared. Reduction factors are normally expressed on a logarithmic scale, which implies that, while residual virus infectivity will never be reduced to zero, it may be greatly reduced mathematically.

In addition to clearance studies for viruses known to be present, studies to characterize the ability to remove and/or inactivate other viruses should be conducted. The purpose of studies with viruses exhibiting a range of biochemical and biophysical properties that are not known or expected to be present is to characterize the robustness of the procedure rather than to achieve a specific inactivation or removal goal. A demonstration of the capacity of the production process to inactivate or remove viruses is desirable (see section VI.C.). Such studies are not performed to evaluate a specific safety risk. Therefore, a specific clearance value need not be achieved.

A. The Choice of Viruses for the Evaluation and Characterization of Viral Clearance

Viruses for clearance evaluation and process characterization studies should be chosen to resemble viruses which may contaminate the product and to represent a wide range of physico-chemical properties in order to test the ability of the system to eliminate viruses in general. The manufacturer should justify the choice of viruses in accordance with the aims of the evaluation and characterization study and the guidance provided in this document.

1. ''Relevant'' Viruses and ''Model'' Viruses

A major issue in performing a viral clearance study is to determine which viruses should be used. Such viruses fall into three categories: ''Relevant'' viruses, specific ''model'' viruses, and nonspecific ''model'' viruses.

''Relevant'' viruses are viruses used in process evaluation of viral clearance studies which are either the identified viruses, or of the same species as the viruses that are known, or likely to contaminate the cell substrate or any other reagents or materials used in the production process. The purification and/or inactivation process should demonstrate the capability to remove and/or inactivate such viruses. When a ''relevant'' virus is not available or when it is not well adapted to process evaluation of viral clearance studies (e.g., it cannot be grown in vitro to sufficiently high titers), a specific ''model'' virus should be used as a substitute. An appropriate specific ''model'' virus may be a virus which is closely related to the known or suspected virus (same genus or family), having similar physical and chemical properties to the observed or suspected virus.

Cell lines derived from rodents usually contain endogenous retrovirus particles or retrovirus-like particles, which may be infectious (C-type particles) or noninfectious (cytoplasmic A- and R-type particles). The capacity of the manufacturing process to remove and/or inactivate rodent retroviruses from products obtained from such cells should be determined. This may be accomplished by using a murine leukemia virus, a specific ''model'' virus in the case of cells of murine origin. When human cell lines secreting monoclonal antibodies have been obtained by the immortalization of B lymphocytes by Epstein-Barr Virus (EBV), the ability of the manufacturing process to remove and/or inactivate a herpes virus should be determined. Pseudorabies virus may also be used as a specific ''model'' virus.

When the purpose is to characterize the capacity of the manufacturing process to remove and/or inactivate viruses in general, i.e., to characterize the robustness of the clearance process, viral clearance characterization studies should be performed with nonspecific ''model'' viruses with differing properties. Data obtained from studies with ''relevant'' and/or specific ''model'' viruses may also contribute to this assessment. It is not necessary to test all types of viruses. Preference should be given to viruses that display a significant resistance to physical and/or chemical treatments. The results obtained for such viruses provide useful information about the ability of the production process to remove and/or inactivate viruses in general. The choice and number of viruses used will be influenced by the quality and characterization of the cell lines and the production process.

Examples of useful ''model'' viruses representing a range of physico-chemical structures and examples of viruses which have been used in viral clearance studies are given in Appendix 2 and Table A–1.

2. Other Considerations

Additional points to be considered are as follows:

(a) Viruses which can be grown to high titer are desirable, although this may not always be possible.

(b) There should be an efficient and reliable assay for the detection of each virus used, for every stage of manufacturing that is tested.

(c) Consideration should be given to the health hazard which certain viruses may pose to the personnel performing the clearance studies.

B. Design and Implications of Viral Clearance Evaluation and Characterization Studies

1. Facility and Staff

It is inappropriate to introduce any virus into a production facility because of good manufacturing practice (GMP) constraints. Therefore, viral clearance studies should be conducted in a separate laboratory equipped for virological work and performed by staff with virological expertise in conjunction with production personnel involved in designing and preparing a scaled-down version of the purification process.

2. Scaled-down Production System

The validity of the scaling down should be demonstrated. The level of purification of the scaled-down version should represent as closely as possible the production procedure. For chromatographic equipment, column bed-height, linear flow-rate, flow-rate-to-bed-volume ratio (i.e., contact time), buffer and gel types, pH, temperature, and concentration of protein, salt, and product should all be shown to be representative of commercial-scale manufacturing. A similar elution profile should result. For other procedures, similar considerations apply. Deviations that cannot be avoided should be discussed with regard to their influence on the results.

3. Analysis of Step-wise Elimination of Virus

When viral clearance studies are being performed, it is desirable to assess the contribution of more than one production step to virus elimination. Steps which are likely to clear virus should be individually assessed for their ability to remove and inactivate virus and careful consideration should be given to the exact definition of an individual step. Sufficient virus should be present in the material of each step to be tested so that an adequate assessment of the effectiveness of each step is obtained. Generally, virus should be added to in-process material of each step to be tested. In some cases, simply adding high titer virus to unpurified bulk and testing its concentration between steps will be sufficient. Where virus removal results from separation procedures, it is recommended that, if appropriate and if possible, the distribution of the virus load in the different fractions be investigated. When virucidal buffers are used in multiple steps within the manufacturing process, alternative strategies such as parallel spiking in less virucidal buffers may be carried out as part of the overall process assessment. The virus titer before and after each step being tested should be determined. Quantitative infectivity assays should have adequate sensitivity and reproducibility and should be performed with sufficient replicates to ensure adequate statistical validity of the result. Quantitative assays not associated with infectivity may be used if justified. Appropriate virus controls should be included in all infectivity assays to ensure the sensitivity of the method. Also, the statistics of sampling virus when at low concentrations should be considered (Appendix 3).

4. Determining Physical Removal Versus Inactivation

Reduction in virus infectivity may be achieved by the removal or inactivation of virus. For each production step assessed, the possible mechanism of loss of viral infectivity should be described with regard to whether it is due to inactivation or removal. If little clearance of infectivity is achieved by the production process, and the clearance of virus is considered to be a major factor in the safety of the product, specific or additional inactivation/removal steps should be introduced. It may be necessary to distinguish between removal and inactivation for a particular step, for example, when there is a possibility that a buffer used in more than one clearance step may contribute to inactivation during each step, i.e., the contribution to inactivation by a buffer shared by several chromatographic steps and the removal achieved by each of these chromatographic steps should be distinguished.

5. Inactivation Assessment

For assessment of viral inactivation, unprocessed crude material or intermediate material should be spiked with infectious virus and the reduction factor calculated. It should be recognized that virus inactivation is not a simple, first order reaction and is usually more complex, with a fast ''phase 1'' and a slow ''phase 2.'' The study should, therefore, be planned in such a way that samples are taken at different times and an inactivation curve constructed. It is recommended that studies for inactivation include at least one time point less than the minimum exposure time and greater than zero, in addition to the minimum exposure time. Additional data are particularly important where the virus is a ''relevant'' virus known to be a human pathogen and an effective inactivation process is being designed. However, for inactivation studies in which nonspecific ''model'' viruses are used or when specific ''model'' viruses are used as surrogates for virus particles, such as the CHO intracytoplasmic retrovirus-like particles, reproducible clearance should be demonstrated in at least two independent studies. Whenever possible, the initial virus load should be determined from the virus that can be detected in the spiked starting material. If this is not possible, the initial virus load may be calculated from the titer of the spiking virus preparation. Where inactivation is too rapid to plot an inactivation curve using process conditions, appropriate controls should be performed to demonstrate that infectivity is indeed lost by inactivation.

6. Function and Regeneration of Columns

Over time and after repeated use, the ability of chromatography columns and other devices used in the purification scheme to clear virus may vary. Some estimate of the stability of the viral clearance after several uses may provide support for repeated use of such columns. Assurance should be provided that any virus potentially retained by the production system would be adequately destroyed or removed prior to reuse of the system. For example, such evidence may be provided by demonstrating that the cleaning and regeneration procedures do inactivate or remove virus.

7. Specific Precautions

(a) Care should be taken in preparing the high-titer virus to avoid aggregation which may enhance physical removal and decrease inactivation, thus distorting the correlation with actual production.

(b) Consideration should be given to the minimum quantity of virus which can be reliably assayed.

(c) The study should include parallel control assays to assess the loss of infectivity of the virus due to such reasons as the dilution, concentration, filtration or storage of samples before titration.

(d) The virus ''spike'' should be added to the product in a small volume so as not to dilute or change the characteristics of the product. Diluted, test-protein sample is no longer identical to the product obtained at commercial scale.

(e) Small differences in, for example, buffers, media, or reagents can substantially affect viral clearance.

(f) Virus inactivation is time-dependent, therefore, the amount of time a spiked product remains in a particular buffer solution or on a particular chromatography column should reflect the conditions of the commercial-scale process.

(g) Buffers and product should be evaluated independently for toxicity or interference in assays used to determine the virus titer, as these components may adversely affect the indicator cells. If the solutions are toxic to the indicator cells, dilution, adjustment of the pH, or dialysis of the buffer containing spiked virus might be necessary. If the product itself has anti-viral activity, the clearance study may need to be performed without the product in a ''mock'' run, although omitting the product or substituting a similar protein that does not have anti-viral activity could affect the behavior of the virus in some production steps. Sufficient controls to demonstrate the effect of procedures used solely to prepare the sample for assay (e.g., dialysis, storage) on the removal/inactivation of the spiking virus should be included.

(h) Many purification schemes use the same or similar buffers or columns repetitively. The effects of this approach should be taken into account when analyzing the data. The effectiveness of virus elimination by a particular process may vary with the manufacturing stage at which it is used.

(i) Overall reduction factors may be underestimated where production conditions or buffers are too cytotoxic or virucidal and should be discussed on a case-by-case basis. Overall reduction factors may also be overestimated due to inherent limitations or inadequate design of viral clearance studies.

C. Interpretation of Viral Clearance Studies; Acceptability

The object of assessing virus inactivation/removal is to evaluate and characterize process steps that can be considered to be effective in inactivating/removing viruses and to estimate quantitatively the overall level of virus reduction obtained by the manufacturing process. For virus contaminants, as in Cases B through E, it is important to show that not only is the virus eliminated or inactivated, but that there is excess capacity for viral clearance built into the purification process to assure an appropriate level of safety for the final product. The amount of virus eliminated or inactivated by the production process should be compared to the amount of virus which may be present in unprocessed bulk.

To carry out this comparison, it is important to estimate the amount of virus in the unprocessed bulk. This estimate should be obtained using assays for infectivity or other methods such as transmission electron microscopy (TEM). The entire purification process should be able to eliminate substantially more virus than is estimated to be present in a single-dose-equivalent of unprocessed bulk. See Appendix 4 for calculation of virus reduction factors and Appendix 5 for calculation of estimated particles per dose.

Manufacturers should recognize that clearance mechanisms may differ between virus classes. A combination of factors should be considered when judging the data supporting the effectiveness of virus inactivation/removal procedures. These include:

(i) The appropriateness of the test viruses used;

(ii) The design of the clearance studies;

(iii) The log reduction achieved;

(iv) The time dependence of inactivation;

(v) The potential effects of variation in process parameters on virus inactivation/removal;

(vi) The limits of assay sensitivities;

(vii) The possible selectivity of inactivation/removal procedure(s) for certain classes of viruses.

Effective clearance may be achieved by any of the following: Multiple inactivation steps, multiple complementary separation steps, or combinations of inactivation and separation steps. Since separation methods may be dependent on the extremely specific physico-chemical properties of a virus which influence its interaction with gel matrices and precipitation properties, ''model'' viruses may be separated in a different manner than a target virus. Manufacturing parameters influencing separation should be properly defined and controlled. Differences may originate from changes in surface properties such as glycosylation. However, despite these potential variables, effective removal can be obtained by a combination of complementary separation steps or combinations of inactivation and separation steps. Therefore, well-designed separation steps, such as chromatographic procedures, filtration steps, and extractions, can be effective virus removal steps provided that they are performed under appropriately controlled conditions. An effective virus removal step should give reproducible reduction of virus load shown by at least two independent studies.

An overall reduction factor is generally expressed as the sum of the individual factors. However, reduction in virus titer of the order of 1 $\log_{10}$ or less would be considered negligible and would be ignored unless justified.

If little reduction of infectivity is achieved by the production process, and the removal of virus is considered to be a major factor in the safety of the product, a specific, additional inactivation/removal step or steps should be introduced. For all viruses, manufacturers should justify the acceptability of the reduction factors obtained. Results would be evaluated on the basis of the factors listed above.

D. Limitations of Viral Clearance Studies

Viral clearance studies are useful for contributing to the assurance that an acceptable level of safety in the final product is achieved but do not by themselves establish safety. However, a number of factors in the design and execution of viral clearance studies may lead to an incorrect estimate of the ability of the process to remove virus infectivity. These factors include the following:

1. Virus preparations used in clearance studies for a production process are likely to be produced in tissue culture. The behavior of a tissue culture virus in a production step may be different from that of the native virus, for example, if native and cultured viruses differ in purity or degree of aggregation.

2. Inactivation of virus infectivity frequently follows a biphasic curve in which a rapid initial phase is followed by a slower phase. It is possible that virus escaping a first inactivation step may be more resistant to subsequent steps. For example, if the resistant fraction takes the form of virus aggregates, infectivity may be resistant to a range of different chemical treatments and to heating.

3. The ability of the overall process to remove infectivity is expressed as the sum of the logarithm of the reductions at each step. The summation of the reduction factors of multiple steps, particularly of steps with little reduction (e.g., below 1 $\log_{10}$), may overestimate the true potential for virus elimination. Furthermore, reduction values achieved by repetition of identical or near identical procedures should not be included unless justified.

4. The expression of reduction factors as logarithmic reductions in titer implies that, while residual virus infectivity may be greatly reduced, it will never be reduced to zero. For example, a reduction in the infectivity of a preparation containing 8 $\log_{10}$ infectious units per milliliter (mL) by a factor of 8 $\log_{10}$ leaves zero $\log_{10}$ per mL or one infectious unit per mL, taking into consideration the limit of detection of the assay.

5. Pilot-plant scale processing may differ from commercial-scale processing despite care taken to design the scaled-down process.

6. Addition of individual virus reduction factors resulting from similar inactivation mechanisms along the manufacturing process may overestimate overall viral clearance.

E. Statistics

The viral clearance studies should include the use of statistical analysis of the data to evaluate the results. The study results should be statistically valid to support the conclusions reached (see Appendix 3).

F. Reevaluation of Viral Clearance

Whenever significant changes in the production or purification process are made, the effect of that change, both direct and indirect, on viral clearance should be considered and the system re-evaluated as needed. For example, changes in production processes may cause significant changes in the amount of virus produced by the cell line; changes in process steps may change the extent of viral clearance.

VII. Summary

This document suggests approaches for the evaluation of the risk of viral contamination and for the removal of virus from product, thus contributing to the production of safe biotechnology products derived from animal or human cell lines, and emphasizes the value of many strategies, including:

A. Thorough characterization/screening of cell substrate starting material in order to identify which, if any, viral contaminants are present;

B. Assessment of risk by determination of the human tropism of the contaminants;

C. Establishment of an appropriate program of testing for adventitious viruses in unprocessed bulk;

D. Careful design of viral clearance studies using different methods of virus inactivation or removal in the same production process in order to achieve maximum viral clearance; and

E. Performance of studies which assess virus inactivation and removal.

Glossary

Adventitious Virus. See virus.

Cell Substrate. Cells used to manufacture product.

Endogenous Virus. See virus.

Inactivation. Reduction of virus infectivity caused by chemical or physical modification.

In Vitro Cell Age. A measure of the period between thawing of the MCB vial(s) and harvest of the production vessel measured by elapsed chronological time in culture, population doubling level of the cells, or passage level of the cells when subcultivated by a defined procedure for dilution of the culture.

Master Cell Bank (MCB). An aliquot of a single pool of cells which generally has been prepared from the selected cell clone under defined conditions, dispensed into multiple containers, and stored under defined conditions. The MCB is used to derive all working cell banks. The testing performed on a new MCB (from a previous initial cell clone, MCB, or WCB) should be the same as for the original MCB, unless justified.

Minimum Exposure Time. The shortest period for which a treatment step will be maintained.

Nonendogenous Virus. See virus.

Process Characterization of Viral Clearance. Viral clearance studies in which nonspecific ''model'' viruses are used to assess the robustness of the manufacturing process to remove and/or inactivate viruses.

Process Evaluation Studies of Viral Clearance. Viral clearance studies in which ''relevant'' and/or specific ''model'' viruses are used to determine the ability of the manufacturing process to remove and/or inactivate these viruses.

Production Cells. Cell substrate used to manufacture product.

Unprocessed Bulk. One or multiple pooled harvests of cells and culture media. When cells are not readily accessible, the unprocessed bulk would constitute fluid harvested from the fermenter.

Virus. Intracellularly replicating infectious agents that are potentially pathogenic, possess only a single type of nucleic acid (either ribonucleic acid (RNA) or DNA), are unable to grow and undergo binary fission, and multiply in the form of their genetic material.

Adventitious Virus. Unintentionally introduced contaminant virus.

Endogenous Virus. Viral entity whose genome is part of the germ line of the species of origin of the cell line and is covalently integrated into the genome of animal from which the parental cell line was derived. For the purposes of this document, intentionally introduced, nonintegrated viruses such as EBV used to immortalize cell substrates or Bovine Papilloma Virus fit in this category.

Nonendogenous Virus. Virus from external sources present in the MCB.

Nonspecific Model Virus. A virus used for characterization of viral clearance of the process when the purpose is to characterize the capacity of the manufacturing process to remove and/or inactivate viruses in general, i.e., to characterize the robustness of the purification process.

Relevant Virus. Virus used in process evaluation studies which is either the identified virus, or of the same species as the virus that is known, or likely to contaminate the cell substrate or any other reagents or materials used in the production process.

Specific Model Virus. Virus which is closely related to the known or suspected virus (same genus or family), having similar physical and chemical properties to those of the observed or suspected virus.

Viral Clearance. Elimination of target virus by removal of viral particles or inactivation of viral infectivity.

Virus-like Particles. Structures visible by electron microscopy which morphologically appear to be related to known viruses.

Virus Removal. Physical separation of virus particles from the intended product.

Working Cell Bank (WCB). The WCB is prepared from aliquots of a homogeneous suspension of cells obtained from culturing the MCB under defined culture conditions.

TABLE 1.—EXAMPLES OF VIRUS TESTS TO BE PERFORMED ONCE AT VARIOUS CELL LEVELS

	MCB	WCB[1]	Cells at the limit[2]
Tests for Retroviruses and Other Endogenous Viruses			
Infectivity	+	-	+
Electron microscopy[3]	+[3]	-	+[3]
Reverse transcriptase[4]	+[4]	-	+[4]
Other virus-specific tests[5]	as appropriate[5]	-	as appropriate[5]
Tests for Nonendogenous or Adventitious Viruses			
In vitro Assays	+	-[6]	+
In vivo Assays	+	-[6]	+
Antibody production tests[7]	+[7]	-	-
Other virus-specific tests[8]	+[8]	-	-

[1] See text—section III.A.2.
[2] Cells at the limit: Cells at the limit of in vitro cell age used for production (See text—section III.A.3.).
[3] May also detect other agents.
[4] Not necessary if positive by retrovirus infectivity test.
[5] As appropriate for cell lines which are known to have been infected by such agents.
[6] For the first WCB, this test should be performed on cells at the limit of in vitro cell age, generated from that WCB; for WCB's subsequent to the first WCB, a single in vitro and in vivo test can be done either directly on the WCB or on cells at the limit of in vitro cell age.
[7] e.g., MAP, RAP, HAP—usually applicable for rodent cell lines.
[8] e.g., tests for cell lines derived from human, nonhuman primate, or other cell lines as appropriate.

TABLE 2.—EXAMPLES OF THE USE AND LIMITATIONS OF ASSAYS WHICH MAY BE USED TO TEST FOR VIRUS

Test	Test article	Detection capability	Detection limitation
Antibody production	Lysate of cells and their culture medium	Specific viral antigens	Antigens not infectious for animal test system
in vivo virus screen	Lysate of cells and their culture medium	Broad range of viruses pathogenic for humans	Agents failing to replicate or produce diseases in the test system
in vitro virus screen for:		Broad range of viruses pathogenic for humans	Agents failing to replicate or produce diseases in the test system
1. Cell bank characterization	1. Lysate of cells and their culture medium (for co-cultivation, intact cells should be in the test article)		
2. Production screen	2. Unprocessed bulk harvest or lysate of cells and their cell culture medium from the production reactor		
TEM on:		Virus and virus-like particles	Qualitative assay with assessment of identity
1. Cell substrate	1. Viable cells		
2. Cell culture supernatant	2. Cell-free culture supernatant		

TABLE 2.—EXAMPLES OF THE USE AND LIMITATIONS OF ASSAYS WHICH MAY BE USED TO TEST FOR VIRUS—Continued

Test	Test article	Detection capability	Detection limitation
Reverse transcriptase (RT)	Cell-free culture supernatant	Retroviruses and expressed retroviral RT	Only detects enzymes with optimal activity under preferred conditions. Interpretation may be difficult due to presence of cellular enzymes; background with some concentrated samples
Retrovirus (RV) infectivity	Cell-free culture supernatant	Infectious retroviruses	RV failing to replicate or form discrete foci or plaques in the chosen test system
Cocultivation	Viable cells	Infectious retroviruses	RV failing to replicate
1. Infectivity endpoint			1. See above under RV infectivity
2. TEM endpoint			2. See above under TEM[1]
3. RT endpoint			3. See above under RT
PCR (Polymerase chain reaction)	Cells, culture fluid and other materials	Specific virus sequences	Primer sequences must be present. Does not indicate whether virus is infectious.

[1] In addition, difficult to distinguish test article from indicator cells.

TABLE 3.—VIRUS DETECTED IN ANTIBODY PRODUCTION TESTS

MAP	HAP	RAP
Ectromelia Virus[2,3]	Lymphocytic Choriomeningitis Virus (LCM)[1,3]	Hantaan Virus[1,3]
Hantaan Virus[1,3]	Pneumonia Virus of Mice (PVM)[2,3]	Kilham Rat Virus (KRV)[2,3]
K Virus[2]	Reovirus Type 3 (Reo3)[1,3]	Mouse Encephalomyelitis Virus (Theilers, GDVII)[2]
Lactic Dehydrogenase Virus (LDM)[1,3]	Sendai Virus[1,3]	Pneumonia Virus of Mice (PVM)[2,3]
Lymphocytic Choriomeningitis Virus (LCM)[1,3]	SV5	Rat Coronavirus (RCV)[2]
Minute Virus of Mice[2,3]		Reovirus Type 3 (Reo3)[1,3]
Mouse Adenovirus (MAV)[2,3]		Sendai Virus[1,3]
Mouse Cytomegalovirus (MCMV)[2,3]		Sialoacryoadenitis Virus (SDAV)[2]
Mouse Encephalomyelitis Virus (Theilers, GDVII)[2]		Toolan Virus (HI)[2,3]
Mouse Hepatitis Virus (MHV)[2]		
Mouse Rotavirus (EDIM)[2,3]		
Pneumonia Virus of Mice (PVM)[2,3]		
Polyoma Virus[2]		
Reovirus Type 3 (Reo3)[1,3]		
Sendai Virus[1,3]		
Thymic Virus[2]		

[1] Viruses for which there is evidence of capacity for infecting humans or primates.
[2] Viruses for which there is no evidence of capacity for infecting humans.
[3] Virus capable of replicating in vitro in cells of human or primate origin.

TABLE 4.—ACTION PLAN FOR PROCESS ASSESSMENT OF VIRAL CLEARANCE AND VIRUS TESTS ON PURIFIED BULK

	Case A	Case B	Case C[2]	Case D[2]	Case E[2]
Status					
Presence of virus[1]	-	-	+	+	(+)[3]
Virus-like particles[1]	-	-	-	-	(+)[3]
Retrovirus-like particles[1]	-	+	-	-	(+)[3]
Virus identified	not applicable	+	+	+	-
Virus pathogenic for humans	not applicable	-[4]	-[4]	+	unknown
Action					
Process characterization of viral clearance using nonspecific ''model'' viruses	yes[5]	yes[5]	yes[5]	yes[5]	yes[7]
Process evaluation of viral clearance using ''relevant'' or specific ''model'' viruses	no	yes[6]	yes[6]	yes[6]	yes[7]
Test for virus in purified bulk	not applicable	yes[8]	yes[8]	yes[8]	yes[8]

[1] Results of virus tests for the cell substrate and/or at the unprocessed bulk level. Cell cultures used for production which are contaminated with viruses will generally not be acceptable. Endogenous viruses (such as retroviruses) or viruses that are an integral part of the MCB may be acceptable if appropriate viral clearance evaluation procedures are followed.
[2] The use of source material which is contaminated with viruses, whether or not they are known to be infectious and/or pathogenic in humans, will only be acceptable under very exceptional circumstances.
[3] Virus has been observed by either direct or indirect methods.
[4] Believed to be nonpathogenic.

[5] Characterization of clearance using nonspecific ''model'' viruses should be performed.
[6] Process evaluation for ''relevant'' viruses or specific ''model'' viruses should be performed.
[7] See text under Case E.
[8] The absence of detectable virus should be confirmed for purified bulk by means of suitable methods having high specificity and sensitivity for the detection of the virus in question. For the purpose of marketing authorization, data from at least 3 lots of purified bulk manufactured at pilot-plant or commercial scale should be provided. However for cell lines such as CHO cells for which the endogenous particles have been extensively characterized and adequate clearance has been demonstrated, it is not usually necessary to assay for the presence of the noninfectious particles in purified bulk.

Appendix 1

Products Derived from Characterized Cell Banks Which Were Subsequently Grown In Vivo

For products manufactured from fluids harvested from animals inoculated with cells from characterized banks, additional information regarding the animals should be provided.

Whenever possible, animals used in the manufacture of biotechnological/biological products should be obtained from well defined, specific pathogen-free colonies. Adequate testing for appropriate viruses, such as those listed in Table 3, should be performed. Quarantine procedures for newly arrived as well as diseased animals should be described, and assurance provided that all containment, cleaning, and decontamination methodologies employed within the facility are adequate to contain the spread of adventitious agents. This may be accomplished through the use of a sentinel program. A listing of agents for which testing is performed should also be included. Veterinary support services should be available on-site or within easy access. The degree to which the vivarium is segregated from other areas of the manufacturing facility should be described. Personnel practices should be adequate to ensure safety.

Procedures for the maintenance of the animals should be fully described. These would include diet, cleaning and feeding schedules, provisions for periodic veterinary care if applicable, and details of special handling that the animals may require once inoculated. A description of the priming regimen(s) for the animals, the preparation of the inoculum, and the site and route of inoculation should also be included.

The primary harvest material from animals may be considered an equivalent stage of manufacture to unprocessed bulk harvest from a bioreactor. Therefore, all testing considerations previously outlined in section IV. of this document should apply. In addition, the manufacturer should assess the bioburden of the unprocessed bulk, determine whether the material is free of mycoplasma, and perform species-specific assay(s) as well as in vivo testing in adult and suckling mice.

Appendix 2

The Choice of Viruses for Viral Clearance Studies

A. Examples of Useful ''Model'' Viruses:

1. Nonspecific ''model'' viruses representing a range of physico-chemical structures:

- SV40 (Polyomavirus maccacae 1), human polio virus 1 (Sabin), animal parvovirus or some other small, nonenveloped viruses;
- a parainfluenza virus or influenza virus, Sindbis virus or some other medium-to-large, enveloped, RNA viruses;
- a herpes virus (e.g., HSV–1 or a pseudorabies virus), or some other medium-to-large, DNA viruses.

These viruses are examples only and their use is not mandatory.

2. For rodent cell substrates murine retroviruses are commonly used as specific ''model'' viruses.

B. Examples of Viruses That Have Been Used in Viral Clearance Studies

Several viruses that have been used in viral clearance studies are listed in Table A–1. However, since these are merely examples, the use of any of the viruses in the table is not considered mandatory and manufacturers are invited to consider other viruses, especially those that may be more appropriate for their individual production processes. Generally, the process should be assessed for its ability to clear at least three different viruses with differing characteristics.

TABLE A–1.—EXAMPLES OF VIRUSES WHICH HAVE BEEN USED IN VIRAL CLEARANCE STUDIES

Virus	Family	Genus	Natural Host	Genome	Env	Size (nm)	Shape	Resistance[1]
Vesicular Stomatitis Virus	Rhabdo	Vesiculo-virus	Equine Bovine	RNA	yes	70 x 150	Bullet	Low
Parainfluenza Virus	Paramyxo	Paramyxo-virus	Various	RNA	yes	100–200+	Pleo/Spher	Low
MuLV	Retro	Type C oncovirus	Mouse	RNA	yes	80–110	Spherical	Low
Sindbis Virus	Toga	Alphavirus	Human	RNA	yes	60–70	Spherical	Low
BVDV	Flavi	Pestivirus	Bovine	RNA	yes	50–70	Pleo/Spher	Low
Pseudo-rabies Virus	Herpes		Swine	DNA	yes	120–200	Spherical	Med
Poliovirus Sabin Type 1	Picorna	Entero-virus	Human	RNA	no	25–30	Icosa-hedral	Med
Encephalomyo-carditis Virus (EMC)	Picorna	Cardio-virus	Mouse	RNA	no	25–30	Icosa-hedral	Med
Reovirus 3	Roe	Orthoreo-virus	Various	DNA	no	60–80	Spherical	Med
SV40	Papova	Polyomavirus	Monkey	DNA	no	40–50	Icosa-hedral	Very high
Parvoviruses (canine, porcine)	Parvo	Parvovirus	Canine Porcine	DNA	no	18–24	Icosa-hedral	Very high

[1] Resistance to physico-chemical treatments based on studies of production processes. Resistance is relative to the specific treatment and it is used in the context of the understanding of the biology of the virus and the nature of the manufacturing process. Actual results will vary according to the treatment. These viruses are examples only and their use is not considered mandatory.

Appendix 3

A. Statistical Considerations for Assessing Virus Assays

Virus titrations suffer the problems of variation common to all biological assay systems. Assessment of the accuracy of the virus titrations and reduction factors derived from them and the validity of the assays should be performed to define the reliability of a study. The objective of statistical evaluation is to establish that the study has been carried out to an acceptable level of virological competence.

1. Assay methods may be either quantal or quantitative. Quantal methods include infectivity assays in animals or in tissue-culture-infectious-dose (TCID) assays, in which the animal or cell culture is scored as either infected or not. Infectivity titers are then measured by the proportion of animals or culture infected. In quantitative methods, the infectivity measured varies continuously with the virus input. Quantitative methods

include plaque assays where each plaque counted corresponds to a single infectious unit. Both quantal and quantitative assays are amenable to statistical evaluation.

2. Variation can arise within an assay as a result of dilution errors, statistical effects, and differences within the assay system which are either unknown or difficult to control. These effects are likely to be greater when different assay runs are compared (between-assay variation) than when results within a single assay run are compared (within-assay variation).

3. The 95 percent confidence limits for results of within-assay variation normally should be on the order of $\pm 0.5 \log_{10}$ of the mean. Within-assay variation can be assessed by standard textbook methods. Between-assay variation can be monitored by the inclusion of a reference preparation, the estimate of whose potency should be within approximately 0.5 $\log_{10}$ of the mean estimate established in the laboratory for the assay to be acceptable. Assays with lower precision may be acceptable with appropriate justification.

4. The 95 percent confidence limits for the reduction factor observed should be calculated wherever possible in studies of clearance of ''relevant'' and specific ''model'' viruses. If the 95 percent confidence limits for the viral assays of the starting material are +s, and for the viral assays of the material after the step are +a, the 95 percent confidence limits for the reduction factor are

$$\pm\sqrt{S^2+a^2}.$$

B. Probability of Detection of Viruses at Low Concentrations

At low virus concentrations (e.g., in the range of 10 to 1,000 infectious particles per liter) it is evident that a sample of a few milliliters may or may not contain infectious particles. The probability, p, that this sample does not contain infectious viruses is:

$p = ((V-v)/V)^n$

where V (liter) is the overall volume of the material to be tested, v (liter) is the volume of the sample and n is the absolute number of infectious particles statistically distributed in V.

If V >> v, this equation can be approximated by the Poisson distribution:

$p = e^{-cv}$

where c is the concentration of infectious particles per liter.

or, $c = \ln p / -v$

As an example, if a sample volume of 1 mL is tested, the probabilities *p* at virus concentrations ranging from 10 to 1,000 infectious particles per liter are:

c	10	100	1,000
p	0.99	0.90	0.37

This indicates that for a concentration of 1,000 viruses per liter, in 37 percent of sampling, 1 mL will not contain a virus particle.

If only a portion of a sample is tested for virus and the test is negative, the amount of virus which would have to be present in the total sample in order to achieve a positive result should be calculated and this value taken into account when calculating a reduction factor. Confidence limits at 95 percent are desirable. However, in some instances, this may not be practical due to material limitations.

Appendix 4

Calculation of Reduction Factors in Studies to Determine Viral Clearance

The virus reduction factor of an individual purification or inactivation step is defined as the $\log_{10}$ of the ratio of the virus load in the pre-purification material and the virus load in the post-purification material which is ready for use in the next step of the process. If the following abbreviations are used:

Starting material: vol v′; titer $10^{a'}$;
virus load: $(v')(10^{a})$,
Final material: vol v″; titer $10^{a''}$;
virus load: $(v'')(10^{a''})$,
the individual reduction factors Ri are calculated according to

$10^{Ri} = (v')(10^{a'}) / (v'')(10^{a''})$

This formula takes into account both the titers and volumes of the materials before and after the purification step.

Because of the inherent imprecision of some virus titrations, an individual reduction factor used for the calculation of an overall reduction factor should be greater than 1.

The overall reduction factor for a complete production process is the sum logarithm of the reduction factors of the individual steps. It represents the logarithm of the ratio of the virus load at the beginning of the first process clearance step and at the end of the last process clearance step. Reduction factors are normally expressed on a logarithmic scale which implies that, while residual virus infectivity will never be reduced to zero, it may be greatly reduced mathematically.

Appendix 5

Calculation of Estimated Particles per Dose

This is applicable to those viruses for which an estimate of starting numbers can be made, such as endogenous retroviruses.

Example:

I. Assumptions

Measured or estimated concentration of virus in cell culture harvest = 10^6/mL

Calculated viral clearance factor = $>10^{15}$

Volume of culture harvest needed to make a dose of product = 1 liter (10^3mL)

II. Calculation of Estimated Particles/Dose

$$\frac{(10^6\ virus\ units/mL)\ x\ (10^3\ mL/dose)}{Clearance\ factor\ >10^{15}}$$

$$= \frac{10^9\ particles/dose}{Clearance\ factor\ >10^{15}}$$

$$= <10^{-6}\ particles/dose$$

Therefore, less than one particle per million doses would be expected.

Dated: September 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25569 Filed 9–23–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee To the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee To the Director, National Cancer Institute.

Date: October 2, 1998.

Time: 2:00 pm to 3:00 pm.

Agenda: To update committee on the progress of the NCI working groups.

Place: National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Susan J. Waldrop, Executive Secretary, National Institutes of Health, National Cancer Institute, Office of Science Policy, Bethesda, MD 20892, 301/496–1458.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25510 Filed 9–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: October 7, 1998.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH/NINDS/SRB, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892–9175, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25509 Filed 9–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 22–23, 1998.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20452.

Contact Person: Mary J. Stephens-Frazier, Ph.D., Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health/PHS/DHHS, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–597.

(Catalogue of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 15, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25511 Filed 9–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Nat'l. Inst. on Deafness & Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: October 14, 1998.

Time: 12:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDCD, 6120 Executive Blvd., Suite 400C, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: George M. Barnas, Phd, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities/NIDCD, 6120 Executive Blvd, Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25512 Filed 9–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Nat'l. Inst. on Deafness & Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Deafness and Other Communication Disorders Advisory Council, October 7, 1998, 8:30 AM to October 7, 1998, 3:00 PM, National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD, 20892 which was published in the **Federal Register** on September 9, 1998, 63FR48236.

The meeting notice has been amended to cancel the October 6 Planning Subcommittee meeting. The meeting is partially Closed to the public.

Dated: September 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25513 Filed 9–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group Health Behavior and Prevention Review Committee.

Date: October 15, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Lawrence C. Chaitkin, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group Treatment Assessment Review Committee.

Date: October 15–16, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC, 20037.

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–3367.

Name of Committee: National Institute of Mental Health Initial Review Group Clinical Psychopathology Review Committee.

Date: October 15–16, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Jack D. Maser, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group Mental Disorders of Aging Review Committee.

Date: October 15–16, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: David Chananie, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group Child Psychopathology and Treatment Review Committee.

Date: October 19–20, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert H. Stretch, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group Violence and Traumatic Stress Review Committee.

Date: October 19–20, 1998.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday, Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group Child/Adolescent Development, Risk, and Prevention Review Committee.

Date: October 22–23, 1998.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Victoria S. Levin, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group Perception and Cognition Review Committee.

Date: October 22–23, 1998.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

Name of Committee: National Institute of Mental Health Initial Review Group Social and Group Processes Review Committee.

Date: October 29–30, 1998.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Shelia O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

September 15, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25515 Filed 9–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological and Physiological Sciences Special Emphasis Panel.

Date: October 1, 1998.

Time: 2:00 pm to 3:30 pm

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla Day, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MGN–01.

Date: October 16, 1998.

Time: 11:00 am to 3:00 pm

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Camilla Day, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037.

Name of Committee: Biobehavioral and Social Sciences Initial Review Group Social Sciences and Population Study Section.

Date: October 22–23, 1998.

Time: 8:00 am to 5:00 pm

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Robert Weller, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7848, Bethesda, MD 20892, (301) 435–1259.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group Biochemical Endocrinology Study Section.

Date: October 22–23, 1998.

Time: 8:30 am to 5:00 pm

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Michael Knecht, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Biochemical Sciences Initial Review Group, Biochemistry Study Section.

Date: October 22–23, 1998.

Time: 8:30 am to 5:00 pm

Agenda: To review and evaluate grant applications.

Place: Granlibakken Management Company, Tahoe City, CA 96145.

Contact Person: Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Immunological Sciences Initial Review Group, Allergy and Immunology Study Section.

Date: October 22–23, 1998.

Time: 8:30 am to 4:00 pm

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Eugene M. Zimmerman, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, (301) 435–1220.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 1.

Date: October 22–23, 1998.

Time: 8:30 am to 5:00 pm

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Bio-Organic and Natural Products Chemistry Study Section.

Date: October 22–23, 1998.

Time: 9:00 am to 5:00 pm

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Mike Radtke, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

(Catalogue of Federal Domestic Assistance Program Nos. 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844; 93.306, Comparative Medicine, 93.306, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25508 Filed 9–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Social Sciences Initial Review Group Human Development and Aging Subcommittee 2.

Date: October 14–15, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Michael Micklin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7848, Bethesda, MD 20892, 301–435–1258.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 14–15, 1998.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Wincopin Circle-Columbia Sheraton Hotel, Columbia, MD 21044.

Contact Person: Herman Teitelbaum, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892.

Name of Committee: Biobehavioral and Social Sciences Initial Review Group, Human Development and Aging Subcommittee 1.

Date: October 15–16, 1998.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7848, Bethesda, MD 20892, 301–435–1260.

Name of Committee: Surgery, Radiology and Bioengineering Initial Review Group, Surgery and Bioengineering Study Section.

Date: October 19–20, 1998.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Washington, DC 20007.

Contact Person: Teresa Nesbitt, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892 (301) 435–1172.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–W(16).

Date: October 19–20, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Dharam S. Dhindsa, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892 (301) 435–1174.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group Physical Biochemistry Study Section.

Date: October 19–20, 1998.

Time: 8:30 AM to 5:00 PM

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721.

Name of Committee: Pathophysiological Sciences Initial Review Group Respiratory and Applied Physiology Study Section.

Date: October 19–20, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Everett E. Sinnett, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892. (301) 435–1016, ev__sinnett@nih.gov.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group Nutrition Study Section.

Date: October 19–20, 1998.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Woodfin Suite Hotel, 1380 Piccard Drive, Rockville, MD 20850.

Contact Person: Sooja K. Kim, PHD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–SB (01)

Date: October 20, 1998.

Time: 8:00 AM to 9:00 AM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 20007.

Contact Person: Teresa Nesbitt, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

Name of Committee: Cardiovascular Sciences Initial Review Group Pathology A Study Section.

Date: October 20–21, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contract Person: Lay Pinkus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group Microbial Physiology and Genetics Subcommittee 2.

Date: October 21–22, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contract Person: Gerald Liddel, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 21–22, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contract Person: Christine Melchior, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25514 Filed 9–23–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4370–N–03]

Announcement of OMB Approval Number for Fiscal Year 1999 Multifamily Housing Mortgage and Housing Assistance Restructuring Program Request for Qualifications

AGENCY: Office of the Secretary, HUD.

ACTION: Announcement of OMB Approval Number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the Fiscal Year 1999 Multifamily Housing Mortgage and Housing Assistance Restructuring Program Request for Qualifications.

FOR FURTHER INFORMATION CONTACT: George C. Dipman or William S. Richbourg, Program Coordinators, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–4000; Room 6272; Telephone (202) 708–2495 Fax (202) 708–5494. (This is not a toll-free number.) Hearing or speech-impaired individuals may call 1–800–877–8399 (Federal Information Relay Service TTY). Internet address: George __C.__Dipman@hud.gov or William__S.__Richbourg@hud.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to Fiscal Year 1999 Multifamily Housing Mortgage and Housing Assistance Restructuring Program Request for Qualifications, published at 63 FR 44102, on August 17, 1998. The OMB approval number for this information collection is 2502–0531, which expires on February 28, 1999.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: September 18, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–25566 Filed 9–23–98; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090998C]

Availability of an Environmental Assessment and Receipt of Applications for Incidental Take Permits for the Operation of Pacific Gas and Electric Company's Pittsburg and Contra Costa Power Plants Circulating Water Systems, Sacramento-San Joaquin Estuary, California

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability/receipt of applications.

SUMMARY: This notice advises the public that Pacific Gas and Electric Company has applied to the Fish and Wildlife Service (Service) and the National Marine Fisheries Service (NMFS) for incidental take permits pursuant to the Endangered Species Act of 1973, as amended. The proposed permit issued by the Service would authorize the incidental take of the threatened delta smelt (*Hypomesus transpacificus*), the endangered California clapper rail (*Rallus longirostris obsoletus*), the endangered California least tern (*Sterna antillarum (=albifrons) browni*), and the endangered salt marsh harvest mouse (*Reithrodontomys raviventris*) during the implementation of Pacific Gas and Electric Company's Multispecies Habitat Conservation Plan (Conservation Plan).

The proposed Service-issued permit also would authorize future incidental take of Sacramento splittail (*Pogonichthys macrolepidotus*), currently proposed for listing as threatened, should it become listed under the Endangered Species Act. The proposed permit issued by NMFS would authorize the incidental take of the endangered winter-run chinook salmon (*Oncorhynchus tshawytscha*) and threatened Central Valley steelhead (*Oncorhynchus mykiss*) during the implementation of the Conservation Plan. The proposed take would occur incidental to power plant operations and related activities on Pacific Gas and Electric Company's lands at the Pittsburg and Contra Costa Power Plants in Contra Costa County, California, and incidental to restoration activities at the Montezuma Enhancement Site, Solano County, California. The permits would be in effect for 15 years.

The Service and NMFS announce the availability for public comment of the permit applications, including the associated proposed Conservation Plan fully describing the proposed project, minimization and mitigation measures, and the accompanying Implementing Agreements. The Service and NMFS also announce the availability of an Environmental Assessment for the incidental take permit applications. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit applications, Conservation Plan, Environmental Assessment and Implementing Agreements should be received on or before October 26, 1998.

ADDRESSES: Comments regarding the application or adequacy of the Conservation Plan, Environmental Assessment and Implementing Agreements with respect to delta smelt, Sacramento splittail, California clapper rail, California least tern, and salt marsh harvest mouse, or other species for which the Service has responsibility, should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821-6340.

Comments regarding the application or adequacy of the Conservation Plan, Environmental Assessment and Implementing Agreements with respect to winter-run chinook salmon and Central Valley steelhead, or other species for which NMFS has responsibility should be addressed to the National Marine Fisheries Service, Southwest Region, 777 Sonoma Avenue, Santa Rosa, California 95404–6528. General comments or comments applicable to both agencies can be sent to either or both of the above addresses. Individuals wishing to receive copies of the application, Conservation Plan, Environmental Assessment and/or Implementing Agreements for review should immediately contact either of the above offices. Documents also will be available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mike Thabault or Matthew Vandenberg, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, (916) 979-2725, or Penny Ruvelas, National Marine Fisheries Service, (707) 575–6050.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and its implementing Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. However, the Service and NMFS, under limited circumstances, may issue permits to allow take of endangered or threatened wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are codified in 50 CFR 17.22 and 17.32, and 50 CFR 222.22 and 222.24–28.

Background

The Pacific Gas and Electric Company seeks coverage for take of the federally listed winter-run chinook salmon, Central Valley steelhead, delta smelt, California clapper rail, California least tern, and salt marsh harvest mouse, as well as the proposed Sacramento splittail, (collectively ''covered species''), incidental to the operation of the Pittsburg and Contra Costa Power Plants. The actions proposed to be covered by the Conservation Plan and its associated incidental take permits are: (1) operations of the two power plants' circulating water systems; (2) maintenance and repair activities at the power plants; (3) enhancement of aquatic and terrestrial habitats at the Montezuma Enhancement Site; and (4) monitoring activities. Each of these actions may result in take of one or more of the listed species or in circumstances leading to the take of one or more of the listed species. The Conservation Plan is designed to include flexibility in its implementation; a series of circumstances or ''thresholds'' are described which would require adjustments to the power plants' circulating water systems and maintenance and repair schedules. Thresholds triggering adjustments to the plan include seasonal reductions in circulating water flow by operating the circulating water pumps under variable speed drive mode and seasonal restrictions on repair and maintenance activities within terrestrial habitats suitable for covered species.

As a part of the Conservation Plan, Pacific Gas and Electric Company proposes to monitor the impacts to covered species resulting from the operations of the circulating water systems, the repair and maintenance programs, and the construction and operation of the Montezuma Enhancement Site. The Conservation Plan also includes measures to minimize the impact of the take, such as seasonal restrictions on operations and repairs and maintenance. The Conservation Plan also addresses the sale of the two power plants, expected to occur in the near future.

The Environmental Assessment considers the environmental consequences of four alternatives plus a no-action alternative. Alternative 1, the proposed action, consists of the issuance of incidental take permits to Pacific Gas and Electric Company and implementation of the Conservation Plan.

Under Alternative 2, Pacific Gas and Electric Company would install mechanical draft cooling towers at the Pittsburg and Contra Costa Plants and would enhance aquatic and wetland habitat at the Pittsburg Power Plant site. This closed-cycle system configuration would recirculate 100 percent of the circulating water flow through the cooling-tower system. The closed cycle system would reduce the volume of condenser cooling water to about 95 percent of that used in the existing design conditions.

Under Alternative 3, Pacific Gas and Electric Company would decrease circulating water flows below thresholds established in the Proposed Action between February 1 and July 31 and enhance aquatic and wetland habitat at the Montezuma Enhancement Site. Circulating water flows could be less than 80 percent of design flow at the Pittsburg Power Plant and less than 95 percent of design flow at the Contra Costa Power Plant. Cooling-water flows could be reduced by reducing plant operation from February 1 through July 31, when fish species are most susceptible to entrainment in the cooling-water systems. Reductions in cooling-water flows could be expected to have a corresponding percent reduction in potential entrainment and impingement losses. Enhancement of

aquatic and wetland habitat at the Montezuma Enhancement Site under Alternative 3 would be the same as that described under the proposed action.

Under Alternative 4, Pacific Gas and Electric Company would replace the existing fish screens at Units 1–6 at the Pittsburg Power Plant and Units 6 and 7 at the Contra Costa Power Plant with screens having smaller mesh sizes (e.g., 1/8 by ½ inch) and lower approach velocities according to NMFS and the California Department of Fish and Game guidelines. The smaller mesh sizes and lower prescribed approach velocities necessitate additional major changes in the intake structures including: (1) an increase in the overall cross-sectional area of the intake bays (to reduce approach velocities); (2) the need for continuous rotating screens (to clean the smaller mesh screens); and (3) the need for fish bypass and return systems (to collect fish entrapped in the fish-screen cleaning system and return them safely to the Delta at a safe distance from the intake systems of the plants).

Under the No-Action Alternative, the Service and NMFS would not issue incidental take permits, the plants would not continue to operate, Pacific Gas and Electric Company would not implement species protection and minimization measures as provided under the Conservation Plan, Pacific Gas and Electric Company would not implement the habitat enhancement project at the Montezuma Enhancement site, nor would they convey a perpetual conservation easement on the Montezuma Site to the California Department of Fish and Game.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The Service and NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that requirements are met, permits will be issued for incidental take of the listed species.

Dated: September 4, 1998.

Michael J. Spear,

Manager, California/Nevada Operations Office, Fish and Wildlife Service, Region 1, Sacramento, California.

Dated: September 15, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, Maryland.

[FR Doc. 98–25461 Filed 9–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–00]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act, OMB Approval Number 1004–019

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. One June 26, 1998, BLM published a notice in the **Federal Register** (63 FR 34918) requesting comments on the proposed collection. The comment period closed on August 25, 1998. BLM received no comments from the public in response to that request. OMB is required to respond to this request within 60 days but may respond within 30 days. For maximum consideration, your comments and suggestions on the requirement should be made directly to the Office of Management and Budget, Interior Desk Officer (1004–0119), Office of Information and Regulatory Affairs, Washington, D.C. 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), Bureau of Land Management, 1849 C St., N.W., mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for BLM's proper functioning, including whether or not the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Abstract: Respondents supply identifying information and data on proposed commercial, competitive, or individual recreational use, respectively, when required, to determine eligibility for a permit. This information allows the Bureau of Land Management to authorize requested use and determine appropriate fees. This information will also be used to tabulate recreation use data for the annual *Federal Recreation Fee Report* as required by the Land and Water Conservation Act.

Bureau Form Number: 8370–1.

Frequency: On occasion.

Description of Respondents: Recreation visitors to areas of the public lands, and related waters, where special recreation permits are required.

Estimated Completion Time: .5 hours.

Annual Responses: 31,000.

Annual Burden Hours: 15,500.

Bureau Clearance Officer: Carole Smith 202–452–0367.

Dated: August 26, 1998.

Carole J. Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 98–25592 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 952 1990 00]

Arizona: Announcement of Automated Land and Mineral Records System; Notice of Temporary Unavailability of Automated Records

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a new automated system of records, the Automated Land and Mineral Record System (ALMRS), is being implemented by the Bureau of Land Management in Arizona. The expected implementation of this system is November 16, 1998. In preparation for the implementation of this new system, the Bureau's current ORCA, Case Recordation, and Mining Claim Recordation Systems for Arizona will continue to be available for public

viewing. However, these systems will not be updated after mid-September for approximately 60 days. Any new actions will be updated after deployment of ALMRS. The Information Access Centers will continue to provide current status through manual tracking systems and the paper records.

ADDRESSES: See Supplementary Information section for website information.

FOR FURTHER INFORMATION CONTACT: Carol Burger, Group Administrator, Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, Phoenix, AZ 85004–2203, (602) 417–9200. Field Office telephone numbers are listed in Supplementary Information.

SUPPLEMENTARY INFORMATION: ALMRS is a unique automated system of records which incorporates data from the currently used automated record systems: On-Line Recordation and Case Access (ORCA)/Case Recordation (CR) and Mining Claim Recordation (MCR). Combining these systems creates a new and efficient automated system of recording, maintaining, and retrieving land use and land availability to meet BLM's mission as a land management agency. ALMRS will allow user access to automated public land records through the use of computers by viewing the application throughout Arizona BLM's Information Access Centers (IACs). The majority of ALMRS user requests for information refers to data from land and mineral cases, and will be available from standard reports. ALMRS data will be accessible to BLM personnel; other federal, state, and local agencies; private industry; and public customers. However, access to proprietary or confidential information will be available according to security, Privacy Act, and FOIA regulations.

If you have questions regarding this notice, you may visit our website at: http:// azwww.az.blm.gov or contact any Arizona BLM Office:

Arizona State Office—602–417–0200
Arizona Strip Field Office—801–688–3200
Kingman Field Office—520–757–3161
Lake Havasu Field Office—520–505–1200
Phoenix Field Office—602–780–8090
Safford Field Office—520–348–4400
Tucson Field Office—520–722–4289
Yuma Field Office—520–317–3200

Dated: September 14, 1998.

Carol Burger,

Group Administrator, Public Info & Records.

[FR Doc. 98–25590 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–7122–00–5513; AZA 28793; AZA 29640]

Availability of the Draft Environmental Impact Statement (DEIS) for the Dos Pobres/San Juan Project Case Number AZA 28793 and AZA 29640, Safford Field Office, Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement.

SUMMARY: The Safford Field Office, United States Department of the Interior, Bureau of Land Management has prepared a Draft Environmental Impact Statement (DEIS) for the proposed Dos Pobres/San Juan Project, as described in the mining plan of operations (MPO) submitted by Phelps Dodge Safford, Inc. The DEIS analyzes the anticipated impacts to the human environment resulting from the development of the Dos Pobres and San Juan copper ore deposits, located in Graham County near Safford, Arizona, by Phelps Dodge Safford, Inc. The proposed mining operation utilizes conventional open pits mining methods combined with solvent extraction electrowinning (SXEW) refining technology and is expected to produce 2.9 billion pounds of copper over the projected 16 year life of the mine. The proposed mining operation utilizes private lands owned by Phelps Dodge, Inc., and BLM-administered public lands. Surface disturbing impact are anticipated on 3,332 acres of land of which 1,935 acres are public lands administered by the BLM.

As an alternative to the mining plan of operations, Phelps Dodge has proposed a land exchange which involves trading 17,000 acres of BLM-administered public lands for 3,858 acres of private lands owned by Phelps Dodge, Inc. The BLM-administered public lands, Phelps Dodge, Inc., proposes to acquire, are located in the Safford Mining District in the vicinity of the Dos Pobres, San Juan and Lone Star ore deposits. They are expected to be utilized for mining-related purposes. The eleven private properties offered for exchange to the BLM by Phelps Dodge, Inc., are all located within the state of Arizona. All eleven-offered parcels are either in holdings within or adjacent to large blocks of federal lands. If the land exchange alternative were to be approved, the 325 acre Tavasci Marsh property would be administered by the National Park Service since it is within the boundaries of the Tuzigoot National Monument while the other ten-offered properties would be managed by the BLM. The offered lands either contain high value riparian and aquatic resources which provide habitat for fish and wildlife including threatened and endangered species, or will contribute to resolving public land management problems such as access to public lands in the Dos Cabezas Wilderness Area, Cienega Creek Resource Conservation Area and the Gila Box Riparian National Conservation Area.

This DEIS was prepared to comply with the Council on Environmental Quality's regulations (40 CFR Parts 1500–1508) for implementing the National Environmental Policy Act of 1969, The Federal Land Exchange Facilitation Act of 1988, BLM regulations governing land exchanges (43 CFR Parts 2090 and 2200), The General Mining Law and the BLM regulations governing mining operations on public lands (43 CFR Part 3809).

DATES: Written comments relating to the DEIS will be accepted until November 25, 1998. Written or oral comments may also be presented at the three public open houses to be held:

October 27, 1998, 4:00 p.m. to 8:00 p.m. BLM Safford Field Office, 711 14th Avenue, Safford, Arizona 85546
October 28, 1998, 4:00 p.m. to 8:00 p.m. BLM Tucson Field Office, 12661 East Broadway, Tucson, Arizona 85748
October 29, 1998, 4:00 p.m. to 8:00 pm., BLM Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027

ADDRESSES: Send written comments to the Bureau of Land Management, Safford Field Office, Attention: Tom Terry, Project Manager, 711 14th Avenue, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyzes the impacts associated with four alternatives: (1) the Proposed Action (Phelps Dodge's Mining Plan of Operations); (2) a partial backfill alternative to the proposed mining plan of operations; (3) the land exchange alternative (BLM's preferred alternative) and; (4) the No Action Alternative.

Phelps Dodge, Inc., holds 844 of the 844 mining claims that are currently on file for the 17,000 acres of BLM-administered public lands they have selected for acquisition in the land exchange alternative. 2,299 acres of the Phelps Dodge private lands to be acquired by BLM would be withdrawn from mineral entry by virtue of their location within BLM or National Park Service areas previously withdrawn from the operation of the mining laws.

1,599 acres of the offered lands to be acquired by BLM would remain open to mineral entry. The potential for the existence of locatable minerals on these lands is considered to be low and no future mining activities are anticipated to occur on these lands.

FOR FUTURE INFORMATION CONTACT: Tom Terry, Project Manager, at the Bureau of Land Management, Stafford Field Office, 711 14th Avenue, Safford, Arizona 85546. Phone (520) 348–4400. Internet address is tterry@az.blm.gov

Dated: September 11, 1998.

Frank L. Rowley,

Acting Field Office Manager.

[FR Doc. 98–25372 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–07–1201–00]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of the BLM-administered public lands within the Northern and Eastern Mojave Management Planning area on Thursday, October 29, 1998, from 7:30 a.m. to 3 p.m., and meet in formal session on Friday, October 30 from 8 a.m. to 5 p.m., and Saturday, October 31 from 8 a.m. to 11:30 a.m. The Friday and Saturday public meetings will be held in the Reflections Room at Buffalo Bills, located at 31700 South Las Vegas Boulevard, Primm, Nevada (Stateline).

The Council and members of the public will assemble for the field tour at the Buffalo Bills parking lot at 7:15 a.m., and depart at 7:30 a.m. The tour will focus on the BLM portion of public lands within the Northern and Eastern Mojave Management (NEMO) Planning area. Presentations and discussions will focus on issues being addressed in the draft management plan.

The public is welcome to participate in the field tour, but should dress appropriately and plan on providing their own transportation, food, and beverage. Anyone interested in participating in the field tour should contact BLM public affairs staff at (909) 697–5217/5220 for more information.

Agenda topics will include briefings and discussions on the NEMO planning effort, budget, BLM State Strategic Plan, recreation fees at the Imperial Sand Dunes Recreation Area, and the Glamis Imperial withdrawal.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Carole Levitzky at (909) 697–5217 or Doran Sanchez at (909) 697–5220, BLM California Desert District Public Affairs.

Dated: September 18, 1998.

Tim Salt,

Acting District Manager.

[FR Doc. 98–25601 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–00; GP8–0337]

Notice of Meeting of Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District Office.

ACTION: Meeting of Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council.

SUMMARY: A meeting of the Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will be held on October 23 and 24 at the Quality Inn, 700 Port Drive, in Clarkston, Washington. The meeting will be from 9:00 a.m. to 5:00 p.m. on October 23, and 8:00 a.m. to 3:00 p.m. on October 24. The meeting is open to the public. Public comments will be received at 1:00 p.m. on October 23. The meeting will include information and processes concerning administrative procedures for the subgroup, election of officers, and development of the program of work and education needs of the group.

FOR FURTHER INFORMATION CONTACT: Karyn Wood, Wallowa-Whitman National Forest, P.O. Box 907, 1550 Dewey Avenue, Baker City, Oregon 97814, or call 541–523–6391.

Dated: September 17, 1998.

James L. Hancock,

District Manager.

[FR Doc. 98–25595 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1430–00]

Temporary Emergency Closure of Public Land in Uintah County, Utah

SUMMARY: Notice is hereby given that the Vernal Field Office herewith issues a temporary emergency closure of public land in Uintah County, Utah, effective October 1, 1998. This order temporarily closes 1,320 acres of public land to public use and entry. This temporary closure area encompasses the following public land:

Salt Lake Meridian, Utah

T.10. S., R. 24 E.,
Sec. 22. E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 23, W½;
Sec. 26, NW¼NW¼;
Sec. 27, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.

The authorized officer, has determined that the underground methane generation occurring at the abandoned White River Oil Shale Mine is a safety hazard making the facility and surrounding area unsafe for human occupation or activity. The closure area affects the above described public land presently encumbered by the abandoned White River Oil Shale Mine, ancillary support facilities, and associated ventilation shafts. The closure prohibits all use, entry, or access onto the affected public lands; however, the access restriction may be waived under extraordinary circumstances where limited, short, term, emergency access is warranted and appropriate clearances and authorization are obtained from the authorized officer.

Where emergency access is authorized by the authorized officer, it would be conditioned on the following provisions;

All persons entering and leaving the closure area shall be accompanied by personnel from the BLM's Vernal Field Office and only after said BLM staff have determined that the area is safe for site visitation purposes.

All persons allowed emergency access into the closure area shall waive and release all direct and indirect claims that may occur against the United States for liability for any loss, damage,

personal injury, or death that may occur as a result of their access to the closure area and will indemnify and hold harmless the United States. All such incidents shall immediately be reported to the BLM Field Office.

The purpose of this closure is to protect human life, ensure public safety, and to prevent human contact with a known hazardous situation. A map of the area affected by this closure is on file and may be viewed at the Venal Field Office of the BLM.

EFFECTIVE DATE: The closure order is effective from September 1, 1998, through December 31, 2000, unless, prior thereto, it is rescinded or modified by the authorized officer.

SUPPLEMENTAL INFORMATION: This closure is under the authority of 43 CFR 8364.1. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7, including a fine not to exceed $1,000.00 and/or imprisonment not to exceed one year.

FOR FURTHER INFORMATION CONTACT: The BLM Vernal Field office, 170 South 500 East, Vernal, Utah 84078, (435) 781–4400.

Dated: September 17, 1998.

David E. Howell,

Field Manager.

[FR Doc. 98–25593 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–96–003; AA–76879, AA–77643, AA–77776, AA–76936, AA–76935, AA–77839]

Notice of Realty Action; Sale of Public Lands in Southwest and Southcentral Alaska and Notice of Approved Plan Amendment to the Southwest and Southcentral Management Framework Plans (MFP) in Southwest and Southcentral Alaska

SUMMARY: The BLM has amended the Southwest and Southcentral MFPs to allow for the sale of public lands needed for church-group related development and to resolve several land occupancy problems. The following described public lands have been examined through the land use planning process and have been found suitable for disposal pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713. Parcel Two of the following described lands is also classified as suitable for lease and sale under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 969.

Parcel One (AA–76879): Seward Meridian, Alaska

T. 20 N., R. 8 E., Sections 23 and 26.
Containing approximately 80 acres.

Parcel Two (AA–77643): Seward Meridian, Alaska

T. 15 N., R. 1 W., Lot 53, Section 19.
Containing approximately 1.42 acres.

Parcel Three (AA–77776): Seward Meridian, Alaska

T. 17 N., R. 2 E., Section 26, Lot 22.
Containing approximately 0.94 acre.

Parcel Four (AA–76396): Kateel River Meridian, Alaska

T. 27 S., R. 22 E., Section 32.
Containing approximately 45 acres.

Parcel Five (AA–76935): Kateel River Meridian, Alaska

T. 27 S., R. 22 E., Section 32.
Containing approximately 1 acre.

Parcel Six (AA–77839): Seward Meridian, Alaska

T. 2 N., R. 12 W., Sections 21 and 22.
Containing approximately .72 acre.

The above lands contain approximately 129 acres.

FOR FURTHER INFORMATION CONTACT: Robert P. Rinehart, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Rd., Anchorage, Alaska, 99507-2599, (907) 267–1272.

SUPPLEMENTARY INFORMATION: The purpose of this sale is to allow three church groups to pursue needed development and to resolve three inadvertent land occupancy situations. Conveyance of the above public lands will be subject to:

A right-of-way thereon for ditches and canals constructed by the authority of the United States: Act of August 30, 1890, 26 Stat 391; 43 U.S.C. 945.

Conveyance of Parcel One also would be subject to execution of a ''hold harmless agreement'' for any liability arising from Victory Ministries activities on the site, before or after the sale.

For a period of 45 days from the date this notice is published in the **Federal Register**, interested parties may submit comments on the sale to the Field Manager, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Nick Douglas,

Field Manager.

[FR Doc. 98–25591 Filed 9–23–98; 8:45 am]

BILLING CODE 1410–00–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–1430–00; CACA 37328]

Notice of Plan Amendment and Notice of Decision for Land Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Folsom Field Office, is amending the 1988 Sierra Planning Area Management Framework Plan Amendment (MFPA) to allow for a boundary adjustment of the Ione Tertiary Oxisol Soils Area of Critical Environmental Concern (ACEC), located in Amador County, CA. The boundary adjustment is necessary to allow for exchange of public land currently within the ACEC in order to acquire adjacent private land of higher resource value to be added to the ACEC. The plan amendment and exchange are made pursuant to Sections 202 and 206 of the Federal Land Policy and Management Act, as amended (43 U.S.C. 1712 and 1716). The lands are described as follows:

Public land to be disposed of and excluded from the ACEC

T. 5 N., R.10 E.,
Sec. 17, N½NE¼NW¼NW¼SE¼, N½S½NE¼NW¼NW¼SE¼, and W½NW¼NW¼SE¼.

The area described contains 6.875 acres in Amador County.

Private land to be acquired and added to the ACEC

T. 5 N., R. 10 E.
Sec. 17, S½SW¼SE¼NE¼ and SW¼SE¼SE¼NE¼.

The area described contains 7.5 acres in Amador County. In addition, an easement will also be acquired in order to secure access to the remaining public lands.

SUPPLEMENTARY INFORMATION: This ACEC was established to protect unique soil profiles. Intensely weathered soils were formed during the Eocene epoch when the area had a tropical climate. This soil has been exposed due to natural erosion of overlying strata revealing a soil with properties of oxisols, a soil order of the tropics. Adjustment of the ACEC boundary allows for the inclusion of 7.5 acres of land to be acquired that is currently adjacent to the existing boundary. This land to be acquired contains exceptional examples of Oxisol soils. In exchange, BLM will also adjust the ACEC boundary to exclude the above described public land which will allow for disposal of this parcel because it possesses inferior soil examples than

the land to be acquired. The exchange will be with TNH/Glenmoor ltd., an adjacent landowner to the ACEC. Disposal of the public land will also allow access by TNH/Glenmoor to their land in the same area. This exchange meets the objectives of the MFPA and the Ione Tertiary Oxisol Soils Area Management Plan (1992), by protecting the area and preserving its intrinsic scientific and educational importance.

The public land parcel would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals and for a road to access the remaining public land.

FOR FURTHER INFORMATION CONTACT: John Beck, Realty Specialist, Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630 or by phone at (916) 985–4474.

DATES: *Planning Protest*—Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest must be in writing and filed with the Director, Bureau of Land Management, 1800 ''C'' Street, N.W., Washington D.C. 20240, on or before October 26, 1998.

Land Exchange Protests: On or before November 9, 1998, interested parties may submit comments or protests regarding the land exchange to the Field Manager, Folsom Field Office, Bureau of Land Management, 63 Natoma Street, Folsom, CA 95630.

This notice will also serve to satisfy the requirement contained in 43 CFR 1610.7–2(b) regarding designation of areas of critical environmental concern.

In the absence of any planning protest or objections regarding the land exchange, the decision will become the final determination of the Department of the Interior and the Planning amendment will be in effect.

Dated: September 16, 1998.

James M. Eicher,

Acting Field Manager.

[FR Doc. 98–25481 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30550 et al.]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona; Correction

AGENCY: Bureau of Land Management.

ACTION: Correction.

SUMMARY: This action corrects the Notice of Proposed Withdrawal, 63 FR 13686, published March 20, 1998 as FR Doc. 98–7199.

1. On page 13686, third column, under T. 15 N., R. 2 W., replace ''sec. 19, lot 4; sec. 30, lot 1.'' with ''Portions of lot 4, sec. 19 and lot 1, sec. 30, more particularly described by metes and bounds as follows: BEGINNING at the section corner of secs. 19, 30, 24, and 25, T. 15 N., Rs. 2 and 3 W., thence south along the west section line of sec. 30, 50 feet, thence along a line parallel with the north section line of sec. 30, 125.2 feet to the west right-of-way line of the Williamson Valley Road, a.k.a., Prescott-Simmons County Highway; thence North 23 degrees West, 320.5 feet along said right-of-way line to the west section line of sec. 19; thence south along said section line, 245 feet to the POINT OF BEGINNING.''

2. In the third column, under T. 15 N., R. 3 W., delete ''sec. 24, SE¼SE¼SE¼SE¼.''

3. In the third column, line 24, after The area described, replace ''81.07 acres'' with ''2.92 acres.''

Dated: September 17, 1998.

Phillip D. Moreland,

Acting Deputy State Director, Resources Division.

[FR Doc. 98–25594 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–1430–00]

Closure and Restriction Order for Certain Public Lands in Washington County, Utah

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: The temporary closure of certain public lands in Washington County, Utah to off-road travel other than on existing roads.

The following public lands, formerly know as the Smith Ranch, are affected:

Salt Lake Meridian

T.39 S., R. 11 W.,
Sec. 30, W2NE, W2SENE, SESW, W2SE, W2SESE;
Sec. 31, Lots 3–4, NE, E2SW, SE;
Sec. 32, SW.
T. 40 S., R. 11 W.,
Sec. 5, Lots 3–11, SENW, EWSW;
Sec. 6, Lot 1, S2NE;
Sec. 8, Lots 1–2, E2NW, NESW.

EFFECTIVE DATE: September 24, 1998. This interim closure and restriction order will terminate upon transfer of the subject lands out of federal ownership or be superseded upon completion of a management plan applicable to the lands described above.

FOR FURTHER INFORMATION CONTACT: Mark Harris, BLM Ranger, Dixie Resource Area, 345 E. Riverside Dr., St. George, Utah 84790, phone (435) 688–3371.

SUPPLEMENTARY INFORMATION: To protect valuable natural resources and wildlife habitat and to preserve relative values of lands being considered for exchange to benefit Zion National Park, lands recently acquired by the Bureau of Land Management will be protected by restricting motorized vehicle travel to existing roads. For the purpose of this action, roads are defined as well-established two-tracks or routes regularly used or maintained for the passage of motorized vehicles. Parking of vehicles for the purpose of camping, hunting, or other authorized activities shall occur within fifty (50) feet of existing roads.

The above restrictions do not apply to emergency and law enforcement vehicles and vehicles in official use by representatives, employees, or contractors of the United States, the State of Utah, or Washington County.

Authority: The authority for issuing a restriction order is contained in 43 CFR 8364. Violations are punishable as class A misdemeanors.

Dated: September 8, 1998.

James D. Crisp,

Area Manager.

[FR Doc. 98–25597 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water management plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) and the Reclamation Reform Act of 1982, Reclamation developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993, and revised and renamed in September 1996 to Criteria for Evaluating Water Management Plans (Criteria). These Criteria were developed based on information provided during public scoping and review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water management plans developed by Central Valley Project contracts in the

MP Region. These Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's water management plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations.

DATES: All public comments must be received by October 26, 1998.

ADDRESSES: Please mail comments to Lucille Billingsley, U.S. Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978–5215 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: Under provision of Section 3405 (e) of the CVPIA (Title 34, Public Law 102–575), ''The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall . . . develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by Section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria will be developed ''. . . with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water management plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water management plans. The steps are:

1. Describe the district.
2. Inventory water resources available to the district.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMPs for Urban Contractors.
5. Exemption Process.

The MP Contractors listed below have developed water management plans which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria. These MP Contractors include: Citrus Heights Water District, Fair Oaks Water District, City of Folsom, Lindmore Irrigation District, Lindsey-Strathmore Irrigation District, Orange Cove Irrigation District, and Orange Vale Water Company.

The MP Contractors listed below have developed a ''cooperative'' water management plan which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria. These MP Contractors include: Central California Irrigation District, Columbia Canal Company, Firebaugh Canal Water District, and San Luis Canal Company. These districts are known as the San Joaquin Valley Exchange Contractors.

Public comment on Reclamation's preliminary (i.e., draft) determinations is invited at this time. Copies of the plans listed above will be available for review at Reclamation's MP Regional Office and area office locations. If you wish to review a copy of the plans, please contact Ms. Billingsley to find the office nearest you.

Dated: September 17, 1998.

Robert F. Stackhouse,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 98–25544 Filed 9–23–98; 8:45 am]

BILLING CODE 4310–94–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: Tuesday, September 22, 1998, 1:00 PM (OPEN Portion); 1:30 PM (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW, Washington, DC.

STATUS: Meeting OPEN to the Public from 1:00 PM to 1:30 PM; Closed portion will commence at 1:30 PM (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of June 9, 1998 Minutes (Open Portion).
3. Meeting schedule through June 1999.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 PM).

1. Proposed FY 2000 Budget Proposal and Allocation of Retained Earnings.
2. Finance and Insurance Project in Venezuela.
3. Insurance Project in Brazil.
4. Insurance Project in Colombia.
5. Finance and Insurance Project in Central America and the Caribbean.
6. Finance Project in Philippines.
7. Insurance Project in Angola.
8. Finance and Insurance Project in Bangladesh.
9. Investment Fund in Armenia, Azerbaijan, and Georgia.
10. Approval of June 9, 1998 Minutes (Closed Portion).
11. Pending Major Projects.
12. Report on Indonesia.
13. Report on Russia.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 98–25637 Filed 9–21–98; 5:04 pm]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Application for Registration Under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Control Act of 1993.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection way previously published in the **Federal Register** on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance

Officer, Suite 850, 1001 G Street, NW, Washington, D.C. 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Application for Registration Under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: DEA–510 and DEA–510a.

Applicable component of the department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: The Domestic Chemical Diversion Control Act requires that distributors, importers, and exporters of listed chemicals which are being diverted in the United States for the production of illicit drugs must register with DEA. Registration provides a system to aid in the tracking of the distribution of List I chemicals.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 1,500 respondents. 1 response per year × 30 minutes per response=.50 hrs.

(6) An estimate of the total public burden (in hours) associated with the collection: 750 annual burden hours. 1,500 respondents × .50 hrs. per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25529 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Removal of Restrictions on Employing Certain Individuals.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, D.C. 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514-1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Removal of Restrictions on Employing Certain Individuals.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: None.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit.

Other: Individuals or households, Not for Profit Institutions, Federal Government, State, Local or Tribal Government.

Abstract: The collection of information is necessary to maintain a closed system of distribution by requiring notification from DEA registrants of their intent to employ persons who have been convicted of a felony.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 100 respondents. 1 response per year × 30 minutes per response = .50 hrs.

(6) An estimate of the total public burden (in hours) associated with the collection: 50 annual burden hours. 100 respondents × .50 hrs. per respondent per year.

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FOI and Records Management Section, Drug Enforcement Administration, Washington, D.C. 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117–0032, Washington, D.C. 20503.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25530 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Reports of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, suite 850, 1001 G Street, NW, Washington, D.C. 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Reports of Suspicious Orders or Theft/Loss of Listed Chemical/Machines.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: None.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration,. U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: Domestic Chemical Diversion Control Act of 1993 amends DEA's chemical recordkeeping and reporting requirements to remove the exemption for certain drugs which contain ephedrine. Comprehensive Methamphetamine Control Act of 1996 removed the exemption for combination ephedrine, pseudoephedrine and phenylpropanolamine drug products. Person who previously were not required to keep records or make reports regarding sales of these products now must do so.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 2,000 reporters. 2 responses per year × 10 minutes per response = 680 hrs. 100 recordkeepers. 100 hours per recordkeeper = 10,000 hrs.

(6) An estimate of the total public burden (in hours) associated with the collection: 10,680 annual burden hours.

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FOI and Records Management Section, Drug Enforcement Administration, Washington, D.C. 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117–0024, Washington, D.C. 20503.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25531 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Import/Export Declaration: Precursor and Essential Chemicals.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Managment Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, D.C. 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Import/Export Declaration: Precursor and Essential Chemicals.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: DEA–486.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: The Chemical Diversion and Trafficking Act of 1988 requires those who import/export certain chemicals to notify the DEA 15 days prior to shipment. Information will be used to prevent shipments not intended for legitimate purposes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 1,800 respondents. 1 response per year × 12 minutes per response = .20 hrs.

(6) An estimate of the total public burden (in hours) associated with the collection: 360 annual burden hours. 1,800 respondents × .20 hrs. per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer.

[FR Doc. 98–25532 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Records and Reports of Registrants: Changes in Record Requirements for Individual Practitioners.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, D.C. 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Records and Reports of Registrants: Changes in Record Requirements for Individual Practitioners.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: None.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Individuals or households.

Other: Business or other for-profit.

Abstract: Required information is needed to maintain closed system of records by requiring the individual practitioner to keep records of (1) complimentary samples of controlled substances dispensed to patients and (2) controlled substances which are both administered and dispensed to patients.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:

100,500 respondents.

100,000 recordkeepers. 1 response per year × 30 minutes per response = .5 hrs.

500 respondents. 1 response per year × 30 minutes per response = .5 hrs.

(6) An estimate of the total public burden (in hours) assoicated with the collection: 50,250 annual burden hours. 100,500 respondents × .5 hrs. per respondent per year.

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FOI and Records Management Section, Drug Enforcement Administration, Washington, D.C. 20537; and to the Office of Management and Budget, Paperwork Reduction Project No. 1117–0021, Washington, D.C. 20503.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25533 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF ENERGY

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; U.S. Official Order Forms for Schedules I and II Controlled Substances (ACCOUNTABLE FORMS), Order Form Requisition.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, D.C. 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: U.S. Official Order Forms for Schedules I and II Controlled Substances (ACCOUNTABLE FORMS), Order Form Requisition.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: DEA Form 222 and DEA Form 222a

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Individuals or households, Federal Government, and State, Local or Tribal Government.

Abstract: DEA–222 is used to transfer or purchase Schedule I and II controlled substances and data is needed to provide an audit of transfer and purchase. DEA–222a Requisition Form is used to obtain the DEA–222 Order Form. Respondents are DEA registrants desiring to handle these controlled substances.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 436,000 respondents. 1 response X 15 minutes per response = .25 hrs.

(6) An estimate of the total public burden (in hours) associated with the collection: 109,000 annual burden hours. 436,000 respondents X .25 hrs per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW,

Washington, D.C. 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25534 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Controlled Substances Import/Export Declaration—DEA Form 236.

Office of management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 28, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, D.C. 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Controlled Substances Import/Export Declaration—DEA Form 236.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: DEA–236.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: None.

Abstract: DEA–236 provides DEA with control measures over the importation and exportation of controlled substances as required by both domestic and international drug control laws. Affected public consists of businesses or other for profit organizations.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 230 respondents, 12 responses per year × 15 minutes per response=3 hrs.

(6) An estimate of the total public burden (in hours) associated with the collection: 690 annual burden hours. 230 respondents × 3 hrs. per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25535 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Report

ACTION: Notice of information collection under review; Extension of a currently approved collection; Application for Permit to Export Controlled Substances—DEA Form 161.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of reports.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Permit to Export Controlled Substances—DEA Form 161.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: DEA–161.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21 CFR 1312.22 requires individuals who export controlled substances in schedules I and II to obtain a permit from DEA. Information is used to issue export permits and exercise control over exportation of controlled substances and compile data for submission to UN for treaty requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 67 respondents. 13 responses per year × 15 minutes per response = 3.25 hrs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 218 annual burden hours. 67 respondents × 3.25 hrs. per respondent per year.

If additional information is required contact: Mr. Robert B. Briffs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC. 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25536 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Application for Permit to Export Controlled Substance—DEA Form 161.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of reports.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Permit to Export Controlled Substances—DEA Form 161.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: DEA–161.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21 CFR 1312.22 requires individuals who export controlled substances in schedules I and II to obtain a permit from DEA. Information is used to issue export permits and excise control over exportation of controlled substances and compile data for submission to UN for treaty requirements.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 67 respondents. 13 responses per year × 15 minutes per response=3.25 hrs.

(6) An estimate of the total public burden (in hours) associated with the collection: 218 annual burden hours. 67 respondents × 3.25 hrs. per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25537 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities:

Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; ARCOS Transaction Reporting—DEA Form 333.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* ARCOS Transaction Reporting—DEA Form 333.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: DEA–333.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Necessary for U.S. to meet obligations under two international treaties: Single Convention on Narcotic Drugs and Psychotropic Substances. Treaties require information on the manufacture and consumption of certain substances. Information tracks substances from manufactured to sale to dispensing level.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 617 respondents. 4 responses per year × 60 minutes per response=4 hrs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,468 annual burden hours. 617 respondents × 4 hrs. per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW, Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25538 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Extension of a currently approved collection; Report of Theft or Loss of Controlled Substances—DEA Form 106.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 20, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 26, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Report of Theft or Loss of Controlled Substances—DFEA Form 106.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: DEA–106.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: Title 21 CFR, 1301.74(c) and 1301.76(b) requires DEA registrants to complete and submit a DEA–106 upon discovery of a theft or loss of controlled substances. Purpose: accurate accountability; monitor substances diverted into illicit markets and develop leads for criminal investigations.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 6,460 respondents. 1.3 responses per year × 30 minutes per response = .65 hrs.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,199 annual burden hours. 6,460 respondents × .65 hrs. per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: September 18, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–25539 Filed 9–23–98; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–123]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Office of the Patent Counsel, Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001; telephone (757) 864–9260.

NASA Case No. LAR 15279–3: Thermally Stable, Piezoelectric Substrates and Methods Relating Thereto

Dated: September 16, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–25518 Filed 9–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–124]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Robert L. Broad, Jr., Patent Counsel, Marshall Space Flight Center, Mail Stop CC01, Huntsville, AL 35812; telephone (256) 544–0021.

NASA Case No. MFS–31142–1: Rate of Rotation Measurement Using Brushless DC Motor;

NASA Case No. MFS–31143–1: Directionless Rate of Rotation Measurement Using Brushless DC Motor;

NASA Case No. MFS–31182–1: Precision Stop Control for Motors;

NASA Case No. MFS–31158–1: Stepper Motor Control that Adjusts to Motor Loading;

NASA Case No. MFS–31148–1: Combustion Chamber/Nozzle Assembly and Fabrication Process Therefor;

NASA Case No. MFS–26395–1: Lidar Remote Sensing System;

NASA Case No. MFS–31175–1: Gasket Assembly;

NASA Case No. MFS–31294–1: Aluminum Alloy Having Improved Properties;

NASA Case No. MFS–31173–1: External Adhesive Pressure Wall Patch;

NASA Case No. MFS–31195–1: System for Measuring Capacitance

Date: September 16, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–25520 Filed 9–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–125]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, Lewis Research Center, Mail Stop 500–118, Cleveland, Ohio 44135-3191; telephone (216) 433–8855.

NASA Case No. LEW–16,440–1: Frequency-Locked Superconductor/ Ferroelectric Thin Film Local Oscillator;

NASA Case No. LEW–16,056–1: Design and Manufacturing Processes for Long-Life Hollow Cathode Assemblies

Dated: September 16, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–25521 Filed 9–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–126)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas H. Jones, Patent Counsel, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109; telephone (818) 354–5179.

NASA Case No. NPO–20230–1–CU: Optical-to-Tactile Translator;
NASA Case No. NPO–19569–1–CU: Real-Time Visualization of Tissue Ischemia;
NASA Case No. NPO–20052–1–CU: High-Resolution and Large-Dynamic-Range Resonant Pressure Sensor Based on Q-Factor Measurement.

Dated: September 16, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–25522 Filed 9–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–127)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Dal Bon, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (650) 604–5104, fax (650) 604–1592.

NASA Case No. ARC–12069–9GE: Anti-Icing Fluid or Deicing Fluid;
NASA Case No. ARC–14279–1GE: Method of Document Modeling and Relevance Ranking of Documents Using a Metric Based on Pairwise Inter-Word Proximity;
NASA Case No. ARC–14262–1GE: Regenerable Sorbent-Based Air Purifier Using Closed-Loop Displacement Regeneration Cycle;
NASA Case No. ARC–14280–1LE: Implantable Biotelemetry System for Preterm Labor and Fetal Monitoring;
NASA Case No. ARC–14268–2GE: Real-Time Surface Traffic Adviser;
NASA Case No. ARC–14281–1GE: Aerodynamic Design Using Neural Networks

Dated: September 17, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–25523 Filed 9–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–128)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Ed Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone (281) 483–0837.

NASA Case No. MSC–22270–1–SB: Ammonia Monitor;
NASA Case No. MSC–22654–1: Neutrophil Screening Assay Using Two Color Flow Cytometry;
NASA Case No. MSC–22616–2: Preservation of Liquid Biological Samples;
NASA Case No. MSC–22491–1: Body Fluid Monitor;
NASA Case No. MSC–22507–1: A Current Control System for An Inductive Load;
NASA Case No. MSC–22653–1: Soft-Side Air Displacement Volumometer;
NASA Case No. MSC–22859–1–CU: Production of Functional Proteins: Balance of Shear Stress and Gravity;
NASA Case No. MSC–22866–1–SB: In Situ Activation of Microcapsules;
NASA Case No. MSC–22936–1–SB: Microencapsulated Bioactive Agents and Method of Making;
NASA Case No. MSC–22937–1–SB: Microencapsulation and Electrostatic Processing Device;
NASA Case No. MSC–22938–1–SB: Low-Shear Microencapsulation & Electrostatic Coating Process;
NASA Case No. MSC–22939–1–SB: Externally Triggered Microcapsules;
NASA Case No. MSC–22802–1–SB: Microwave Powered Sterile Access Port;
NASA Case No. MSC–22378–2: Method and Apparatus for Improved Spatial Light Modulation;
NASA Case No. MSC–22614–1: Whole Blood Staining Device;
NASA Case No. MSC–22325–1: Misalignment Accommodating Connector Assembly;
NASA Case No. MSC–22797–1: Actuator for Flexing a Resilient Covering;
NASA Case No. MSC–22358–2: Method of Production of Powders;
NASA Case No. MSC–22595–1: Torque-Limiting Manipulation Device;
NASA Case No. MSC–22513–1: Variable Resistance Elastomer Sensor.

Dated: September 17, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–25524 Filed 9–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–121)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; 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 meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: Thursday, October 22, 1998, 8:30 a.m. to 6:00 p.m.; and Friday, October 23, 1998, 8:00 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Rhome, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1490.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Life and Microgravity Sciences and Applications Advisory Committee May 1998 Recommendations
—Office of Life and Microgravity Sciences and Applications (OLMSA) Overview
—Subcommittee Summary Reports
—Congressional Issues
—Russian Program
—FY 1998 Performance Evaluation Summary Reports
—National Research Council Report ''Science Management in the Human Exploration of Space''
—Discussion of Committee Findings and Recommendations
—Annual OLMSA Performance Review—Fall 1998.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 17, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–25517 Filed 9–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–122)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Research Advisory Subcommittee; 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 meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Microgravity Research Advisory Subcommittee.

DATES: Wednesday, October 21, 1998, 9:00 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 8O54, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley M. Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0813.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of the Microgravity Research Advisory Subcommittee Recommendations
—Microgravity Resident Research Associates Program Developments
—Program Status Report
—Microgravity Research Performance Goal Assessment
—Informal Discussion

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 17, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–25519 Filed 9–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–129]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee; 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 meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee.

DATES: Wednesday, October 21, 1998, 8:30 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–6, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sam L. Pool, Code SA, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 281/483–7109.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aerospace Medicine and Occupational Health Reorganization
—Summary of Phase I—Shuttle/Mir Medical Operations
—International Space Station Flight Surgeon Training and Certification
—Status Report of Medical Operations Requirements Documents
—Occupational Health 1998 Self Assessment and Proposed Performance Measures
—Enhancement to Mission Control Center for Behavior and Performance Inflight
—International Practice of Medicine in Space: Quality of Practice, Credentialing, and Policies
—Data Exchange between Life Sciences Research and Medical Operations Activities
—Pillars of Biology—Biomedicine Workshop
—FY 2000 Performance Targets and Budget
—Informal Discussion
—Summary of Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 18, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–25602 Filed 9–23–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

The National Credit Union Administration Board determined that its business requires the addition of the following item, which is open to public observation, to the previously announced open meeting scheduled for Wednesday, September 23, 1998.

1. Request from a Federal Credit Union to Convert to a Community Charter.

The Board voted unanimously that agency business requires that this item be considered with less than the usual seven days notice, that it be open to the public, and that no earlier announcement of this change was possible.

The previously announced items are:

1. Requests from Two (2) Federal Credit Unions to Convert to Community Charters.

2. Request from a Credit Union to Convert Insurance.

3. Request from a Corporate Federal Credit Union for a Field of Membership (FOM) Amendment.

4. Request from a Corporate Credit Union to Merge with a Corporate Federal Credit Union.

5. Final Rule: Amendments to Parts 724 and 701, NCUA's Rules and Regulations, Trustees and Custodians of Pension Plans; FCU Employees Retirement Benefits.

6. Interim Final Rule: Amendments to Part 723, NCUA's Rules and Regulations, Member Business Loans.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–25690 Filed 9–22–98; 3:26 pm]

BILLING CODE 7530–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

The National Credit Union Administration Board determined that its business requires the addition of the following item, which is closed to public observation, to the previously announced closed meeting scheduled for Wednesday, September 23, 1998.

6. Personnel Action. Closed pursuant to exemptions (2), (6), and (9)(B).

The Board voted unanimously that agency business requires that this item be considered with less than the usual seven days notice, that it be closed to the public, and that no earlier announcement of this change was possible.

The previously announced items are:

1. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

2. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Administrative Action under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

4. Administrative Action under Section 206 of the FCU Act. Closed pursuant to exemptions (7) and (8).

5. Two (2) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–25691 Filed 9–22–98; 3:26 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts, Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater/Musical Theater Section (Planning & Stabilization-A category) to the National Council on the Arts will be held on October 14–16, 1998. The panel will meet from 9:30 a.m. to 6:00 p.m. on October 14th and 15th, and from 9:30 a.m. to 3:00 p.m. on October 16th in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 3:30 p.m. to 6:00 p.m. on October 15th, will be open to the public for a policy discussion on field issues and needs, leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:30 a.m. to 6:00 p.m. on October 14, from 9:30 a.m. to 3:30 p.m. on October 15th, and from 9:30 a.m. to 3:00 p.m. on October 16th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b to Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: September 17, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–25502 Filed 9–23–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater/Musical Theater Section (Planning & Stabilization-B category) to the National Council on the Arts will be held on October 16, 1998. The panel will meet from 3:00 p.m. to 4:30 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: September 17, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–25603 Filed 9–23–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis in Mathematical Sciences (1204).

Date and Time: October 8–9, 1998; 8:30 A.M. until 5:00 P.M.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Joe Jenkins, Program Director, Analysis Program, Division of Mathematical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1879.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Analysis Program nominations/applications as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 17, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–25525 Filed 9–23–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Duke Energy Corporation; Notice of Reconstitution of Board

[Docket Nos. 50–269/50–270/50–287–LR 1ASLBP No. 98–752–02–LR]

Pursuant to the authority contained in 10 C.F.R. 2.721, the Atomic Safety and Licensing Board in the Duke Energy Corporation proceeding, with the above-identified Docket Number, is hereby reconstituted by appointing Administrative Judge B. Paul Cotter, Jr. as the Board Chairman in place of Administrative Judge Thomas S. Moore.

As reconstituted, the Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr., Chairman

Dr. Richard F. Cole

Dr. Peter S. Lam

All correspondence, documents and other material shall be filed with the Board in accordance with 10 C.F.R. 2.701 (1980). The address of the new member is: B. Paul Cotter, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland, this 18th day of September 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–25598 Filed 9–23–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40448; International Series Release No. 1158; File No. SR–Amex–98–27]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Settlement of the Eurotop 100 Index

September 17, 1998.

I. Introduction

On July 8, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Eurotop 100 Index's (''Index'')[3] settlement value methodology for options traded on the Index. On July 28, 1998, the Exchange filed an amendment to the proposed rule change (''Amendment No. 1'').[4] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on August 26, 1998.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Eurotop 100 Index and the Financial Times—Stock Exchange (''FTSE'') Eurotop 100 Index are referring to the same index. Telephone conversation between Scott G. Van Hatten, Legal Counsel, Amex, and James T. McHale, Special Counsel, Division of Market Regulation (''Division''), Commission, on September 15, 1998.

[4] Amendment No. 1 made the following clarifications: (i) the London International Financial Futures and Options Exchange (''LIFFE'') will be the new official calculation agent of settlement values; (ii) the current agent is the European Options Exchange; and (iii) reference to the maintenance of the Index by the Exchange is deleted from the filing. *See* letter from Scott G. Van Hatten, Legal Counsel, Amex to Sharon Lawson, Senior Special Counsel, Division, Commission (July 27, 1998).

[5] Securities Exchange Act Release No. 40343 (August 19, 1998), 63 FR 45538 (August 26, 1998).

II. Description of the Proposal

The Exchange proposes to revise the settlement value methodology for options on the Index in response to a change in the official calculation agent from EOE to LIFFE. Currently, the settlement value for options overlying the Index, calculated on the third Friday of the month, is based on the average of the Index values calculated at 5 minute intervals between 12:30 p.m. and 1 p.m. Central European Time (C.E.T.) (6:30 a.m. and 7:00 a.m. Eastern Standard Time (E.S.T.)).[6] Accordingly, on each expiration Friday, the settlement value is calculated by averaging the Index values quoted at 12:30, 12:35, 12:40, 12:45, 12:50, 12:55 and 1:00 p.m. The Exchange settles its Index options contracts based on this value, reduced by a factor of one-tenth (0.10).

The new settlement value calculation uses a similar averaging methodology, but instead of every five minutes, the new settlement value will be an average of the Index's values taken every fifteen seconds during the period of 12:40 p.m. to 1:00 p.m. C.E.T. The values averaged during the twenty minute period will exclude the twelve highest and twelve lowest values, resulting in a settlement value made up of the average of 57 individual index values.[7] The Exchange has represented the FTSE Eurotop 100 Index futures contracts traded on the New York Mercantile Exchange (''NYMEX'') will settle using the new settlement methodology for all Index futures contracts expiring after December 1998. Moreover, the Amex has represented that in June 1998, FTSE Eurotop 100 Index futures contracts traded on LIFFE and the Amsterdam Exchange FTSE Eurotop 100 Ecu options contracts began settling using the new settlement methodology.

The settlement value using the existing methodology will continue to be disseminated by the Exchange and used to settle contracts expiring through December 1998. Options expiring after December 1998 will be settled using the new settlement methodology.[8] No other changes are being proposed to the Index. The Exchange will inform its members of the change in the settlement

[6] The current settlement methodology has been used since initial approval of options on the Index in 1992. *See* Securities Exchange Act Release No. 30463 (March 11, 1992), 57 FR 9284 (March 17, 1992).

[7] The Amex will continue to reduce the LIFFE-calculated settlement value by a factor of one-tenth (0.10) when the Exchange settles its Index option contracts.

[8] Currently, there are no outstanding contracts that expire after December 1998.

methodology through dissemination of an information circular.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act [9] and in particular, with Section 6(b) of the Act.[10] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest in that the use of more samples in arriving at the settlement value should be a more accurate method of calculating the average of these individual index values.

In particular, the Commission notes that the original approval order for the Index options [11] permitted a similar Index average price methodology to be used for Index options settlement purposes. While the time period for averaging the Index values is reduced by ten minutes (changing from 12:30–1:00 C.E.T. to 12:40–1:00 C.E.T.), because the new settlement Index value will be calculated using Index values reported every 15 seconds, rather than values reported every five minutes, there will be a much larger sample of index values that will be averaged for settlement purposes. Moreover, removing the twelve highest and twelve lowest prices from the index settlement value calculation should help to ensure that the settlement value is not affected by temporary highs and lows in the Index's value. The Commission also believes the proposed methodology should contribute to the maintenance of fair and orderly markets by eliminating potential disparities between the settlement values of Index options traded on the Amex and options and futures contracts on the same index traded on other markets. Furthermore, the Exchange will issue a regulatory circular to its membership concerning the new settlement methodology in order to avoid investor confusion. Finally, the Commission notes that no outstanding Index options will be affected by the change.[12]

The Commission finds good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. As discussed above, the proposal refines the way existing settlement values are calculated for the Index by providing more prices to be used in calculating the Index's settlement value. Further, accelerated approval will permit the Exchange to implement the new settlement methodology starting with options that begin trading on September 21, 1998 and ensures that no options utilizing the old settlement methodology will be outstanding after the December 1998 expiration. In addition, the Commission believes that the proposed settlement value does not present any new or novel regulatory issues. Finally, there were no comments from the public on the proposal during the 21 day comment period. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change, including Amendment No. 1, on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change, as amended (SR-Amex-98–27), is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

[FR Doc. 98–25491 Filed 9–23–98; 8:45 am]

BILLING CODE 8010–01–M

[9] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] *See supra* note 6.

[12] The Exchange has represented that all currently outstanding options on the Index will expire on or before December 1998.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40443; File No. SR–NASD–98–67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Policies Regarding Authority Over American Stock Exchange LLC and Composition of Board of Governors of American Stock Exchange LLC

September 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] notice is hereby given that on September 14, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The NASD filed an amendment to the filing on September 16, 1998.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed a proposed rule change to state two policies regarding NASD's oversight of American Stock Exchange LLC (''Amex LLC'') and the composition of the Board of Governors of Amex LLC. Below is the text of the proposed rule change:

Policy With Respect to Authority Over American Stock Exchange LLC

Under the Transaction Agreement dated as of May 8, 1998, by and among the NASD, American Stock Exchange, Inc., and certain other related parities (the ''Transaction Agreement'' and, together with the agreements and other documents attached thereto, the ''Transactional Documents''), Amex LLC will be and remain a self-regulatory organization registered under Section 6 of the Act, and as such will have statutory authority and responsibility over, among other things, the disciplining of its members, the amendment, repeal or addition of provisions to its Constitution and Rules (subject only to the power of the NASD to withhold consent to any such action affecting the Constitution of Amex LLC), the listing and delisting of securities, the grant or denial of membership in Amex LLC and approval of status as an approved person or allied member, and the grant or denial of access of facilities of and services offered by Amex LLC, all subject to the power of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the ''Act'').

Subject to the terms and conditions of the Transactional Documents, the NASD will enjoy a controlling interest in Amex LLC, including in the selection of a majority of the Amex LLC Board of Governors and, through its influence over the Board of Governors, in the allocation of the resources of Amex LLC.

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Letter to Katherine England, Commission, from T. Grant Callery, NASD, dated September 16, 1998 (''Amendment No. 1''). Amendment No. 1 replaces entirely the Exhibit No. 1 originally submitted with the rule filing.

As the parent company of Amex LLC, the NASD will be responsible to ensure that Amex meets it obligations as a self-regulatory organization. It will be the policy of the NASD that in discharging that responsibility the NASD will be governed by the following principles:

1. The NASD will exercise its powers and its managerial influence to ensure that the Amex LLC fulfills its self-regulatory obligations by:

Directing Amex LLC to take action necessary to effectuate its purposes and functions as a national securities exchange operating pursuant to the Act; and Ensuring that Amex LLC has and appropriately allocates such financial, technological, technical, and personnel resources as may be necessary or appropriate to meet its obligations under the Act.

2. The NASD will refrain form taking any action with respect to Amex LLC that, to the best of its knowledge, would impede, delay, obstruct, or conflict with efforts by Amex LLC to carry out its self-regulatory obligations under the Act and the rules and regulations thereunder.

Policy With Respect to Composition of Board of Governors of American Stock Exchange LLC

Section 9.12(d) of the Transaction Agreement dated as of May 8, 1998, by and among the NASD, American Stock Exchange, Inc., and certain other related parties (the ''Transaction Agreement'') and Article II, Sec. 04(a)(4) of the Constitution of American Stock Exchange LLC (''Amex LLC'') provide that the Board of Governors of Amex LLC will include two representatives of NASD staff appointed by the NASD.

To assure substantial and meaningful input by the public in the governance of Amex LLC the NASD will use its appointment power to fill one of those two positions with a representative of the staff who is not an employee of and has no material business relationship with a broker or dealer or with the NASD, NASD Regulations, The Nasdaq Stock Market, or Amex LLC, but who be an officer or employee of an issuer of securities listed on Nasdaq or Amex LLC or traded in the over-the-counter market.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change has two purposes. First, with regard to NASD's authority over Amex LLC (the successor operating organization to the American Stock Exchange), the proposed rule change is intended to clarify the NASD's intent that, upon closing of the Transaction Agreement dated as of May 8, 1998, by and among the NASD, the American Stock Exchange, Inc., and certain other related parties, the NASD will be responsible to ensure that Amex LLC will fulfill its self-regulatory obligations and will have the resources necessary for it to do so.

Second, with regard to the composition of the Board of Governors of Amex LLC, the proposed rule change is intended to ensure sufficient non-Industry representation on that Board.

Summary of Proposed Rule Change

Policy With Respect to Authority Over American Stock Exchange LLC

This part of the proposed rule change sets forth certain principles that will guide the NASD in its fulfillment of its responsibilities as parent company of Amex LLC with ultimate responsibility for Amex LLC's compliance with its statutory responsibilities as a self-regulatory organization.

Policy With Respect to Composition of Board of Governors of American Stock Exchange LLC

This part of the proposed rule change states the NASD's policy that, in order to assure substantial and meaningful input by persons outside the securities industry in the governance of Amex LLC, the NASD will appoint as one of the two representatives of NASD staff on the Amex LLC Board of Governors, a person who is not an employee of and has no material business relationship with a broker or dealer or with the NASD, NASD Regulation, The Nasdaq Stock Market, or Amex LLC, but who may be an officer or employee of an issuer of securities listed on Nasdaq or Amex LLC or traded in the over-the-counter market.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(2) and 15A(b)(4) of the Act, which require, among other things, that the NASD's rules must be designed to carry out the purposes of the Act, and to assure a fair representation of its members in the administration of its affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room located at the above address. Copies of such filing will also be

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–67 and should be submitted by October 15, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25492 Filed 9–23–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40449; File No. SR–PCX–98–46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Guidelines for Consolidation of Specialist Posts

September 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 17, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to adopt formal guidelines to be used by the Equity Floor Trading Committee (''EFTC'') in determining whether to allow specialist firms to consolidate their specialist posts. These standards are intended to give the EFTC greater guidance in exercising its existing authority to supervise and approve the consolidation of specialist posts on the Equity Floors of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The EFTC has been responsible for approving requests of specialist firms to transfer issues inter-firm or intra-firm, including requests of specialist firms to consolidate their posts.[2] Under this long-standing authority of the EFTC to review intra-firm transfers, including the consolidation of specialist posts, the EFTC supervises and approves the transfer of issues on the floor when a member firm has relinquished one or more of its specialist posts. It has also approved the intra-firm transfer of stocks, for example, a firm with five posts may obtain EFTC approval to ''collapse'' one post and redistribute its stocks to the remaining four posts.[3]

The Exchange believes that a number of specialist firms will be interested in collapsing their posts. In light of several such requests to collapse posts, the Exchange is now proposing to provide the EFTC with specific guidelines and procedures to use when considering member firms' requests to consolidate their specialist posts. Specifically, in the approval process, the EFTC will consider: (a) whether the firm has provided the Exchange with economic or business justification for consolidating its posts; (b) whether the firm has demonstrated to the EFTC that it will provide adequate staffing and an adequate capital commitment to handle the merged posts; and (c) whether the firm should relinquish some of its specialty stocks (or reallocate them among its remaining posts) to be able to handle the increased market making load as a precondition of effecting a post consolidation.[4]

The Exchange believes that the proposed guidelines take into account the types of information necessary for the EFTC to review when considering requests for consolidation of specialist posts. Specifically, in reviewing particular member firm applications that provide the relevant information, the EFTC will be in a position to determine whether, after a post consolidation, a given specialist firm will have the resources necessary to fulfill its market making responsibilities, to make deep and liquid markets, and to provide timely executions of customer orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to facilitate transactions in securities, promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(iii)[7] of the Act and subparagraph (e)(3) of Rule 19b–4

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* PCX Constitution, Art. IV, Section 6(a), which provides that the EFTC ''shall be responsible for the general supervision of the dealings of members on the Equity Floor. It shall make and recommend to the Board of Governors for adoption such rules as it may deem necessary for the fair and orderly transaction of business upon the Equity Trading Floor.'' *See also* Section 6(b), which provides in part that ''[it] shall be the duty of the [EFTC] to . . . supervise the conduct of members on the floor and their use of floor facilities [and to] recommend to the Board of Governors: (i) the creation of specialist posts, and (ii) the appointment of specialists.'' *See also* PCX Rule 11.4, which provides in part that ''[e]ach committee shall have such other powers and duties as may be delegated to it by the Board of Governors.''

[3] Although the EFTC is responsible for overseeing the transfer of issues in these situations, the Equity Allocation Committee continues to be responsible for allocating stocks, in general, or reallocating stocks for performance reasons. *See* PCX Constitution, Art. IV, Section 5(b); PCX Rules 5.37(j) and 5.37(s). The Exchange notes that parallel rules and procedures exist with respect to Options Floor realignment of Options Market Maker posts on the floor and the reallocation of option issues on the Options Trading Floor. *See* PCX Constitution, Art. IV, Section 8(a)–(c); and PCX Rules 6.82(e)–(f) and 11.10(c).

[4] The Exchange intends to disseminate a Regulatory Bulletin to notify its Members and Member firms of these new guidelines.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78(f)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

under the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX.

All submissions should refer to File No. SR–PCX–98–46 and should be submitted by October 15, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25490 Filed 9–23–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9992]

State of Alaska

The Boroughs of Bristol Bay and Lake and Peninsula, and the Regional Education Attendance Areas of Lower Yukon (3), Lower Kuskokwim (4), Southwest Region (6), Iditarod (11), Yukon/Koyukuk (12), Yukon Flats (13), Alaska Gateway (16), Kashunamiut (22), and Yupiit (23), as well as the contiguous Boroughs of Aleutians East, Denali, Fairbanks North Star, Kenai Peninsula, Kodiak Island, Matanuska Susitna, North Slope and Northwest Arctic, and the contiguous Regional Education Attendance Areas of Bering Straits (2), Kuspuk (5), Delta/Greely (15), and Copper River (17 constitute an economic injury disaster area due to the effects of the warm water current known as El Nino beginning in May of 1997. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on June 17, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: September 17, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–25501 Filed 9–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3127]

State of Florida

As a result of the President's major disaster declaration on September 4, 1998, and an amendment thereto on the same date, I find that Bay, Dixie, Franklin, Gulf, Taylor, and Wakulla Counties in the State of Florida constitute a disaster area due to damages caused by Hurricane Earl which occurred on September 3, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on November 3, 1998, and for loans for economic injury until the close of business on June 4, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of Florida may be filed until the specified date at the above location: Calhoun, Gilchrist, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Walton, and Washington.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437%
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 312708, and for economic injury the number is 998700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 10, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–25499 Filed 9–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3129]

State of Maine

Cumberland County and the contiguous Counties of Androscoggin, Oxford, Sagadahoc and York constitute a disaster area as a result of damages caused by thunderstorms that occurred on August 24 and 25, 1998. Applications for loans for physical damage may be filed until the close of business on November 12, 1998 and for economic injury until the close of business on June 11, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437

[8] 17 CFR 240.19b–4(e)(3).

[9] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

	Percent
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 312911 for physical damage and 998900 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 11, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–25498 Filed 9–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3125]

State of Texas; Amendment #2

In accordance with a notice from the Federal Emergency Management Agency dated September 11, 1998, the above-numbered Declaration is hereby amended to include Edwards County, Texas as a disaster area due to damages caused by Tropical Storm Charley beginning on August 22, 1998 and continuing through August 31, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Kimble in the State of Texas may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is October 24, 1998, and for economic injury the deadline is May 26, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 16, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–25497 Filed 9–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3128]

Commonwealth of Virginia

As a result of the President's major disaster declaration on September 4, 1998, I find that the Independent Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach in the Commonwealth of Virginia constitute a disaster area due to damages caused by Hurricane Bonnie that occurred August 25, 1998 through September 1, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on November 3, 1998, and for loans for economic injury until the close of business on June 4, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties and independent cities in Virginia may be filed until the specified date at the above location: the Independent Cities of Hampton and Newport News, and the Counties of Isle of Wight and Southampton.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 312808, and for economic injury the number is 998800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 10, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–25500 Filed 9–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Mid-Atlantic States Regional Fairness; Board Public Hearing

The Mid-Atlantic States Regional Fairness Board Public Hearing, to be held on September 28, 1998 starting at 11:00 a.m. at the Adelphi University, Ruth S. Harley University Center, Room 313, Adelphi South Avenue, Garden City, NY 11530. The space is being donated by Adelphi University. To receive comments from small businesses concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

After the hearing, there will be a strategy/de-briefing session to collect Fairness Board members' input on the proceedings, as well as to obtain recommendations for the annual Report to Congress. This meeting will begin at approximately 2:00 pm at the same location.

FOR FURTHER INFORMATION CONTACT: Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–25494 Filed 9–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IV, North Florida District; Jacksonville, Florida; Advisory Council Meeting; Public Meeting

The U. S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12:00 p.m. to 2:00 p.m., October 8, 1998, at the Jacksonville Area Chamber of Commerce, 3 Independent Drive, Hadlow Board Room, Third Floor, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present.

For further information write or call Claudia D. Taylor, U.S. Small Business Administration, 7825 Baymeadows

Way, Suite 100-B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–25493 Filed 9–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region 1 Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region 1 Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 10:00 a.m. on Monday, September 28, 1998 at the Portland Resource Hub, 441 Congress Street, Portland, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, 207–622–8242.

Shirl Thomas,

Director, Office of External Affairs

[FR Doc. 98–25496 Filed 9–23–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region II Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region II Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting at 10:00 a.m. on October 21, 1998, at Buffalo Office Interiors, 1418 Niagara Street, Buffalo, New York to discuss matters that may be presented by members of the Advisory Council, staff of the U.S. Small Business Administration or others present.

For further information, write or call Franklin J. Sciortino, District Director, U.S. Small Business Administration, Room 1311, 111 West Huron Street, Buffalo, New York 14202—(716) 551–4301.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–25495 Filed 9–23–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2899]

Shipping Coordinating Committee; Subcommittee for the Prevention of Marine Pollution, Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, October 27, 1998, at 9:30 a.m. in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the forty-second session of the Marine Environment Protection Committee (MEPC 42) of the International Maritime Organization (IMO). MEPC 42 will be held from November 2–6, 1998. Proposed U.S. positions on the agenda items for MEPC 42 will be discussed.

The major items for discussion for MEPC 42 will begin at 9:30 a.m. and include the following:

a. Harmful effects of the use of anti-fouling paints for ships;

b. Inadequacy of waste reception facilities at ports and terminals;

c. Implementation of the Oil Pollution Preparedness, Response, and Cooperation Convention (OPRC) convention and associated conference resolutions;

d. Harmful aquatic organisms in ballast water;

e. Prevention of air pollution from ships;

f. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

g. Interpretation and amendments of MARPOL 73/78 and related codes;

h. Promotion of implementation and enforcement of MARPOL 73/78 and related codes;

i. Irradiated Nuclear Fuel Code related matters;

j. Role of the human element with regard to pollution prevention;

k. Formal safety assessment including environmental indexing of ships.

Members of the public may attend this meeting up to the seating capacity of the room. For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander John Meehan, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW., Washington, DC 20593–0001; Telephone: (202) 267–2714.

Dated: September 16, 1998.

Stephen M. Miller,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–25587 Filed 9–23–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice No. 2898]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Thursday, October 08, 1998, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC. The purpose of this meeting is to prepare for the 78th session of the IMO Legal Committee, which will be held October 19–23, 1998, in London. The meeting will address: provision of financial security for passenger claims, provision of financial security for other maritime claims, compensation for pollution from ships' bunkers, a draft conviction on wreck removal, as well as other matters. This meeting will also be a further opportunity for interested members of the public to express their views on whether the United States should ratify the Hazardous and Noxious Substance Convention, adopted in London in May, 1996.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views concerning the subjects of discussion, write to either Captain Malcolm J. Williams, Jr., of Lieutenant William G. Rospars, U.S. Coast Guard (G–LMI), 2100 Second Street, SW, Washington, DC 20593, or by telephone (202) 267–1527, telefax (202) 267–4496.

Dated: September 16, 1998.

Stephen M. Miller,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–25588 Filed 9–23–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice No. 2897]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Radiocommunications and Search and Rescue; Notice of Meetings

The Working Group on Radiocommunications and Search and Rescue of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 AM on Wednesday, October 7, and December 9, 1998, February 17, March 31, and June 30, 1999. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh

Street, S.W., Washington, DC 20950. The purpose of these meetings is to prepare for the Fourth Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue which is scheduled for the week of July 12, 1999, at the IMO headquarters in London, England. Among other things, the items of particular interest are:

—The implementation of the Global Maritime Distress and Safety System (GMDSS).

—Maritime Search and Rescue matters.

Further information, including meeting agendas with meeting room numbers, minutes, and input papers, can be obtained from the Coast Guard Navigation Information Center Internet World Wide Web by entering: ''http://www.navcen.uscg.mil/marcomms/imo/imo.htm''

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, S.W., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to rgrandmaison@comdt.uscg.mil.

Dated: August 20, 1998.

Susan K. Bennett,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–25589 Filed 9–23–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Reliant Airlines, Inc. for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 98–9–18) Dockets OST–98–3895 and OST 98–3896.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Reliant Airlines, Inc., fit, willing, and able and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of property and mail as a certificated air carrier.

RESPONSES: Objections and answers to objections should be filed in Dockets OST–98–3895 and OST–98–3896 and addressed to the Department of Transportation Dockets (SVC124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer or Ms. Karen Arendt, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: September 17, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–25504 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Asia Pacific Airlines for Certificate Authority

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of order to show cause (Order 98–9–20) Dockets OST–98–3404 and OST–98–3479.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Aero Micronesia, Inc. d/b/a Asia Pacific Airlines fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of property, and mail.

DATES: Persons wishing to file objections should do so no later than October 2, 1998.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–98–3404 and OST–98–3479 and addressed to Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, S.W., Rm. PL–401, Washington, D.C. 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnhart, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–5279.

Dated: September 18, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–25618 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held Wednesday, October 21, 1998, from 2:00–4:00 p.m. at the Washington Court Hotel, Ash Lawn Room, 525 New Jersey Avenue, NW., Washington, DC. The agenda for the meeting is as follows:

—Advocacy

—DOT DBE Program

—Small Business Programs

—Outreach

—Financial Services

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Office of Small and Disadvantaged Business Utilization, Minority Business Resource Center by 4:00 p.m. on Monday, October 19, 1998. Information pertaining to the meeting may be obtained from Mrs. Marie A. Hendricks, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–1930 or (800) 532–1169. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on September 16, 1998.

Luz A. Hopewell,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 98–25505 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Burbank-Glendale-Pasadena Airport, Burbank, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Burbank-Glendale-Pasadena Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 26, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Greer, Executive Director at the following address, Burbank-Glendale-Pasadena Airport Authority, 2627 Hollywood Way, Burbank, CA 91505–9989.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Burbank-Glendale-Pasadena Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John Milligan, Supervisor, Standards Section, Airports Division, Federal Aviation Administration, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261, Telephone (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Burbank-Glendale-Pasadena Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 11, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Burbank-Glendale-Pasadena Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 10, 1998.

The following is a brief overview of the application.

PFC application number: PFC No. 98–03–C–00–BUR.

Level of proposed PFC: $3.00.

Proposed charge effective date: November 1, 2001.

Proposed charge expiration date: June 30, 2010.

Total estimated PFC revenue: $84,481,000.

Brief description of the proposed project: Replacement Terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burbank-Glendale-Pasadena Airport Authority.

Issued in Hawthorne, California on September 15, 1998.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 98–25556 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4034; Notice 16]

Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Natural Gas Pipe Line Company of America Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice; Correction.

SUMMARY: RSPA published a document in the **Federal Register** of September 1, 1998, regarding the intent to approve the Natural Gas Pipe Line Company of America as a participant in the Pipeline Risk Management Demonstration Program. The document contained an error in reference to the Notice Number.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 355–4572.

Correction

In the **Federal Register** issue of September 1, 1998, in FR Doc. 98–23442, on page 46497, in the fourth line of the title, correct the Notice number to read:

Notice 16.

Issued in Washington, DC on September 21, 1998.

Richard B. Felder,

Associate Administrator.

[FR Doc. 98–25623 Filed 9–23–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (98–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the fourth quarter 1998 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 1998 RCAF (Unadjusted) is 1.003. The fourth quarter 1998 RCAF (Adjusted) is 0.618. The fourth quarter 1998 RCAF–5 is 0.621.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565-1549. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: September 17, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–25600 Filed 9–23–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33650]

RailAmerica, Inc.—Continuance in Control Exemption—Ventura County Railroad Co.

RailAmerica, Inc. (RailAmerica) has filed a verified notice of exemption to continue in control of Ventura County Railroad Company (VCRR), upon VCRR's becoming a Class III railroad.

The transaction was scheduled to be consummated on or shortly after September 1, 1998.

This transaction is related to STB Finance Docket No. 33649, *Ventura County Railroad Company—Lease and Operation Exemption—Ventura County Railway Company,* wherein VCRR seeks to lease and operate certain rail lines from Ventura County Railway Company (VCRC).[1]

RailAmerica currently controls 10 common carrier Class III rail carriers operating in 7 states: the Cascade and Columbia River Railroad Company; the Delaware Valley Railway Company, Inc.; the Huron & Eastern Railway Company, Inc.; Minnesota Northern Railroad, Inc.; the Otter Tail Valley Railroad Company; the Saginaw Valley Railway Company, Inc.; the West Texas & Lubbock Railroad Company, Inc.; the Dakota Rail, Inc.; and the South Central Tennessee Railroad Corp.

RailAmerica states that: (i) The rail lines operated by VCRR do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect VCRR with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33650, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary Laakso, Esq., RailAmerica, Inc., 301 Yamato Road, Suite 1190A, Boca Raton, FL 33431.

Board decisions and notices are available on our website at ''www.stb.dot.gov.''

Decided: September 16, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–25335 Filed 9–23–98; 8:45 am]

BILLING CODE 4915–00–P

[1] VCRR and VCRC have entered into an agreement for VCRR to lease the line and purchase certain assets and equipment from VCRC.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33649]

Ventura County Railroad Co.—Lease and Operation Exemption—Ventura County Railway Co.

Ventura County Railroad Company (VCRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Ventura County Railway Company (VCRC)[1] and operate approximately 12.09 miles of rail line. The rail lines to be leased include: the mainline from milepost 0.0 (the interchange with Union Pacific Railroad Company) to milepost 5.7 on the docks at Port Hueneme, and three branches: the 1.05-mile Diamond Branch; the 1.71-mile Edison Branch, and the 3.63-mile Patterson Branch in the Port of Hueneme and Oxnard, CA.[2]

The transaction was scheduled to be consummated on or shortly after September 1, 1998.

The transaction is related to STB Finance Docket No. 33650, *RailAmerica, Inc.—Continuance in Control Exemption—Ventura County Railroad Company,* wherein RailAmerica, Inc., has concurrently filed a verified notice to continue in control of VCRR, upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33649, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary Laakso, Esq., RailAmerica, Inc., 301 Yamato Road, Suite 1190A, Boca Raton, FL 33431.

Board decisions and notices are available on our website at ''www.stb.dot.gov.''

Decided: September 16, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–25334 Filed 9–23–98; 8:45 am]

BILLING CODE 4915–00–P

[1] VCRR and VCRC have entered into an agreement for VCRR to lease from VCRC the line and all improvements thereon, all rail ties, spikes, tie plates, rail anchors, bridges, culverts, signaling equipment, and other supporting structures, ballast, and track materials, while excluding some real property and a building, and the purchase of certain assets, all located in the Port of Hueneme, Oxnard, CA.

[2] VCRR states that its projected revenues will not exceed those that would qualify it as a Class III carrier.

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting

SUMMARY: This notice announces the date and time for the next meeting and the agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, October 9, 1998 at 9:00 a.m. in Chicago, Illinois. The meeting will be held in the 47th floor boardroom of Sara Lee corporate headquarters at 70 West Madison Street (also known as 3 First National Plaza), Chicago, IL 60602. 70 West Madison Street is between Clark Street and Dearborn Street. Phone: (312) 726–2600.

The duration of the meeting will be approximately three to three and a half hours.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500

Pennsylvania Avenue, NW, Washington, DC 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: At the October 9, 1998 session, the regular quarterly meeting of the Advisory Committee, the Committee is expected to consider the agenda items listed below. The agenda may be modified prior to the meeting:

1. Status of implementation of Committee recommendations on the Automated Export System (AES).
2. The Automated Commercial Environment (ACE) and the International Trade Data System (ITDS): Where do they stand?
3. Adequacy of staffing for the Office of Regulations and Ruling.
4. The Merchandise Processing Fee and aggregation of entries.
5. Review of Committee annual report recommendations.

The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting, should give advance notice by contacting Theresa Manning at (202) 622–0220 no later than October 2, 1998.

Dated: September 19, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 98–25516 Filed 9–23–98; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Program Title The FREEDOM Support Act/Future Leaders Exchange (FSA/FLEX) Program; Inbound, NIS Secondary School Initiative

NOTICE: Request for proposals.

SUMMARY: The Youth Programs Division/Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the FREEDOM Support Act Future Leaders Exchange Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501 may submit proposals to recruit and select host families of high school students between the ages of 15 and 17 from the New Independent States (NIS) of the former Soviet Union. In addition to screening, selecting, and orienting host families and enrolling students in American high schools, organizations will be responsible for: Orienting students at the local level; providing support services for students; arranging enhancement activities; monitoring students during their stay in the U.S.; providing reentry training; and assessing student performance and progress. The award of grants and the number of students who will participate is subject to the availability of funding in fiscal year 1999.

Program Information

Background

Academic year 1999/00 will be the seventh year of the FSA/FLEX program, which now includes over 6000 alumni. This component of the NIS Secondary School Initiative was originally authorized under the FREEDOM Support Act of 1992 and is funded by annual allocations from the Foreign Operations and USIA appropriations. The goals of the program are to promote mutual understanding and foster a relationship between the people of the NIS and the U.S.; assist the successor generation of the NIS to develop the qualities it will need to lead in the transformation of those countries in the 21st Century; and to promote democratic values and civic responsibility by giving NIS youth the opportunity to live in American society for an academic year.

Objectives

To place approximately 930 pre-selected high school students from the NIS in qualified, well-motivated host families and welcoming schools. To expose program participants to American culture and democracy through homestay experiences and enhancement activities that will enable them to attain a broad view of the society and culture of the U.S. To encourage FSA/FLEX program participants to share their culture, lifestyle, and traditions with U.S. citizens.

Other Components

Two organizations have been awarded grants to perform the following functions: Recruitment and selection of students; targeted recruitment for students with disabilities; assistance in documentation and preparation of IAP–66 forms; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitate ongoing communication between the natural parents and placement organizations, as needed; maintenance of a student database and provision of data to USIA; and ongoing follow-up with alumni following their return to the NIS. Additionally, a separate grant may be awarded for a one-week mid-year civic education program in Washington, DC, for a select number of students who successfully compete for the Washington program. Students who require additional English language training before entering their host communities will attend an English upgrade and cultural orientation program, which is conducted under a grant exclusively for that purpose. The announcements of the competitions for these grants are being published separately.

Guidelines

Organizations chosen under this competition are responsible for the following: Recruitment, screening, selection, and orientation of host families; school enrollment; local orientation; placement of a small number of students with disabilities; specialized training of local staff and volunteers to work with NIS students; preparation and dissemination of materials to students pertaining to the placement organization; program enhancement activities; supervision and monitoring of students; trouble shooting and periodic reporting on their progress; when appropriate, communication with the organizations conducting other program components; evaluation of the students' performance; evaluation of the organization's success in achieving program goals; and re-entry training to prepare students for readjustment to their native culture.

Applicants may request a grant for the placement of at least 20 students. There is no ceiling on the number of students who may be placed by one organization. It is anticipated that 10 to 15 grants will be awarded for this component of the FLEX program. Placements will be spread all across the U.S. Students may be clustered in one or more regions or dispersed. If dispersed, applicants should demonstrate that local staffing and training of local staff is adequate to ensure their competence in supervising and counseling students from the NIS. Please refers to the Solicitation Package, available on request from the address listed below, for details on essential program elements, permissible costs, and criteria used to select students.

Grants should begin at the point that the complete applications on selected finalists are delivered to the placement organizations, approximately on April 1, 1999. Participants arrive in their host communities in the month of August and remain for 10 or 11 months until their departure during the period mid-June to early July 2000. Some students will depart at the end of May to

complete university exams in their home countries.

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Applicants should submit the health and accident insurance plans they intend to use for students on this program. USIA will compare the plan with the Agency plan and make a determination of which will be applicable.

Participants will travel on J–1 visas issued by USIA using a government program number. Organizations must comply with J–1 visa regulations in carrying out their responsibilities under the FLEX program. Please refer to Solicitation Package for further information

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program costs. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Monthly and incidentals allowances for participants, as established by USIA.

(2) Costs associated with student enhancements and orientations.

(3) Administrative costs associated with host family recruiting, staff training, monitoring, and other functions.

(4) Health and accident insurance.

Please refer to the Solicitation Package for complete budget guidelines and formatting instruction.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the above title and number E/P–99–05.

FOR FURTHER INFORMATION CONTACT: The Office of Youth Program, E/PY, Rm 568, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, tel. (202) 619–6299, fax (202) 619–5311, e-mail daronson@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Diana Aronson on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, October 30, 1998. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 6 copies of the application should be sent to: U.S. Information Agency, Ref.: E/P–99–05, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIA posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. ''Pub. L. 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as by USIA's East European and NIS Area Office and the USIA post(s) overseas, where appropriate. Eligible proposals will be forwarded to panels the USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be

reasonable and feasible and should coincide with those for the FLEX program stated above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity both in host community and family placements and in program content (e.g., orientation, enhancement activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and efficiency in carrying out all functions.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior grant recipients and the demonstrated potential of new applicants.

8. Project Evaluation: Proposals should include a plan to evaluate achievements and success in dealing with problems. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to the stated objectives is recommended. Successful applicants will be expected to submit quarterly reports.

9. Cost-effectiveness: The overhead and administrative costs, including salaries and honoraria, should be kept as low as possible. All other items should be reasonable and appropriate to conducting the program efficiently.

10. Cost-sharing: Proposals should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation pertaining to the USIA and Foreign Operations appropriations.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: September 15, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–25155 Filed 9–23–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0095]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine net income derived from farming.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 23, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0095'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501 '' 3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Pension Claim Questionnaire for Farm Income, VA Form 21–4165.

OMB Control Number: 2900–0095.

Type of Review: Extension of a currently approved collection.

Abstract: A claimant's eligibility for VA pension benefits is determined, in part, by countable income. VA Form 21–4165 is used to develop the necessary income and asset information peculiar to farm operations. The information is used by VA to determine whether the claimant is eligible for VA benefits. If eligibility exists, the information is used to determine the proper rate of benefits.

Affected Public: Individuals or households—Farms.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Dated: August 24, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–25551 Filed 9–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0255]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the applicant's eligibility to apply for VA benefits in conjunction with Social Security benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 23, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0255'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation or Death Pension (Including Accrued Benefits and Death Compensation Where Applicable) From the Department of Veterans Affairs, VA Form 21–4182.

OMB Control Number: 2900–0255.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to determine the applicant's eligibility for accrued, dependency and indemnity compensation, death compensation and/or death pension benefits when applying for Social Security benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 14,000.

Dated: August 4, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–25552 Filed 9–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0270]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to help veteran-borrowers who are seriously delinquent on guaranteed or insured VA home loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 23, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0270'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Financial Counseling Statement, VA Form 26–8844.

OMB Control Number: 2900–0270.

Type of Review: Extension of a currently approved collection.

Abstract: The form is part of VA's supplemental servicing program for helping veteran-borrowers who are seriously delinquent on guaranteed or

insured VA home loans. In VA's supplemental servicing effort, financial counseling is performed in appropriate cases to afford veteran-borrowers the maximum assistance possible to retain their homes during periods of temporary financial difficulty. The information collected is used by VA to make recommendations to the borrower in an effort to help the borrower cure the default status of the loan.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,750 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: August 24, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–25553 Filed 9–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0510]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether children's income can be excluded from consideration in determining a parent's eligibility for nonservice-connected pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 23, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0510'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Exclusion of Children's Income, VA Form 21–0571.

OMB Control Number: 2900–0510.

Type of Review: Extension of a currently approved collection.

Abstract: A veteran's or surviving spouse's rate of Improved Pension is determined by family income. Normally, income of children who are members of the household is included in this determination. However, children's income may be excluded if it is unavailable or if consideration of that income would cause hardship. The information collected is used by VA to determine whether children's income can be excluded from consideration in determining a parent's eligibility for nonservice-connected pension.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,750 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Dated: August 24, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–25554 Filed 9–23–98; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (VR&C)]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 26, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–NEW (VR&C).''

SUPPLEMENTARY INFORMATION:

Title: Vocational Rehabilitation and Counseling (VR&C) Service Program Outcome Survey, VA Form 28–0317.

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: VBA plans to conduct a study to assess program outcomes for its Vocational Rehabilitation and Counseling (VR&C) Program. VBA has identified a need for direct input from former program customers, including reactions to VR&C's program offerings, processes, quality of services, and outcomes achieved by veterans who participated in the program. The information collected will be used to identify program outcomes and opportunities for improving VR&C program performance. Specifically, the information will be used to assess whether the services provided under the program meets veterans needs, are provided in a manner that encourages participation by eligible recipients, and promotes successful achievement of rehabilitation and related objectives.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 24, 1998 at page 14178.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,650 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–NEW (VR&C)'' in any correspondence.

Dated: August 4, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–25547 Filed 9–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0202]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 26, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0202.''

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Application for Ordinary Life Insurance (Age 70), VA Form 29–8485a; and Information About Modified Life Insurance Reduction and Replacement Features (Age 70), VA Form 29–8701.

OMB Control Number: 2900–0202.

Type of Review: Extension of a currently approved collection.

Abstract: The forms are used by the insured to apply for replacement insurance to replace the amount of Modified Life Insurance that was reduced at age 70. The information is used by VA to initiate the granting of the coverage for which applied.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1998 at page 4524.

Affected Public: Individuals or households.

Estimated Annual Burden: 642 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,700.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0202'' in any correspondence.

Dated: August 4, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–25548 Filed 9–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0234]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 26, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0234.''

SUPPLEMENTARY INFORMATION:

Title: Request to Mortgage Company for Amount of Unpaid Insurance, VA Form Letter 29–712.

OMB Control Number: 2900–0234.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to request the amount of the veteran's unpaid mortgage from the lending institution with which the veteran carries the mortgage. The information is required by law, Title 38, U.S.C., Section 2106, and is used by VA to determine Veterans Mortgage Life Insurance premiums.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 1998 at page 16861.

Affected Public: Individuals or households.

Estimated Annual Burden: 75 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 450.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0234'' in any correspondence.

Dated: August 4, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–25549 Filed 9–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 26, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0539.''

SUPPLEMENTARY INFORMATION:

Title: Application for Supplemental Service Disabled Veterans Insurance, VA Form 29–0188.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by veterans to apply for Supplemental Service Disabled Veterans Insurance. No insurance may be granted unless a completed application has been received. The information is used by the VBA to determine eligibility for insurance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 9, 1998 at page 17485.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0539'' in any correspondence.

Dated: August 4, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–25550 Filed 9–23–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee on Prosthetics and Special-Disabilities has been renewed for a 2-year period beginning September 16, 1998, through September 16, 2000.

Dated: September 17, 1998.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–25555 Filed 9–23–98; 8:45 am]

BILLING CODE 8220–01–M

Corrections

Federal Register

Vol. 63, No. 185

Thursday, September 24, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Orders Eligible for Post-execution Allocation

Correction

In rule document 98–22933 beginning on page 45699, in the issue of Thursday, August 27, 1998, make the following corrections:

1. On page 45699, in the first column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the fourth line, ''Anderson'' should read Andresen''.

2. On page 45699, in the first column, under the heading **Table of Contents**, in the ninth line, ''1.35(a-1)'' should read ''1.35(a-1)(5)(i)''.

3. On page 45699, in the second column, in the 16th line, ''1.35(a-1)(5)(iii)'' should read ''1.35(a-1)(5)(ii)''.

4. On page 45700, in the second column, under the heading **II.Amendments to Commission Regulation 1.35(a-1)**, in the third line, ''Orders eligible for post-execution allocation,'' should read ''*Orders eligible for post-execution allocation*''.

5. On page 45700, in the second column, under the heading **II. Amendments to Commission Regulation 1.35(a-1)**, in the 19th line, ''as'' should read ''a''.

6. On page 45700, in the third column, in the second full paragraph, in the tenth line, ''ere'' should read ''were''.

7. On page 45702, in the second column, in the first full paragraph, in the 11th line from the bottom, ''section'' should read ''Section''.

8. On page 45702, in the second column, in paragraph (b)(i), ''manager,'' should read ''manager;''.

9. On page 45702, in the third column, in paragraph (b)(v), in the sixth line, ''order,'' should read ''order;''.

10. On page 45702, in the third column, in paragraph (b)(vi) , in the second line, ''person.'' should read ''persons.''.

11. On page 45702, in the third column, in the fourth paragraph, in the eighth line, ''bounded'' should read ''bunched''.

12. On page 45703, in the third column, under heading *D. Disclosure Final Regulation 1.35(a-1)(5)(iii),* in the third line, ''writing'' should read ''writing,''.

13. On page 45703, in the third column, in the 7th line from the bottom, ''MFA'' should read ''MFA,''.

14. On page 45704, in the second column, in the second paragraph, in the first line, ''In'' should read ''The''.

15. On page 45704, in the second column, under the heading, 2. Comments Received, in the ninth line, ''provided'' should read ''provide''.

16. On page 45704, in the second column, in the footnotes, in the eighth line from the bottom, ''Goldman,'' should read ''Goldman.''.

17. On page 45706, in the third column, in the footnotes, in the tenth line from the bottom, ''and or'' should read ''and of''.

18. On page 45709, in the second column, in the second full paragraph, in the first line, ''1.35(a-'' should read ''1.35 (a-1)(5) generally applies to large users of the market. It''.

BILLING CODE 1505-01-D

Federal Register

Thursday
September 24, 1998

Part II

Department of Justice

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

[Civ. No. 1:98 CV 1616]

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Ohio, Eastern Division, in United States and States of Ohio, Arizona, California, Colorado, Florida, Maryland, New York, Texas, Washington, and Wisconsin, and Commonwealths of Kentucky and Pennsylvania v. USA Waste Services, Inc., Dome Merger Subsidiary, and Waste Management, Inc. Civ. No. 1:98 CV 1616.

On July 16, 1998, the United States and the listed eleven states and two commonwealths filed a Complaint, which alleged that USA Waste's proposed acquisition of Waste Management would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in commercial waste collection and/or municipal solid waste disposal in 21 geographic markets around the country, including: Akron, Canton, Cleveland and Columbus, OH; Allentown, Pittsburgh and Philadelphia, PA; Baltimore, MD; Denver, CO; Detroit, Flint and Northeast Michigan; Houston, TX; Los Angeles, CA; Louisville, KY; Miami and Gainesville, FL; Milwaukee, WI; New York, NY; Portland, OR; and Tucson, AZ. The proposed Final Judgment, filed the same day as the Complaint, requires that USA Waste and Waste Management divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20530 [telephone: (202) 307–0924].

Constance K. Robinson,

Director of Operations & Merger Enforcement.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. *USA Waste* means defendant USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries (including Dome Merger Subsidiary), divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. *WMI* means defendant Waste Management, Inc., A Delaware corporation with its headquarters in Oak Brook, Illinois, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. *Relevant Disposal Assets* means, unless otherwise noted, with respect to each landfill or transfer station listed and described herein, all tangible assets, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; landfill- or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all intangible assets of the listed landfill or transfer station, including landfill- or transfer station-related customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills

a. Akron/Canton, OH

WMI's Countywide R&D Landfill, located at 3619 Gracement Street, SW, East Sparta, OH 44626, and known as the Countywide Landfill;

b. Columbus, OH

USA Waste's Pine Grove Landfill, located at 5131 Drinkle Road, SW, Amanda, OH 43102;

c. Denver, CO

USA Waste's Front Range Landfill, located at 1830 County Road 5, Erie, CO 80516–8005.

d. Detroit, MI

USA Waste's Carleton Farms Landfill, located at 28800 Clark Road, New Boston, MI;

e. Flint, MI

USA Waste's Brent Run Landfill, located at Vienna Road, Montrose Township, Genesee County, MI;

f. Houston, TX

USA Waste's Brazoria County Landfill, located at 10310 FM–523, Angleton, TX 77515; and

g. Los Angeles, CA

USA Waste's Chiquita Canyon Landfill, located at 29201 Henry Mayo Drive, Valencia, CA 91355;

h. Louisville, KY

USA Waste's Valley View Landfill, located at 9120 Sulphur Road, Sulphur, KY 40070;

j. Milwaukee, WI

USA Waste's Kestrel Hawk Landfill, located at 1989 Oakes Road, Racine, WI 53406; and WMI's Mallard Ridge Landfill, located at W. 8470 State Road 11, Delavan, WI 53315;

k. New York, NY/Philadelphia, PA

WMI's Modern Landfill & Recycling, located at 4400 Mt. Piscah Road, York, PA 17402, and known as the Modern Landfill;

l. Northeast Michigan

USA Waste's Whitefeather Landfill, located at 2401 Whitefeather Road, Pinconning, MI; and Elk Run Sanitary Landfill, located at 20676 Five Mile Highway, Onaway, MI;

m. Pittsburgh, PA

WMI's Green Ridge Landfill, located at 717 East Huntingdon Landfill Road, Scottdale, PA 15683, and variously known as the Green Ridge Landfill, the Y&S Landfill, or the Greenridge Reclamation Landfill;

n. Portland, OR

USA Waste's North WASCO Landfill, located at 2550 Steel Road, The Dalles, OR 97058; and

2. Transfer Stations

a. Akron/Canton, OH

WMI's Akron Central Transfer Station, located at 389 Fountain Street, Akron, OH;

b. Baltimore, MD

WMI's Southwest Resource Recovery Facility (known as Baltimore RESCO or BRESCO), located at 1801 Annapolis Road, Baltimore, MD 21230; Baltimore County Resource Recovery Facility, located at 10320 York Road, Cockeysville, MD; and Western Acceptance Facility, located at 3310 Transway Road, Baltimore, MD;

c. Cleveland, OH

USA Waste's Newburgh Heights Transfer Station, located at 3227 Harvard Road, Newburgh Heights, OH 44105 (and known as the Harvard Road Transfer Station); and WMI's Strongsville Transfer Station, located at 16099 Foltz Industrial Parkway, Strongsville, OH;

d. Columbus, OH

WMI's Reynolds Road Transfer Station, located at 805 Reynolds Avenue, Columbus, OH 43201;

e. Houston, TX

USA Waste's Hardy Road Transfer Station, located at 18784 East Hardy, Houston, TX;

f. Louisville, KY

USA Waste's Poplar Level Road Transfer Station, located at 4446 Poplar Level Road, Louisville, KY;

g. Miami, FL

All USA Waste's operations related to its right, title, and interest in, or operation or, the Reuters Transfer Station Rights, as conveyed to Chambers Waste Systems of Florida, a subsidiary of USA Waste, pursuant to the Final Judgment in United States v. Reuter Recycling of Florida, Inc., 1996–1 Trade Cas. (CCH) ¶ 71,353 (D.D.C. 1996), a copy of which is attached to the proposed Final Judgment as Exhibit A;

h. New York, NY

WMI's SPM Transfer Station, located at 912 East 132nd Street, Bronx, NY 10452, and all rights and interests, legal or otherwise, the WMI now enjoys, has had or made use of out of the SPMT Transfer Station, to deliver waste by truck to rail siding at the Oak Point Rail Yard in the Bronx, NY, and at the Harlem River Yards facility, located at St. Ann's and Lincoln Avenues at 132nd Street, Bronx, NY 1045; and

i. Philadelphia, PA

USA Waste's Girard Point Transfer Station, located at 3600 South 26nd Street. Philadelphia, PA 19145; and USA Waste's Quick Way Inc. Municipal Waste Transfer Station, located at SE Corner, Bath and Orthodox Streets, Philadelphia, PA 19137.

D. *Relevant Hauling Assets,* unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies except real property and improvements to real property (*i.e.,* buildings)]; and it includes all intangible assets, including hauling-related customers lists, contracts and accounts.

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

USA Waste's and American Waste Corporation's front-end loader truck (''FEL'') commercial routes that serve Summit County, Ohio;

2. Allentown, PA

WMI's FEL commercial routes that serve the cities of Allentown and Northampton and Lehigh County, PA;

3. Cleveland, OH

WMI's FEL commercial routes that serve Franklin County, Ohio;

5. Denver, CO

USA Waste's FEL commercial routes that serve the City of Denver, and Denver and Arapaho County, CO;

6. Detroit, MI

WMI's FEL commercial routes that serve the City of Detroit and Wayne County, MI;

7. Houston, TX

WMI's FEL commercial routes that serve the City of Houston, the Dickinson area, and Harris County, TX;

8. Louisville, KY

USA waste's FEL commercial routes that serve the City of Louisville and Jefferson County, KY;

9. Pittsburgh, PA

WMI's FEL commercial routes that serve Allegheny County and Westmoreland County, PA, and the garage facility (real estate and improvements) located at the Y&S Landfill;

10. Portland, OR

WMI's FEL commercial routes that serve the City of Portland, OR;

11. Tucson, AZ

USA Waste's FEL commercial routes that serve the City of Tucson and Pima County, AZ; and

12. Gainesville, FL

WMI's FEL commercial routes that serve Alachua County, FL.

E. *Hauling* means the collection of nonhazardous waste from customers and the shipment of the collected waste to disposal sites.

F. *Waste* means nonhazardous municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

H. *Relevant area* means the county in which the Relevant Hauling Assets or Relevant Disposal Assets are located and any adjacent city or county, except with respect to the Modern Landfill [see Section I(C)(1)(k)], for which the Relevant Area means Philadelphia, PA, and New York, NY.

I. *Relevant State* means the state in which the Relevant Disposal Assets or Relevant Hauling Assets are located, provided however, that state is a party to this Final Judgment. With respect to the Modern Landfill [see Section I(C)(1)(k)], the Relevant State means the Commonwealth of Pennsylvania and the State of New York.

II. Objectives

The Final Judgment filed in this case in meant to ensure defendants' prompt divestitures of the Relevant Disposal Assets and the Relevant Hauling Assets for the purpose of establishing viable competitors in the waste disposal business or the commercial waste hauling business, or both, in the Relevant Areas to remedy the effects that plaintiffs allege would otherwise result from USA Waste's acquisition of WMI. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and the Relevant Hauling Assets are independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Northern District of Ohio, Eastern Division.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form hereto attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until

expiration of time of all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and operate the Relevant Disposal Assets and the Relevant Hauling Assets as independent competitors with management, sales and operations held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the marketing of, or sales by, any Relevant Disposal Asset or Relevant Hauling Asset with defendants' other operations. Within twenty (20) days after the filing of the Complaint, or thirty (30) days after the entry of this Order, whichever is later, defendants will inform plaintiffs of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Relevant Disposal Assets and Relevant Hauling Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the waste disposal business or waste hauling business, or both, in each Relevant Area; (2) management of the Relevant Disposal Assets and Relevant Hauling Assets will not be influenced by USA Waste; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Disposal Assets and Relevant Hauling Assets will be kept separate and apart from defendants' other operations. USA Waste's influence over the Relevant Disposal Assets and Relevant Hauling Assets shall be limited to that necessary to carry out USA Waste's obligations under this Order and the Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Disposal Assets and Relevant Hauling Assets, and shall maintain at 1997 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Disposal Assets and Relevant Hauling Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Disposal Assets and Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Disposal Assets and Relevant Hauling Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Disposal Assets and Relevant Hauling Assets.

F. Defendants shall not, except as part of a divestiture approved by plaintiffs, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Disposal Assets and Relevant Hauling Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Disposal Assets and Relevant Hauling Assets.

H. Except as the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any USA Waste or WMI employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Disposal Asset or Relevant Hauling Assets, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Disposal Assets and Relevant Hauling Assets are divested pursuant to the terms of the Final Judgment, the Relevant Disposal Assets and Relevant Hauling Assets of WMI and USA Waste shall be managed by Donald Chappel. Mr. Chappel shall have complete managerial responsibility for the Relevant Disposal Assets and Relevant Hauling Assets of WMI and USA Waste, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Chappel is unable to perform this duties, defendants shall appoint, subject to the approval of the United States, after consultation with the Relevant States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States, after consultation with the Relevant State, within ten (10) working days the United States shall appoint a replacement.

J. Defendants Shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States, after consultation with the Relevant State.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the Final Judgment or until further order of the Court.

VI. Defendants' Expectations

In consenting to the entry of this Final Judgment, each defendant has relied upon, as a material factor, its understanding of the hauling routes that it will be required to divest, as set forth in a letter from James. R. Weiss and Neal R. Stoll, counsel for defendants, dated July 14, 1998, and acknowledged by Anthony E. Harris, Antitrust Division, U.S. Department of Justice, counsel for the United States.

Dated: July 16, 1998.

For Plaintiff United States of America:

Anthony E. Harris, Esquire

U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, DC 20005, (202) 307–6583.

For Defendants

USA Waste Services, Inc. and Dome Merger Subsidiary

James R. Weiss, Esquire

Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Washington, DC 20006–8425, (202) 662–8425.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States, after consultation with the Relevant State.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the Final Judgment or until further order of the Court.

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Dated: July 16, 1998.

For Plaintiff United States of America

Anthony E. Harris, Esquire,

U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, DC 20005, (202) 307–6583.

For Defendants USA Waste Services, Inc. and Dome Merger Subsidiary

James R. Weiss, Esquire,

Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Washington, DC 20006–8425, (202) 662–8425.

For Plaintiff State of Ohio

Betty D. Montgomery,

Attorney General.

Doreen C. Johnson,

Chief, Antitrust Section, Ohio Attorney General's Office, 30 East Broad Street, 16th Floor, Columbus, OH 43215, (614) 446–4328.

For Plaintiff State of Arizona

Grant Woods,

Attorney General.

1275 West Washington, Phoenix, AZ 85007, (602) 542–7761

For Plaintiff State of California

Daniel E. Lungren,

Attorney General.

Barbara Motz,

Supervising Deputy Attorney General, 300 South Spring Street, Los Angeles, CA (213) 897–2691.

For Plaintiff State of Colorado

Gale A. Norton

For Defendant Waste Management, Inc.

Neal R. Stoll, Esquire,

Skadden, Arpa, Slate, Meagher & Flom, 919 Third Avenue, New York, NY 10022–3897, (212) 735–3000.

For Plaintiff State of Ohio

Betty D. Montgomery,

Attorney General.

Doreen C. Johnson,

Assistant Attorney General, Chief, Antitrust Section, Ohio Bar No. 0024725.

Mitchell L. Gentile, Senior Attorney,

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Ohio Attorney General's Office, 30 East Broad Street, 16th Floor, Columbus, OH 43215, (614) 466–4328

For Plaintiff State of Arizona

Grant Woods,

Attorney General.

Nancy M. Bonnell,

Assistant Attorney General, Arizona Bar No. 016382, Antitrust Unit, Civil Division, 1275 West Washington, Phoenix, AZ 85007, (602) 542–7711, (602) 542–4801 (facsimile).

For Defendant Waste Management Services, Inc.

Neal R. Stoll, Esquire,

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For Plaintiff State of California

Daniel E. Lungren,

Attorney General.

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Gale A. Norton,

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Jan Michael Zavislan, Colorado Bar No. 11636,

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For Plaintiff State of Florida

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Attorney General.

Lizabeth A. Leeds, Douglas L. Kilby,

Assistant Attorneys General, Antitrust Section, PL–01, The Capitol, Tallahassee, FL 32399–1050, (850) 414–3856.

For Plaintiff Commonwealth of Kentucky

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Attorney General.

David R. Vandeventer,

Assistant Attorney General, Kentucky Bar No. 72790.

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For Plaintiff State of Maryland

J. Joseph Curran, Jr.,

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For Plaintiff State of Michigan

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Assistant Attorney General, Consumer Protection Division, Franchise/Antitrust Section, P.O. Box 30213, Lansing, MI 48909, (517) 373–7117.

For Plaintiff State of New York

Dennis C. Vacco,

Attorney General.

Stephen D. Houck,

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Richard E. Grimm,

Assistant Attorney General, Antitrust Bureau, Office of the Attorney General, State of New York, 120 Broadway, Suite 26–01, New York, NY 10271, (212) 416–8271

Of Counsel:

Kay Taylor,

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ORDER

IT IS SO ORDERED by the Court, this _____ day of July, 1998.

_____

United States District Judge

Final Judgment

WHEREAS, plaintiffs, the United States of America, the State of Ohio, the State of Arizona, the State of California, the State of Colorado, the State of Florida, the Commonwealth of Kentucky, the State of Maryland, the State of Michigan, the State of New York, the Commonwealth of Pennsylvania, the State of Texas, the State of Washington, and the State of Wisconsin, and defendants USA Waste Services, Inc. (''USA Waste'') and Waste Management, Inc. (''WMI''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without the Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of the Final Judgment is the prompt and certain divestiture of the Relevant Disposal Assets and Relevant Hauling Assets to assure that competition is not substantially lessened;

And Whereas, plaintiffs require defendants to make certain divestitures for the purpose of establishing one or more viable competitors in the waste disposal business, the commercial waste hauling business, or both in the specified areas;

And Whereas, defendants have represented to the plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. *USA Waste* means defendant USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries (including Dome Merger Subsidiary), divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. *WMI* means defendant Waste Management, Inc., a Delaware corporation with its headquarters in Oak Brook, Illinois, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. *Relevant Disposal Assets* means, unless otherwise noted, with respect to each landfill or transfer station listed and described herein, all tangible asses, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; landfill- or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all intangible assets of the listed landfill or transfer station, including landfill- or transfer station-related customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills and Airspace Disposal Rights

a. Akron/Canton, OH

WMI's Countywide R&D Landfill, located at 3619 Gracemont Street, SW, East Sparta, OH 44626, and known as the Countywide Landfill;

b. Columbus, OH

USA Waste's Pine Grove Landfill, located at 5131 Drinkle Road, SW, Amanda, OH 43102;

c. Denver, CO

USA Waste's Front Range Landfill, located at 1830 County Road 5, Erie, CO 80516–8005; and at purchaser's option, a two-year waste supply agreement that would require defendants to dispose of a minimum of 150 tons/day of waste at the Front Range Landfill, at disposal fees to be negotiated between purchaser and defendants;

d. Detroit, MI

USA Waste' Carleton Farms Landfill, located at 28800 Clark Road, New Boston, MI, subject to two conditions, viz., USA Waste's obligations to (1) dispose of ash from the Greater Detroit Resource Recovery Center's incinerator at a separate monofill cell on this site pursuant to an existing contract, and (2) dispose of waste from the Greater Detroit Resource Recovery Center's bypass transfer station at this landfill, until defendants transfer such obligation to another landfill, which they shall use their best efforts to accomplish expeditiously;

e. Flint, MI

USA Waste's Brent Run Landfill, located at Vienna Road, Montrose Township, Genesee County, MI;

f. Houston, TX

(1) USA Waste's Brazoria County Landfill, located at 10310 FM–523, Angleton, TX 77515; and

(2) Airspace disposal rights at WMI's Security Landfill, located at 19248 Highway 105E, Cleveland, TX, or WMI's Atascocita Landfill, located at 2020 Atascocita Road, Humble, TX, or both, pursuant to which defendants will sell to one or more purchasers rights to dispose of at least 3.0 million tons of waste, over a ten-year period, under the following minimum terms and conditions:

(a) The purchaser (or all purchasers combined), or their designee(s), may dispose of up to 360,000 tons of waste/year, or a maximum of 1,200 tons of waste/day, at either, or both of, WMI's Security or Atascocita landfills. If more than one person purchases the airspace

disposal rights, the minimum annual and daily disposal rates for each purchaser shall be specified in its purchase agreement, and the total of all purchasers' maximum disposal amounts shall be no less than 360,000 tons/year and 1,200 tons/day;

(b) For each purchaser of airspace rights (or their designee), defendants must commit to operate the Atascocita Landfill and Security Landfill gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in the metropolitan Houston area, except as to price and credit terms;

(c) At the end of the first five years of the agreement, the purchaser or purchasers will have been considered to have used a minimum of 1.4 million tons of airspace and can have no more than 1.6 million tons left to use under the purchase agreements. If there is more than one purchaser of the airspace, the minimum amounts used during the first five years shall be specified in their purchase agreements, but the total amount shall be no more than 1.4 million tons; and

(d) At the end of the first seven years of the agreement, the purchaser (or purchasers) will have been considered to have used a minimum of 2.0 million tons of airspace and can have no more than 1.0 million tons left to use under the purchase agreements. If there is more than one purchaser of the airspace, the minimum amount used during the first five years shall be specified in their purchase agreements, but the total amount shall be no more than 2.0 million tons;

g. Los Angeles, CA

USA Waste's Chiquita Canyon Landfill, located at 29201 Henry Mayo Drive, Valencia, CA 91355;

h. Louisville, KY

USA Waste's Valley View Landfill, located at 9120 Sulphur Road, Sulphur, KY 40070;

i. Miami, FL

Airspace disposal rights at USA Waste's Okeechobee Landfill, controlled by a subsidiary of USA Waste, and located at 10800 NE 128th Avenue, Okeechobee, FL 34972, pursuant to which defendants will sell a total of 4.3 million tons of airspace, over a 20-year time period, to one or more purchasers, under the following minimum terms and conditions:

(1) The right to dispose of a maximum of 1.8 million tons of South Florida Waste, over a 20-year time period, as follows:

(a) The purchaser (or purchasers) must commit to dispose of no more than 600 tons/day, of South Florida Waste;

(b) The total amount of airspace used in each year may not exceed 150,000 tons; and

(2) Three options for additional airspace at Okeechobee Landfill, exercisable at the sole discretion of the purchaser of the airspace disposal rights, as follows:

(a) *First Options:* The right to dispose of an additional 1.0 million tons of South Florida Waste at the Okeechobee Landfill, for the remaining term of the agreement, as follows:

(i) The amount of airspace used each weekday must be at least 500 tons, but not more than 800 tons (including tonnage disposed of under prior air space commitments); and

(ii) The amount of airspace used in the year the option is exercised, and in each succeeding year over the term of the agreement, may not exceed 225,000 tons (including tonnage disposed of under prior air space commitments);

(b) *Second Option:* Exercisable at any time after the second anniversary of the agreement, and after exercise of the first option, the right to dispose of an additional 1.0 million tons of South Florida Waste at the Okeechobee Landfill, for the remaining term of the agreement, as follows:

(i) The amount of airspace used each weekday must be at least 600 tons, but not more than 1,000 tons/day (including tonnage disposed of under prior air space commitments); and

(ii) The amount of airspace used in the year Option Two is exercised and in each succeeding year of the life of the rights may not exceed 300,000 tons (including tonnage disposed of under prior air space commitments); and

(c) *Third Option:* Exercisable any time after the fifth anniversary of the agreement, and after exercise of the second option, the right to dispose of an additional 500,000 tons of South Florida Waste, for the remaining term of the agreement, as follows:

(i) The amount of airspace used must be at least 600 tons/weekday, but may not exceed 1,100 tons/weekday, (including tonnage disposed of under prior air space commitments);

(ii) The amount of airspace used in the year the third option is exercised, and in each succeeding year of the life of the rights may not exceed 300,000 tons/year (including tonnage disposed of under prior air space commitments); provided, that in any event,

(d) The Okeechobee Landfill Rights shall expire when the purchaser has used the maximum tonnages available under the rights and exercised options, or twenty years from the date of purchase of the rights, whichever is sooner; and

(e) For each purchaser of airspace rights (or its designee), defendants must commit to operate the Okeechobee Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendant's own vehicles or to the vehicles of any municipality in Florida, except as to price and credit terms;

j. Milwaukee, WI

USA Waste's Kestrel Hawk Landfill, located at 1989 Oakes Road, Racine, WI 53406; and WMI's Mallard Ridge Landfill, located at W. 8470 State Road 11, Delavan, WI 53115;

k. New York, NY/Philadephia, PA

WMI's Modern Landfill & Recycling, located at 4400 Mt. Piscah Road, York, PA 17402, and know as the Modern Landfill;

l. Northeast Michigan

USA Waste's Whitefeather Landfill, located at 2401 Whitefeather Road, Pinconning, MI; and Elk Run Sanitary Landfill, located at 20676 Five Mile Highway, Onaway, MI;

m. Pittsburgh, PA

WMI's Green Ridge Landfill, located at 717 East Huntingdon Landfill Road, Scottdale, PA 15683, and variously known as the Green Ridge Landfill, the Y&S Landfill, or the Greenridge Reclamation Landfill;

n. Portland, OR

USA Waste's North WASCO Landfill, located at 2550 Steele Road, The Dalles, OR 97058; and

2. Transfer Stations, Disposal Rights and Throughput Agreements

a. Akron/Canton, OH

Throughput disposal rights of a maximum of 400 tons/day of waste, for a ten-year time period, at WMI's Akron Central Transfer Station, located at 389 Fountain Street, Akron, OH, under the following terms and conditions:

(1) The purchaser (or its designee) can deliver waste to the Akron Central Transfer Station for processing and, at the purchaser's option, load the processed waste into the purchaser's (or its designee's) vehicles for disposal;

(2) For each purchaser of such disposal rights (or its designee), defendants must commit to operate the listed Akron Central Transfer Station's gate, scale house, and disposal area

under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

b. Baltimore, MD

Disposal rights of at least 600 tons of waste/day, pursuant to which defendants will sell to one or more purchasers rights to dispose, for a five-year time period, under the following terms and conditions:

(1) The purchaser(s) or its designee(s) may dispose of waste at any one or any combination of the following facilities, as specified in its purchase agreement: Southwest Resource Recovery Facility (known as Baltimore RESCO or BRESCO), located at 1801 Annapolis Road, Baltimore, MD 21230; Baltimore County Resource Recovery Facility, located at 10320 York Road, Cockeysville, MD; Western Acceptance Facility, located at 3310 Transway Road, Baltimore, MD; or Annapolis Junction Transfer Station, located at 8077 Brock Bridge Road, Jessup, MD 20794. If more than one person purchases the disposal rights, the minimum daily disposal rates, and the total of all purchasers' maximum disposal amounts at all facilities specified shall be no less than 600 tons/day;

(2) For each purchaser of disposal rights (or its designee), defendants must commit to operate the listed Baltimore, MD area facilities' gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Maryland, except as to price and credit terms;

c. Cleveland, OH

At purchaser's option, either USA Waste's Newburgh Heights Transfer Station, located at 3227 Harvard Road, Newburgh Heights, OH 44105 (and known as the Harvard Road Transfer Station); or all of WMI's right, title and interest in the Strongsville Transfer Station, located at 16099 Foltz Industrial Parkway, Strongsville, OH; provided, however, that the City of Strongsville, owner of the transfer station, approves such sale or assignment. Defendants will exercise their best efforts to secure the assignment to the purchaser of all their rights, title and their interests in the Strongsville Transfer Station, and in the event the purchaser selects Strongsville, defendants will not reacquire any right, title or interest in the Strongsville transfer station. If the contract is not assigned, defendants will enter into a disposal rights agreement with the purchaser (or purchasers), which will provide, in effect, that the purchaser(s) will enjoy all disposal rights and privileges now enjoyed by defendants at the Strongsville Transfer Station, and that defendants will operate the facility's gate, scale house, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

d. Columbus, OH

WMI's Reynolds Road Transfer Station, located at 805 Reynolds Avenue, Columbus, OH 43201;

e. Detroit, MI

WMI's Detroit Transfer Station, located at 12002 Mack Avenue, Detroit, MI 48215;

f. Houston, TX

USA Waste's Hardy Road Transfer Station, located at 18784 East Hardy, Houston, TX;

g. Louisville, KY

USA Waste's Poplar Level Road Transfer Station, located at 4446 Poplar Level Road, Louisville, KY:

h. Miami, FL

All USA Waste's right, title, and interest in the Reuters Transfer Station Rights, as conveyed to Chambers Waste Systems of Florida, a subsidiary of USA Waste, pursuant to the Final Judgment in *United States* v. *Reuter Recycling of Florida, Inc.*, 1996–1 Trade Cas. (CCH) ¶ 71,353 (D.D.C. 1996), a copy of which is attached as Exhibit A;

i. New York, NY

(1) WMI's SPM Transfer Station, located at 912 East 132nd Street, Bronx, NY 10452, and all rights and interest, legal or otherwise, that WMI now enjoys, has had or made use of out of the SPM Transfer Station, to deliver waste by truck to rail siding at the Oak Point Rail Yard in the Bronx, NY, and at the Harlem River Yards facility, located at St. Ann's and Lincoln Avenue at 132nd Street, Bronx, NY 10454;

(2) All right, title, and interest in USA Waste's pending application to construct and operate a waste transfer station located at 2 North 5th Street, Brooklyn, NY 11211, and known as the Nekboh Transfer Station; and

(3) USA Waste's all City Transfer Station, located at 246–252 Plymouth Street, Brooklyn, NY 11202; and

(4) WMI's Brooklyn,Transfer Station, located at 485 Scott Avenue, Brooklyn, NY 12222, but only in the event that USA Waste's Nekboh Transfer Station has not been licensed or permitted to accept waste within one year from the date of entry of the Final Judgment; and

j. Philadelphia, PA

USA Waste's Girard Point Transfer Station, located at 3600 South 25th Streets, Philadelphia, PA 19145; and USA Waste's Quick Way Inc. Municipal Waste Transfer Station, located at SE Corner, Bath and Orthodox Streets, Philadelphia, PA 19137, subject to the conditions that (1) the existing City of Philadelphia waste contract is transferred to a WMI transfer station, which defendants must use their best efforts to accomplish, and (2) until such transfer is effected, USA Waste will be granted through put capacity at the Quick Way Transfer Station to handle this contract.

D. ''Relevant Hauling Assets,'' unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interest, permits, supplies [except real property and improvements to real property (i.e., buildings)] and it includes all intangible assets, including hauling-related customer lists, contract, and accounts.

Relevant hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

USA Waste's and American Waste Corporation's front-end loader truck (''FEL'') commercial routes that serve the City of Akron and Summit County, Ohio;

2. Allentown, PA

WMI's FEL commercial routes that serve the cities of Allentown and Northampton and Lehigh County, PA;

3. Cleveland, OH

WMI's FEL commercial routes that serve the City of Cleveland and Cuyahoga County, Ohio (not including the northwestern quadrant);

4. Columbus, OH

WMI's FEL commercial routes that serve Franklin County, Ohio;

5. Denver, CO

USA Waste's FEL commercial routes that serve the City of Denver, and Denver and Arapahoe County, CO;

6. Detroit, MI

WMI's FEL commercial routes that serve the City of Detroit and Wayne County, MI;

7. Houston, TX

WMI's FEL commercial routes that serve the City of Houston, the Dickinson area, and Harris County, TX;

8. Louisville, KY

USA Waste's FEL commercial routes that serve the City of Louisville and Jefferson Country, KY;

9. Pittsburgh, PA

WMI's FEL commercial routes that serve Allegheny County and Westmoreland County, PA, and the garage facility (real estate and improvements) located at the Y&S Landfill;

10. Portland, OR

WMI's FEL commercial routes that serve the City of Portland, OR;

11. Tucson, AZ

USA Waste's FEL commercial routes that serve the City of Tucson and Pima County, AZ; and

12. Gainesville, FL

WMI's FEL commercial routes that serve Alachua County, FL.

E. *Hauling* means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

F. *Waste* means municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

H. *Relevant Area* means the county in which the Relevant Hauling Asset or Relevant Disposal Assets are located and any adjacent city or county, except with respect to the Modern Landfill [see Section II(C)(1)(k)], for which the Relevant Area means Philadelphia, PA, and New York, NY.

I. *Relevant State* means the state in which the Relevant Disposal Assets or Relevant Hauling Assets are located, provided however, that stat is a party to this Final Judgment. With respect to the Modern Landfill [see Section II(C)(1)(k)], the Relevant State means the Commonwealth of Pennsylvania and the State of New York. With respect to Section VII, the Relevant State means each state in which the disposal or hauling assets to be acquired are located, provided that state is a party to this Final Judgment.

J. *South Florida Waste* means waste collected, or delivered directly from a transfer station located, in Broward, Dade or Monroe County, FL.

III. Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active consent or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of a lesser business unit that includes defendants' hauling or disposal businesses in any Relevant Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. With the exception of the Brooklyn Transfer Station (Section II(C)(2)(i)(4)), defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell all Relevant Disposal Assets and Relevant Hauling Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the Relevant State.

B. In the event that USA Waste's Nekboh Transfer Station has not been licensed or permitted to accept waste within one year from the date of entry of the Final Judgment, defendants are hereby ordered and directed, in accordance with the terms of Sections II, IV, V and VI of this Final Judgment, within one hundred and twenty (120) calendar days after such anniversary date, to sell WMI's Brooklyn Transfer Station, located at 485 Scott Avenue, Brooklyn, NY 12222, as a viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the Relevant State.

C. Defendants shall sue their best efforts to accomplish the diversitures ordered by this Final Judgment as expenditously and timely as possible. The United States, in its sole discretion, after consultation with the Relevant State, may extend the time period for any divestiture an additional period of time, not to exceed sixty (60) calendar days.

D. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known by usual and customary means, the availability of the Relevant Disposal Assets and the Relevant Hauling Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Disposal Assets and Relevant Hauling Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

E. Defendants shall not interfere with any negotiations by any purchaser to employ any USA Waste (or former WMI) employee who works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the Relevant Disposal Assets or Relevant Hauling Assets.

F. Defendants shall permit prospective purchasers of the Relevant Disposal Assets or Relevant Hauling Assets to have access to personnel and to any and all environmental, zoning, and other permit documents and information, and to make inspection of the Relevant Disposal Assets and Relevant Hauling Assets and of any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. With the exception of the facilities described in Sections II(C)(2)(e), (h) and (i)(2), defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that each asset will be operational on the date of sale.

H. Defendants shall not take any action, direct or indirect, that will impede in any way the operation of the Relevant Disposal Assets or Relevant Hauling Assets.

I. Defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that defendants will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

J. Unless the United States, after consultation with the Relevant State, otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Judgment, shall

include all Relevant Disposal Assets and Relevant Hauling Assets and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Relevant State, that the Relevant Disposal Assets or Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser (or purchasers) for whom it is demonstrated to the United States sole satisfaction, after consultation with the Relevant State, that: (1) the purchaser(s) has the capability and intent of competing effectively in the waste disposal or hauling business in the Relevant Area; (2) the purchaser(s) has the managerial, operational, and financial capability to compete effectively in the waste disposal or hauling business in the Relevant Area; and (3) none of the terms of any agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in the Relevant Area.

K. A purchaser of any Relevant Disposal Assets or Relevant Hauling Assets under this Final Judgment must demonstrate to the satisfaction of the United States, after consultation with the Relevant State, that the purchaser will comply with any and all applicable federal, state and local environmental and licensing laws.

L. Defendants may enter into an agreement, after review and approval of the United States, in its sole discretion, after consultation with the Relevant State, with a purchaser or purchasers of the Chiquita Canyon, Brazoria or Carleton Farms landfills (*see* Sections II (C)(1)(g), (f) and (d) for disposal of commercially acceptable waste collected or transferred from defendants' own route operations.

V. Appointment of Trustee

A. In the event that defendants have not sold the Relevant Disposal Assets or Relevant Hauling Assets within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of each Relevant Disposal Asset or Relevant Hauling Asset not sold.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Disposal Assets or Relevant Hauling Assets described in Sections II (C) and (D) of this Final Judgment. The trustee shall have the power and authority to accomplish any and all divestitures at the best price than obtainable upon a reasonable effort by the trustee, subject to the provisions of Section IV, VI, and IX of this Judgment, and shall have such others powers as the Court shall deem appropriate. Subject to Section V(C) of this Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. To assist in the sale of the Brent Run Landfill, described in Section II(C)(1)(e) of this Judgment, the trustee also shall have the power and authority to commit defendants to supply waste from defendant's routes in the Relevant Area to that landfill for up to a five-year time period at the best disposal price than obtainable upon reasonable effort by the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the Relevant State, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Relevant State and trustee with ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each Relevant Disposal Asset or Relevant Hauling Asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the rust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and defendants shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit bona fide prospective purchasers of each Relevant Disposal Asset or Relevant Hauling Asset to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time

furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestitures

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for affecting the divestiture, shall notify the United States and the Relevant State of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States and the Relevant State of such notice, the United States, in its sole discretion, after consultation with the Relevant State, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice [or within twenty (20) calendar days after the United States and the Relevant State have been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later], the United States, after consultation with the Relevant State, shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Notice of Future Acquisitions

A. Defendants shall provide each Relevant State with 30 days' written notice (which period may be shortened by permission of the Relevant State) before acquiring, directly or indirectly, any interest in any business, assets (other than in the ordinary course of business), capital stock, or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in waste disposal or small containerized solid waste hauling in any area listed in Section VII(B), where that person's annual revenues from waste disposal or small containerized solid waste hauling in the area were in excess of $500,000 annually, or its total revenues were in excess of $,000,000 annually.

B. The notice provisions set forth in Section VII (A) above apply whenever defendants seek to acquire any interest in any business, assets (other than in the ordinary course of business), capital stock, or voting securities of any person that was engaged in waste disposal or small containerized solid waste hauling in any of the following areas:

Relevant state	Area of which defendants must provide relevant state notice of future acquisitions
Arizona	Pima Co. (hauling and disposal).
California	Los Angeles and Riverside (hauling and disposal); Ventura and Orange Co. (disposal only).
Colorado	Boulder and Denver Co. (hauling and disposal).
Florida	Brevard, Alachua, Marion, Orange, Osceola, Seminole, Lee, Charlotte, Sarsota, Putnam, Volusia and Flagler Co. (hauling and disposal).
Kentucky	Jefferson and Oldham Co. (hauling and disposal).
Maryland	Baltimore City, Baltimore, Anne Arundel, Hartford, Carroll, Howard, Montgomery, and Prince George's Co. (hauling and disposal).
Michigan	Wayne, Macomb, and Oakland Co. (hauling and disposal); Genessee, Shiiawassee, Saginaw, Bay, Midland, Wexford, Manistee and Montmorency Co. (disposal only).
New York	New York, Bronx, Kings, Queens, and Richmond Co. (disposal only).
Ohio	Ashtabula, Cuyahoga, Delaware, Fairfield, Franklin, Geauga, Lake Licking, Lorain, Lucas, Mahoning, Medina, Pickaway, Portage, Stark, Summit, Trumbull, and Wood Co. (hauling and disposal); Carroll, Columbiana, Coshocton, Holmes, Knox, Madison, Tuscarawas, Union and Wayne Co. (disposal only).
Pennsylvania	Allegheny, Westmoreland, Washington, Beaver, Butler, Lehigh, Northampton, Dauphin, Cumberland, and Perry Co. (hauling and disposal); Philadelphia, Bucks, Montgomery, and Delaware Co. (disposal only).
Texas	Brazoria, Chambers, Ft. Bend, Galveston, Harris, Liberty, Montgomery, Walker and Waller Co. (hauling and disposal).
Washington	Cowlitz and Clark Co. (hauling and disposal).
Wisconsin	Milwaukee, Waukesha, Racine, Washington, Kenosha, Ozaukee, Walworth, Jefferson and Dane Co. (disposal only).

C. For purposes of this Section VII, the term ''small containerized solid waste hauling'' means the provision of solid waste hauling service to commercial customers by providing the customer with a one to ten cubic yard container, which is picked up mechanically using a frontload, rearload or sideload truck, and excludes hand pick-up service, and service using a compactor attached to or part of a container.

VIII. Defendants' Additional Obligations

Defendants are hereby ordered and directed to, in accordance with the terms of this Final Judgment:

A. Offer to extend, for an additional ten-year time period, the Solid Waste Service Agreement, dated August 8, 1996, by and between the Northeast Maryland Waste Disposal Authority and USA Waste's subsidiary, Garnet of Maryland, Inc. (attached hereto as Exhibit B), for the disposal of Anne Arundel County, MD and Howard County, MD waste at the Annapolis Junction Transfer Station;

B. Use their best efforts, prior to its divestiture, to obtain any and all licenses and permits to open and operate USA Waste's Nekboh Transfer Station, described in Section II(C)(2)(i)(2); and for a five-year period following such divestiture, to cooperate and assist the purchaser in obtaining any and all licenses or permits required to operate Nekboh Transfer Station and to refrain from opposing any application by the purchaser to obtain a license or permit to expand the Nekboh Transfer Station;

C. For a one-year period following entry of this Final Judgment, refrain from opposing any application by any person for permit or license to operate any waste transfer station in any borough of the City of New York, NY;

D. For a five-year period following entry of this Final Judgment, refrain from opposing any application by any person to obtain a license or permit to expand the remaining capacity or the average daily capacity of the Emerald Park Landfill, Glacier Ridge Landfill, or Valley Meadows Landfill, in the Greater Milwaukee, WI area;

E. Refrain from reacquiring any interest in any Relevant Disposal Assets or Relevant Hauling Assets divested pursuant to the terms of this Final Judgment, without prior written notice to, and written consent of, the Untied States and the Relevant State;

F. Refrain from conditioning the sale of any landfill pursuant to this Final Judgment on any understanding, agreement or commitment, written or understood, that the purchaser (or purchasers) will agree to sell airspace or otherwise permit defendants to dispose of waste in that landfill; provided, however, that USA Waste's Carleton Farms Landfill may be divested subject to USA Waste's obligation to dispose of ash from the Greater Detroit Resource Recovery Center's incinerator at a separate monofill cell on the Carleton Farms Landfill site;

G. Refrain from taking any action to enforce any agreement or understanding that would prohibit any person from competing in Alachua or Marion County, FL: provided, however, that this provision shall not apply to a current or former employee of defendants (other than any employee who may be responsible in any way for route operations subject to divestiture under Sections II(D)(12), IV and V of this Judgment); and

H. Provide access to the gate, scale house and disposal area of the WMI Tucson transfer station, located at 5200 West Ina, Tucson, AZ, under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any county or municipality in Arizona.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Final Judgment in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall described in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all Relevant Disposal Assets and Relevant Hauling Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the Relevant State, to information provided by defendants, including limitations on informations shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiffs an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Relevant Disposal Assets and Relevant Hauling Assets pursuant to Section X of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each Relevant Disposal Asset and Relevant Hauling Asset as a viable active competitor; to maintain separate management, staffing, sales, marketing and pricing of each asset; and to maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Disposal Assets and Relevant Hauling Assets that were divested and to effect the ordered divestitures.

X. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of any Relevant Disposal Asset or Relevant Hauling Asset.

XI. Financing

Defendants are ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

XII. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon written request of duly authorized representatives of the Attorney General's Office of any other plaintiff, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and

the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon the written request of the Attorney General's Office or any other plaintiff, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or the Attorney General's Office of any other plaintiff, except in the course of legal proceedings to which the United States or any other plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiffs, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiffs to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____ 1998.

_____

United States District Judge

Exhibit A—Final Judgment, US v. Reuter Recycling of Florida, Inc.

In the United States District Court for the District of Columbia

United States of America and State of Florida, by and through its Attorney General, Plaintiffs, v. Reuter Recycling of Florida, Inc., and Waste Management Inc. of Florida, Defendants Civil Action No.: 951982. Filed: June 25, 1999. Entered: January 22, 1996.

Final Judgment

Whereas, Plaintiffs, United States of America (hereinafter ''United States'') and the State of Florida (hereinafter ''Florida''), having filed their Complaint in this action on October 20, 1995, and Plaintiffs and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

And Whereas, Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the Plaintiffs intend Defendants to be required to preserve competition for solid waste disposal by honoring certain contracts, as amended, and by giving to a competitor an option to purchase real property capable of being used as a municipal solid waste transfer station to preserve competition in solid waste disposal in Dade and Broward Counties, Florida, now and in the future, and, by permitting a competitor to preserve its ability to compete for and to have access to capacity for sufficient volumes of municipal solid waste to remain a viable solid waste disposal competitor while its seeks another transfer station site;

And Whereas, Defendants have represented that the contract changes and the option agreement to purchase real estate described below can and will be made and honored and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below.

Now, therefore, before any testimony is taken, and without trail or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

(A) ''Broward'' means Broward County, Florida.

(B) ''Chambers'' means Chamber Waste Systems of Florida, Inc., a subsidiary of USA Waste Services, Inc. Chambers is a corporation organized and existing under the laws of the State of Florida with its principle offices in Okeechobee, Florida.

(C) ''Dade'' means Dade County, Florida.

(D) ''Defendants'' means Reuter and WMF, as hereinafter defined.

(E) ''Reuter'' means defendant Reuter Recycling of Florida, Inc., Reuter is a corporation organized and existing under the laws of the State of Florida with its principal offices in Pembroke Pines, Florida.

(F) ''Solid waste disposal service'' means the final disposal of municipal solid waste, generally in a landfill or incineration facility.

(G) ''Transfer Station Agreement'' means the agreement between Reuter and Chambers dated as of July 14, 1993 pursuant to which Reuter, among other things, accepts for transfer certain solid waste material delivered by Chambers or Chambers' subcontractors. A copy of the Transfer Station Agreement is attached as Exhibit A.

(H) ''Amendment to Transfer Station Agreement'' means the Agreement between Reuter and Chambers dated October 20, 1995 modifying the Transfer Station Agreement. A copy of the Amendment to Transfer Station Agreement is attached as Exhibit B.

(I) ''Option Agreement'' means the Agreement between Reuter and Chambers dated October 20, 1995. A copy of the Option Agreement is attached as Exhibit C.

(J) ''WMF'' means defendant Waste Management Inc. of Florida, a subsidiary of Waste Management, Inc. WMF is a corporation organized and existing under the laws of the State of Florida with its principal offices in Pompano Beach, Florida.

(K) ''Acquisition'' means the acquisition of the majority of the outstanding stock of Reuter by WMF.

(L) ''Reuter Transfer Station'' means the facility owned by Reuter and located at 2079 Pembroke Road, Pembroke Pines, FL which currently, among other things, accepts for transfer certain solid waste material delivered by Chambers or Chambers' subcontractors and also accepts waste from the cities of Pompano Beach, Pembroke Pines, Dania, and Hallandale, FL.

III. Applicability

This Final Judgment applies to Defendants and to their officers, directors, managers, agents, employees, successors, assigns, affiliates, parents and subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be

construed to provide any rights to any third party.

IV. Entry Into and Compliance With Agreements

On or before the date the Acquisition is consummated, Reuter shall enter into the Amendment to Transfer Station Agreement and the Option Agreement. Defendants shall be bound by the terms of the Transfer Station Agreement, as modified by the Amendment to Transfer Station Agreement, and the Option Agreement. Defendants shall not convey to any person other than Chambers, the property subject to the Option Agreement, prior to the later of July 14, 1998 or any extension of that Option Agreement, except as provided in the Option Agreement. Defendants shall not exercise their right to replace Chambers as the Facility operator under Paragraph 3f of the Amendment to Transfer Station Agreement without the prior approval of the United States, in consultation with Florida.

V. Termination of the Agreements

In the event Chambers has secured the right to use and is using another transfer station capable of serving Broward or Dade Counties prior to July 14, 1998, Defendants may notify Plaintiffs of that fact and Defendants may request in writing that they be relieved of the obligation to extend the term of the Transfer Station Agreement as set forth in Paragraph 2 of the Amendment to Transfer Station Agreement, and of the obligation to convey property under the Option Agreement. The United States may grant one or both of Defendants; requests if it determines, in its sole discretion after consultation with Florida, that Chambers can effectively compete in the relevant markets without access to the Reuter Transfer Station or without access to the property subject to the Option Agreement.

VI. Interim Preservation of Viable Competition

(A) Defendants shall not enter into any contract or contracts, with any firm listed on Exhibit D, having a term in excess of one (1) hear, or having multiple consecutive one (1) year terms, for the disposal of solid waste, where any such waste would be transported through the Reuter Transfer Station for disposal elsewhere, Exhibit D is a list of the customers of Chambers for whom Chambers uses the Reuter Transfer Station to enable it to dispose of solid waste as of the date this Final Judgment is filed (''Chambers Customers'').

(B) Defendants' obligations under Paragraph VI.A. shall terminate upon the United States providing Defendants with written notice, following application by Defendants, that the United States, in its sole discretion after consultation with Florida, has determined that Chambers can compete effectively in the relevant market if Defendants are permitted to contract with Chambers' Customers as proscribed in Paragraph VI.A. In any event, Paragraph VI.A. shall terminate on the date the Transfer Station Agreement, as amended by the Amendment to the Transfer Station Agreement, terminates.

(C) Nothing herein shall preclude Defendants from contracting with any of the Chambers' Customers for a period of one (1) year or less; or, for a period in excess of one (1) year where that customer's solid waste is not transported by Defendants, directly or indirectly, through the Reuter Transfer Station.

VII. Defendants' Obligations of Noninterference and Assistance

In the event that Chambers seeks to permit a new transfer station or seeks access to a new or existing transfer station other than the Reuter Transfer Station, Defendants shall take no action to protest, lobby against, object to, or otherwise impede, directly or indirectly, any attempts by Chambers to lease, purchase, site, obtain appropriate zoning for, obtain permits and any and all other governmental approvals for a solid waste transfer station capable of serving Broward or Dade, nor shall Defendants provide financing or other assistance to any person who does so. Furthermore, from the effective date of the Option Agreement through the termination date of that Agreement, including any extensions thereof, Defendants will cooperate with Chambers' efforts to obtain any necessary government approvals on the property subject to the Option Agreement.

Notwithstanding the provisions of this Final Judgment, Defendants may bid on and enter into contracts with municipal or governmental entities for the provision or use of transfer station facilities in Dade and Broward.

VIII. Acquisition of the Option Property

If the option the purchase under the Option Agreement is exercised, Defendants shall not, without prior written consent of the United States, after consultation with Florida, re-acquire any of the property conveyed pursuant to the Option Agreement.

IX. Reporting and Plaintiffs' Access

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiffs shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Florida Attorney General or his duly authorized representative, respectively, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, be permitted:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendants, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview officers, employees, or agents of Defendants, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Florida Attorney General or his duly authorized representative, on reasonable notice given to Defendants at their principal officers, subject to any lawful privilege, Defendants shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States government or of the State of Florida, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to Plaintiffs, Defendants represent and identify in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material ''Subject to claim of protection under Rules 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten days notice shall be given by Plaintiffs to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not party.

X. Further Elements of Judgment

(A) This Final Judgment shall expire on the tenth anniversary of the date of its entry.

(B) jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply for the purpose of enabling any of the parties thereto to apply to this Court at any time for further order and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

XI. Public Interest

Entry of this Final Judgment is in the public interest.

Plaintiff's motion (unopposed) for entry of Judgment as granted.

Entered: January 22, 1996

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Royce C. Lamberth,

United States District Judge.

Exhibit B—Service Agreement, Northeast Maryland Waste Disposal Authority and Garnet of Maryland, Inc.

Service Agreement by and Between Northeast Maryland Waste Disposal Authority and Garnet of Maryland, Inc. To Provide Solid Waste Acceptance, Processing, Transportation and Disposal Services for Anne Arundel and Howard Counties, Maryland

Dated as of August 8, 1996.

Table of Contents

This Service Agreement is made as of August 8, 1996 between the Northeast Maryland Waste Disposal Authority (''Authority'') and Garnet of Maryland (''Company'').

Recitals

A. The Authority is an instrumentality of the State of Maryland created to assist with the preservation, improvement and management of the quality of air, land and water resources and to promote the health and welfare of the citizens of the State by providing dependable, effective and efficient disposal of solid Wastes, including the recovery of usable resources from such Waste. Howard County and Anne Arundel County, Maryland (collectively, ''Counties'') have requested that the Authority provide for the Acceptance, Processing, Transfer and Disposal of certain amounts of non-recycled solid waste (the ''Services'') collected by, or on behalf of, the Counties.

B. The Authority and the Counties will enter into a Waste Disposal Agreement under which the Authority will be obligated to provide these Services.

The Authority intends to fulfill its obligations to the Counties to provide the Services by entering into and managing this Agreement.

C. The Authority, in cooperation with the Counties, has selected the Company through a competitive process. The Company has demonstrated that it is qualified to accept process, transport and dispose of solid Waste.

D. The Company shall provide the Acceptance Facility, Disposal Facility and other Facilities so as to receive and process all of the solid Waste delivered to the Company by the Counties or the Designated Haulers.

E. The Counties will be third party beneficiaries of the Company's obligations under this Agreement.

Now, therefore, in consideration of the mutual promises and covenants of each to the other contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties of this Service Agreement agree as follows:

Article I—Definitions and Rules of Interpretation

Section 1.1 Definitions

Capitalized terms used in this Agreement have the meanings set forth in Schedule 2.

Section 1.2 Rules of Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) All reference in this instrument to designated ''Articles,'' Sections'' and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.

(b) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(c) Words,of the masculine gender shall be deemed and construed to include correlative words of the femine and neuter genders.

(d) The table of contents and the headings or captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions hereof or the scope or intent hereof.

(e) References to agreements or contracts include all amendments, modifications and supplements thereto.

Article II—Obligations Relating to Acceptance of Waste; Operating Procedures; Performance of Authority's Obligations

Section 2.1 Acceptance, Processing, Transportation and Disposal of Waste

(a) The Company has sole responsibility for the provision and operation of all facilities, personnel, vehicles and sites necessary to provide the Service as described in Schedule 1. The Company shall communicate on a routine basis to ensure the day-to-day coordination of activities between the Company, the Counties and the Authority. Upon request of the Authority Representative or any of the County Representatives, the Company shall meet with the Authority and/or one or both of the Counties.

Beginning on the Commencement Date and continuing throughout the term of this Agreement the Company shall accept, process, transfer and dispose in accordance with this Agreement and Applicable Law all Acceptable Waste delivered by or on behalf of the Counties.

(b) Acceptable Waste will be delivered in vehicles owned or operated by employees of or under contract to, the Counties or a Designated Hauler. The Counties or a Designated Hauler may deliver Acceptable Waste in any form they deem appropriate. The Authority shall provide the Company with the following information about each vehicle delivering Acceptable Waste to the Company for its credit; hauler name and address, make, body type; tag or permit

number of each vehicle used; area of collection; and whether the vehicle is owned by the Counties or by a Designated Hauler.

(c) The Authority understands that the Company may accept Waste from other customers at the Facilities, but it may not accept Waste from other customers during the interim period at Anne Arundel County's Millersville Landfill.

Section 2.2 Refusal of Deliveries

(a) Extent of Refusal Rights

The Company may reject deliveries of Acceptable Waste delivered at hours established under Section 2.3. Acceptable Waste rejected by the Company for any reason other than as permitted pursuant to this Section 2.2 (a) or (b) or any other provision of this Agreement constitute Wrongfully Diverted Acceptable Waste. The amount of Wrongfully Diverted Acceptable Waste is used to calculate Alternate Disposal Damages under Section 3.2.

The parties agree that Company shall be the only party entitled to establish the classification of Waste delivered to a Facility, subject to the Authority's ability to object to such classification as set forth in Section 3.4.

(b) Inspection of Delivered Waste

The Company shall develop and maintain any and all reasonable appropriate screening programs at the Acceptable Facility. Any such screening programs shall include any reasonable programs and practices required by the Counties or the Authority. The Counties and the Authority shall cooperate with the Company with regard to the screening programs. Neither the inclusion of programs or practices in the Waste screening programs by the Authority or the Counties nor the review or comment by the Authority or the Counties upon any Company proposal with regard to the Waste screening programs relieves the Company of any of its obligations hereunder or imposes any liability upon the Authority or the Counties.

The Company may inspect the contents of all vehicles delivering Waste under this Agreement to the Acceptance Facility. The Counties will monitor their own collection operations to reduce the collection of Unacceptable Waste. The Company will institute appropriate procedures, including inspection procedures, to ensure that Unacceptable Waste is separated at the Acceptance Facility. The Company will give immediate notice to the Counties of deliveries of Unacceptable Waste to the Company, followed by prompt written notice indicating the time, the source of delivery and identity of the hauling firm and driver. The intent of this requirement is to ensure safe handling by the Company of the Waste received in compliance with Applicable Law. The Company shall handle and dispose of Unacceptable Waste that is received at the Acceptance Facility.

The cost for disposal of Unacceptable Waste shall be paid to the Company as specified in this Service Agreement.

The Company shall be entitled to the Unacceptable Waste Disposal Cost described in Section 3.2 for any amounts of Unacceptable Waste it removes from the Acceptance Facility.

Section 2.3 Receiving Hours and Waiting Time

(a) The Company shall accept the delivery of Acceptable Waste during the hours of 7:00 a.m. to 5:00 p.m., Monday through Saturday and until 7:00 p.m. on the first regular collection day following a Holiday. Acceptable Waste will not be delivered by the Counties on the following holidays. The Authority shall designate the dates on which holidays are to be observed.

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

(b) The Company shall accept Acceptable Waste at hours other than the Receiving Hours, to the extent permitted by Applicable Law, upon reasonable prior notice of such delivery. The Out of Hours Delivery Charge for Company operations outside of Receiving Hours, pursuant to this Section 2.3(b), may be charged for each ton of Waste delivered before 7:00 a.m. and after 5:00 p.m. except that the Out-of-Hours Delivery Charge shall not be charged for Waste delivered between the hours of 5:00 p.m. and 7:00 p.m. on the first regular collection day following a holiday. *The amount shall be 3% above the per ton bid* price. The Out of Hours Delivery Charge shall not apply for any hours the Acceptance Facility is open to receive Waste from sources other than the Authority.

(c) The Company shall take all steps necessary to ensure that the time period between delivery vehicle arrival at and departure from the Acceptance Facility does not exceed 30 minutes for Acceptable Waste delivered by the Counties, Designated Haulers, or the Authority.

Section 2.4 Scales and Weighing Records

The Company shall operate and maintain the road vehicle scales at the Acceptance Facility which shall provide for automatic weighing and recording of all Wastes received and removed. The Company shall weigh all vehicles delivering Acceptable Waste to the Project. The scales shall incorporate a computer interface system and use software acceptable to the Authority. The weight record shall contain gross weight, tare weight, date, time of arrival, time of departure, description of Waste in the vehicle, vehicle identification (truck or permit number) and identification of origin of Waste in the vehicle.

The Authority may require each vehicle operator delivering Waste to present to the scale operator a card, permit, identification or license. The Company or the Authority may require from time to time the revalidation of the tare weight of any vehicle or the reweighing of unloaded vehicles.

If the permanent vehicle scales at the Acceptance Facility are not working properly or are being tested, the Company shall use portable scales at the Acceptance Facility. If portable scales or other alternate weighing facilities and equipment meeting the requirements of Applicable Law are not available, a ''scale outage'' will occur, and the Company shall estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and historical information about the Authority, the Counties, the Company and the Designated Haulers. These estimates shall take the place of actual weighing records during the scale outage. In order to participate in the estimating of quantities of Acceptance Waste during a scale outage, the Authority and/or County may have an employee or agent present in the scale house when each vehicle arrives.

The Company, at its expense, shall obtain approval of, inspect and test the vehicle scales as required by Applicable Law but no less frequently than once per year. At the written request of the Authority, the Company in the presence of the Authority Representative, shall make additional tests of all vehicle scales. The cost of these additional tests shall be borne by the Authority if the scales meet the accuracy requirements of Applicable Law.

If any test shows that a scale registers farther above or below the correct reading than permitted by Applicable Law, the charges and calculations based on scale readings made within thirty (30) days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the scales has been performed during the preceding thirty (30) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

The Company shall maintain daily records of the total tonnage of Waste delivered to the Acceptance Facility, the tonnage of Waste accepted by the Company and the tonnages of Unacceptable Waste. The Company shall submit monthly reports, as specified in schedule 4 in a form approved by the Authority. The Company shall cooperate with the Authority and the Counties to provide this information electronically or on disk. The Company shall furnish the Authority a compilation of such information for each month, within ten days after the end of the month. The Company shall keep copies of all weight tickets for at least three years which shall be available for inspection by the Authority and the Counties upon request.

The Company shall pay all costs for accepting, transporting, processing and final disposal of Acceptable Waste.

Section 2.5 Hazardous Waste

(a) The Company shall develop a plan for the identification, handling and disposal of Hazardous Waste discovered at the Acceptance Facility (the ''Hazardous Waste Plan''). The Company shall segregate and isolate all Hazardous Waste discovered at the Acceptance Facility in accordance with this Agreement, the Hazardous Waste Plan, Applicable Law and any procedures required by the Authority in connection with the segregation and isolation of Hazardous Waste (collectively, the ''Hazardous Waste Protocol''). The Company shall maintain any screening programs reasonably necessary or otherwise reasonably required by the Authority that, under Applicable Law, segregate Hazardous Waste delivered to the Acceptance Facility.

(b) So long as the Company (i) acts in accordance with the Hazardous Waste

Protocol and Applicable Law and (ii) enforces its and the Authority's right to payments from third parties or under applicable insurance policies due to the discovery of Hazardous Waste, then the cost of segregation isolation and disposal of the Hazardous Waste shall be reimbursed if the Hazardous Waste was delivered in a vehicle owned, operated or contracted by one of the Counties, the Authority, or a Designated Hauler, provided that such vehicle is correctly identified by the Company as the particular vehicle which delivered such Hazardous Waste.

(c) If Hazardous Waste is delivered to the Acceptance Facility, and the source of such Hazardous Waste or hauler delivering Hazardous Waste cannot be determined by the Parties, the Company shall separately contain, set aside, segregate, isolate and manage the Hazardous Waste as required by law and by the Hazardous Waste Protocol, and the Authority and the Counties shall be notified immediately of its location, general character and amount. The Company shall remove, or cause to be removed, such Hazardous Waste from the Acceptance Facility and shall transport and dispose of, or shall cause such Hazardous Waste to be transported and disposed, in accordance with State and Federal law. The Company shall, at no expense to the Counties or the Authority, bear all of the costs of transportation and disposal of Hazardous Waste which is delivered to the Acceptance Facility because the Company has failed to follow or enforce any provision of the Hazardous Waste Protocol. The foregoing shall not be considered to be a waiver of any claim Company may have against any other third party, including a Designated Hauler. Company may make any such claim directly against the party involved, and to the extent necessary by law in order for such claim to proceed, the Authority and the Counties assign to Company their respective rights to make such a claim.

(d) Hazardous Waste delivered by a vehicle owned, operated, or contracted by one of the Counties, the Authority, or a Designated Hauler which is segregated for disposal as Hazardous Waste shall only be disposed of at a Disposal Facility approved by the Authority.

Section 2.6 Manner of Deliveries; Vehicle Size; Rules and Regulations

The Authority shall comply with the reasonable rules and regulations for the delivery of Acceptable Waste to the Acceptance Facility that are provided by the Company and agreed to by the Authority and Counties, which include regulations regarding vehicular movement on the Acceptance Facility Site and screening to segregate Unacceptable Waste. No rules or regulations are effective against the Authority, the Counties, or Designated Haulers unless approved by the Authority Representative and the County Representatives, which approval shall not be unreasonably withheld.

Section 2.7 Contract for Project Management; Performance Security

(a) The parties acknowledge that the dependable operation and maintenance of the Acceptance Facility, the Disposal Facility and other Facilities providing the Service is in the interests of the parties to this Agreement. The Company shall not enter into or maintain any contract or subcontract with any person other than an Affiliate of the Company for any substantial portion of the operation, management or control of a Facility or the performance of any of the Company's obligations under this Agreement without the prior written consent of the Authority.

(b) No contract or subcontract between the Company and any other person will affect the Company's obligation under this Agreement.

(c) Prior to the Commencement Date the Company shall provide evidence of a Performance Bond, standby Letter of Credit or Corporate Guarantee from a surety or insurance company acceptance to the Authority, covering the performance obligations of the Company under Article II of this Agreement. The Performance Bond, Letter of Credit or corporate guarantee shall be in an amount equal to one year of estimated Service Fee payments to the Company, as defined in Section 3.1 of this Agreement, and name, among others, the Authority as beneficiary. The Performance Bond or LOC shall be in the form set forth in Schedule 5. The Company shall provide the Performance Bonds, Letter of Credit, or corporate guarantee until release by the Authority. The Authority shall release the Performance Bond, Letter of Credit or corporate guarantee upon termination of this Agreement as long as the Company is not in default and the Performance Bond, Letter of Credit, or corporate guarantee is not being drawn upon by the Authority.

Section 2.8 Repairs and Maintenance

The Company, at its own expense, shall maintain the Facilities in good condition at all times, and make all repairs and replacements required for the Company to perform its obligations under this Agreement. The Company shall maintain the safety of the Facilities at a level consistent with Applicable Law and standard facility practices.

Section 2.9 Authority and County Access

The Authority, the Counties and their respective agents, licensees and invitees may visit or inspect the Facilities at any reasonable time during the term of this Agreement. The Authority Representative or its designees, or the County Representatives or their respective designees may inspect the Facilities at any time from time to time without notice. The Authority, the Counties and their respective agents, licensees and invitees shall conduct visits to the Facilities in a manner that does not cause unreasonable interference with the Company's operations. To the extent practical, the Authority and the Counties shall provide the names of all invitees to the Company in advance. The Company may require any Person on a Facility site to comply with its reasonable rules and regulations and to sign a statement agreeing (i) to assume the risk of the visit but not the risk of injury due to the intentional or negligent acts or omissions of the Company or any of its subcontractors, agents or employees and (ii) not to disclose or use any Confidential Information of the Company other than for the purpose for which it was furnished or, in the case of Authority or County employees and agents, except in accordance with Section 9.11.

Section 2.10 Clean-Up and Disposal

The Company shall keep the Facilities free from accumulation of Wastes or rubbish (except in appropriate locations) caused by operations at the Facilities and shall maintain and operate the Facilities so as to prevent the Sites from becoming unsightly or a nuisance under Applicable Law.

Section 2.11 Regulatory Requirements

The Company shall perform its obligations under this Agreement and operate the Facilities in accordance with all requirements of Applicable Law, regulations, and permits. The Company shall obtain and maintain, or cause to be obtained and maintained, all permits and licenses required by Applicable Law to perform its obligations hereunder, provided that the Company will not breach its obligations under this Section if (i) the Company is contesting the Applicable Law in good faith by appropriate proceedings conducted with due diligence and the Applicable Law allows continue operation of the Facilities pending resolution of the contest or (ii) the Company is diligently seeking to comply with such Applicable Law or to obtain or maintain any such permit or license and Applicable Law allows continued operation of the Facilities.

Article III—Service Fee: Damages; Payments

Section 3.1 Service Fee, Damages, Payments

(a) From and after the Commencement Date, the Company may charge and collect from the Authority a fixed Service Fee as shown in Schedule 3 for each ton of Acceptable Waste accepted by the Company from the Counties, or Designated Haulers for disposal hereunder.

(b) the Authority shall pay to the Company certain other charges as detailed in Section 3.2. The Authority may retain or set-off from any amounts due the Company, Acceptance Facility Delay Damages, Alternate Disposal Damages, Alternate Procurement Damages and Delivery Delay Damages.

(c) The Service Fee and Out of Hours Delivery Charge shall not be adjusted by any inflation factor.

Section 3.2 Monthly Payments

(a) The Company shall provide the Authority and the Counties with a statement or invoice for all amounts payable hereunder by the twenty-fifth (25th) day of the calendar month immediately succeeding the calendar month for which such amounts are payable. Amounts invoiced are due thirty (30) days after receipt of the invoice by the Authority and the Counties. Each invoice shall set forth amount of the Service Fee and other charges payable to the Company for the applicable period, together with supporting documentation including scale records, sufficient to allow the recipient of the invoice to verify the Company's calculations of the Service Fee and other charges for such

period. The supporting documentation shall be adequate to allow the Authority to determine the portion of the amount payable by each of the Counties. The amounts payable monthly in accordance with Section 3.2 are calculated as follows:

(i) The amount due for Service Fee payments shall be the product of the Service Fee multiplied by the aggregate number of tons of Acceptable Waste delivered by a County, a Designated Hauler, or the Authority during the month; plus

(ii) Any Out-of-Hours delivery charges; plus

(iii) The Company's direct out of pocket costs for Unacceptable Waste that is delivered to the Acceptance Facility by a County, a Designated Hauler, or the Authority and disposed of by the Company; less

(iv) The amount of Acceptance Facility Delay Damages, Alternate Disposal Damages, Alternate Procurement Damages and Delivery Delay Damages, if any.

All Company invoices and statements shall be delivered by hand or mailed first class, postage prepaid, to: Northeast Maryland Waste Disposal Authority, 25 S. Charles Street, Suite 2105, Baltimore, Maryland 21201–3330, Attention: Executive Director.

The Authority shall have no obligation to make payment for any amount of Acceptable Waste delivered to the Acceptance Facility by any Person other than a County, a Designated Hauler, or the Authority.

Section 3.3 Late Payment

Any amounts payable under this Agreement by the Authority or the Company that are not paid when due in accordance with this Agreement shall, unless otherwise specifically provided, bear interest, to the extent permitted by Applicable Law, at the Late Payment Rate.

Section 3.4 Disputes as to Service Fee or Other Charges

If the Company or the Authority disputes any amount owed as the Service Fee, Out-of-Hours Delivery Charge pursuant to Section 9.15, the classification of Waste made by the Company, or the amount of Damages claimed by the Authority under Section 3.2(iv) or elsewhere herein, the disputed portion of such adjustment is not effective until resolution of a dispute. Immediately after the resolution of a disagreement about a Service Fee or Out-of-Hours Delivery Charge, classification of Waste or amount of Damages, the party whose position does not prevail shall reimburse the other party for the aggregate amount of any underpayment or overpayment, plus interest at the Late Payment Rate.

Section 3.5 Books and Records, Audit and Reports

(a) The Company shall maintain all books, records and accounts necessary to record all matters affecting the Service Fee, Out-of-Hours Delivery Charge, applicable damages or other amounts payable by or to the Authority or the Company under this Agreement or other agreements, including, but not limited to, policies for Required Insurance, policy amendments and all other related insurance documents. The Company shall maintain all such books, records and accounts in accordance with GAAP. The Company's books, records and accounts shall accurately, fairly and in reasonable detail reflect all the Company's dealings and transactions under this Agreement and other agreements and shall contain sufficient data to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards. The Company shall make all such books, records and accounts available for inspection and photocopying by the Authority or the Counties within 5 business days of a written request by the Authority or a County.

(b) The Company shall provide the Authority and the Counties with the reports and information set forth in Schedule 4 at the times required by Schedule 4. The report format can be modified with approval of the Authority to reflect the facilities used by the Company to provide the Service.

(c) The Company certifies that all information the Company has provided, or will provide to the Authority or the Counties, is true and correct and can be relied upon by the Authority and the Counties in awarding, modifying, making payments, or taking any other action with respect to this Agreement. Any material false or misleading information is a ground for the Authority to terminate this Agreement for cause, without opportunity to cure, and to pursue any other appropriate remedy.

Section 3.6 Accounting

Beginning July 1, 1997, within sixty (60) days following the end of each Fiscal Year, the Company shall provide an accounting to the Authority and the Counties of all payments made by the Authority for the Fiscal Year and all amounts payable by the Authority for such Fiscal Year.

Article IV—Processing Capacity Reductions and Uncontrollable Circumstances

Section 4.1 Effect of Uncontrollable Circumstances

A party to this Agreement shall not be in default under this Agreement or liable to the other party for its failure to perform obligations under this Agreement, if such failure results from an Uncontrollable Circumstance. The Company shall diligently overcome or remove such Uncontrollable Circumstance as soon as possible. The Company shall give prompt notice of such claim to the Authority and to the County Representatives with reasonably requested information concerning the nature of such claim and the efforts to overcome or remove the Uncontrollable Circumstance.

Section 4.2 Changes Necessitated by Uncontrollable Circumstances

(a) As soon as possible after an Uncontrollable Circumstance occurring on or after the Commencement Date, the Company shall give the Authority Representative and the County Representatives a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Company), and a description of the conditions preventing the performance of the Company's obligations

(b) If a Facility is unavailable due to an Uncontrollable Circumstance, the Company must diligently pursue finding an alternate facility. Any alternate acceptance facility must be within the same geographic boundaries as shown in the RFB. Alternate disposal facilities must be approved by the Authority. The Company may seek pre-approval of an alternate disposal facility.

In no case will the Service Fee increase due to an Uncontrollable Circumstance.

(c) The Company shall answer any inquiries of the Authority Representative or the County Representatives regarding the conditions caused by the Uncontrollable Circumstance and shall provide them with such information as they reasonably request. Upon the request of the Authority Representative or the County Representative, a consulting engineer, at the Authority's expense, may review the Company's estimate of the time schedule for repairing a Facility or the alleged causes of the Uncontrollable Circumstance.

Article V—Insurance and Indemnification

Section 5.1 Types of Insurance for the Company

The Company shall obtain and maintain, or cause to be obtained and maintained, the Required Insurance in the forms approved by the Authority. The deductible limits contained in Schedule 6 shall not be increased. The Company shall procure and maintain any additional insurance coverage requested by the Authority that is available on commercially reasonable terms and such other insurance required by Applicable Law if the Authority agrees that the cost of the additional insurance may be added to the Service Fee. Insurance required to be obtained by the Company pursuant to this Section 5.1 is ''Required Insurance'' for all purposes of this Agreement.

Section 5.2 Delivery of Evidence of Insurance: Certain Required Provisions

(a) Within ten (10) business days of execution of this Agreement by the Authority, and at any time thereafter, the Company shall deliver to the Authority copies of all certificates of insurance for Required Insurance and any policy amendments and policy renewals upon ten (10) business days after receipt by the Company. Except for Worker's Compensation Insurance, each policy shall name the Authority and the Counties as co-insured and required the insurer to provide the Authority and the Counties sixty (60) days' prior written notice of termination or cancellation or of any change in coverage or deductibles under such Policy.

(b) The Company shall use only responsible insurance companies of recognized standing which are authorized to do business in Maryland as providers of all Required Insurance. The Company shall carry all Required Insurance with insurance companies rated at least ''A–'' or its equivalent by Best's Key Rating or another national rating organization. The Company may effect Required Insurance by endorsement of blanket insurance policies.

(c) The Company shall not take out separate insurance concurrent in form or contribution in the event of loss with Required Insurance if the existence of such

insurance reduces amounts payable under Required Insurance if the existence of such insurance reduces amounts payable under Required Insurance. The Company shall immediately notify the Authority whenever it applies for any separate insurance and shall promptly deliver the policy or policies evidencing the separate insurance to the Authority.

(d) The Company shall submit to the appropriate insurer timely notices and claims of all losses insured under any Required Insurance policy, pursue such claims diligently and comply with all terms and conditions of Required Insurance policies. The Company shall promptly give the Authority and the Counties copies of all notices and claims of loss and any documentation or correspondence related to such losses. The Company shall make all policies for Required Insurance, policy amendments and other related insurance documents available for inspection and photocopying by the Authority or the Counties on reasonable notice.

Section 5.3 Indemnification

Company agrees to indemnify, save harmless and defend the Authority, the Counties and their respective officers, employees and agents, from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereof (including costs of defense, settlement and reasonable attorneys' fees), which they, individually or collectively, may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of this Agreement or any negligent act or omission or willful misconduct of the Company, or its officers, employees or agents. This indemnification is not to be deemed as a waiver of any immunity which may exist in any action against the Authority or the Counties.

The Company shall also indemnify, defend, hold harmless and hereby waives any claim for contribution against the Authority, the State of Maryland, the Counties, or their respective officers, agents and employees, for any Environmental Claim arising in whole or in part from the performance of the Company or its officers, employees, agents or subcontractors, under this Agreement, irrespective of whether such performance is negligent or willful or breaches any term or provision of this Agreement. For purposes of this section of the Agreement, the following definitions apply:

''Environmental Claim'' means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Waste or actual or alleged Hazardous Waste Activity, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Waste, Environmental Law or other order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

''Environmental Law'' shall mean any current or future Legal Requirement pertaining to (a) the protection of health, safety and the indoor or outdoor environment, (b) the conservation, management, or use of natural resources and wildlife, (c) the protection or use of surface water or groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Waste or (e) pollution (including any release to air, land, surface water and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*,, Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, *et seq.*, Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*, Hazardous Wastes Transportation Act, 49 U.S.C. App. §§ 1801 *et seq.*, Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 *et seq.*, Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*, Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 1101 *et seq.*, National Environmental Policy Act of 1969, 42 U.S.C. §§ 4421 *et seq.*, Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) *et seq.*, any similar, implementing or successor law, including, without limitation, laws enacted by the State of Maryland or any other State, and any amendment, rule, regulation, order, or directive issued thereunder.

''Governmental Approval'' means any permit, license, variance, certificate, consent, letter, clearance, closure, exemption, decision or action or approval of a ''Governmental Authority.''

''Governmental Authority'' means any international, foreign, federal, state, regional, county, or local person or body having governmental or quasi-governmental authority or subdivision thereof.

''Hazardous Waste'' has the meaning given in Schedule 2 to this Agreement.

''Hazardous Waste Activity'' shall mean any activity, event, or occurrence involving a Hazardous Waste, including without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Waste.

''Legal Requirement'' means any treaty, convention, statute, law, regulation, ordinance, Governmental Approval, injunction, judgment, order, consent decree, or other requirement of any Governmental Authority.

''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing or previously containing any Hazardous Waste.

Article VI—Default and Termination

Section 6.1 Remedies for Default

(a) If the Authority breaches any of its obligations under this Agreement, the right of the Company to recover damages or to be reimbursed ordinarily constitutes an adequate remedy. Therefore, the Company may not terminate its obligations under this Agreement for cause or any breach unless an Event of Default (as defined in Section 6.3) on the part of the Authority has occurred and is continuing.

(b) The Company acknowledges that a breach of this Agreement or an Event of Default by the Company entitles the Authority to recover, to the extent proven, all of its damages, as set forth in this Agreement, caused by such default or Event of Default. Nevertheless, any persistent failure by the Company to provide Service hereunder entitles the Authority to terminate this Agreement.

Section 6.2 Events of Default by the Company

Each of the following constitute an Event of Default on the part of the Company.

(a) The failure or refusal by the Company to fulfill any of its material obligations to the Authority in accordance with this Agreement, the RFB and the bid submittal unless such failure or refusal is excused or justified pursuant to this Agreement, or the failure or refusal by the Guarantor to fulfill any of its obligations in accordance with the Guaranty Agreement. Regardless of whether there exists an event of Default, if the Company fails or refuses to perform any of its obligations, the Company shall be liable to the Authority for the full amount of the Authority's Alternate Disposal Damages. No such failure or refusal on the part of the Company or Guarantor shall constitute an Event of Default unless and until:

(i) The Authority has given written notice to the Company stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exist that shall, unless corrected, constitute a material breach of this Agreement on the part of the Company and that give the Authority a right to terminate its obligations to the Company under this agreement for cause under this Section unless such default is corrected within a reasonable period of time; and

(ii) The Company or the Guarantor, as the case may be, have neither corrected such default nor initiated reasonable steps to correct it within a reasonable period of time (a reasonable period of time, for purposes of this paragraph, shall in any event be not less than 30 business days from the date of the notice given pursuant to clause (i) of this Section for any obligation other than one related to a failure by the Company to accept Waste pursuant to the terms of this Agreement, for which obligation a reasonable period of time shall in any event be not less than five (5) business days from the date of

the notice given pursuant to clause (i) of this Section 6.2(a)), *provided* that if the Company or the Guarantor has commenced to take reasonable steps to correct such default within such reasonable period of time, the default shall not constitute an Event of Default for as long the Company or the Guarantor, as the case may be, is continuing to take reasonable steps to correct it; or

(b) If, by the order of a court of competent jurisdiction, a receiver, liquidator, custodian or trustee of either the Company or the Guarantor or of a major part of either of their property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, the Company or the Guarantor is adjudicated insolvent or a major part of either of their property is sequestered and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize the Company or the Guarantor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company or the Guarantor, as now or hereinafter in effect, is filed against the Company or the Guarantor and is not dismissed within sixty (60) days after such filing; or

(c) If either the Company or the Guarantor is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against either the Company or the Guarantor under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Company or the Guarantor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company or the Guarantor, as now or hereafter in effect; or

(d) If either the Company or the Guarantor makes an assignment for the benefit or creditors, or admits, in writing, an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the either the Company or the Guarantor or a major part of either or their property; or

(e) If the Company provides or has provided materially false or misleading information to the Authority or the Counties; or

(f) The failure of the Company or other Facility operators to comply with Applicable Law in any material fashion; or

(g) The failure of the Company to provide a fully operational Service by the Commencement Date, including the Acceptable Facility by January 1, 1997, or failure to provide evidence upon request of Authority that the Acceptable Facility will be available by January 1, 1997.

Section 6.3 Events of Default by the Authority

Each of the following constitutes an Event of Default on the part of the Authority:

(a) The failure by the Authority to pay any amount in excess of $550,000, that the Authority is required to pay to the Company under this Agreement within sixty (60) days after receipt by the Authority of written demand from the Company accompanied by notice stating that unless such amount is paid within sixty (60) days after such demand the failure shall constitute an Event of Default; or

(b) The failure or refusal by the Authority substantially to fulfill any of its material obligations to the Company in accordance with this Agreement, other than as provided in subparagraph (a) above, unless such failure or refusal is excused or justified pursuant to the provisions of this Agreement, *provided* that no such failure or refusal constitutes an Event of Default unless and until:

(i) The Company has given prior written notice to the Authority and the County Representatives stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exists and unless corrected, constitute a material breach of this Agreement on the part of the Authority and gives the Company a right to terminate this Agreement for cause under this Section 6.3(b) unless such default is corrected within a reasonable period of time; and

(ii) Neither the Authority nor the Counties have corrected such default nor initiated steps to correct it within a reasonable period of time (a reasonable period of time for purposes of this paragraph shall in any event not be less than thirty (30) Business Days from the date of the notice given pursuant to clause (i) of this Section 6.3(b)), *provided* that if the Authority or the Counties have commenced to take reasonable steps to correct such default within such reasonable period of time, it shall not constitute an Event of Default for as long as the Authority or the Counties are continuing to take reasonable steps to correct it; and

(iii) There exists no reasonable expectation that the Company can obtain relief other than by termination of this Agreement for such default sufficient to compensate it for any loss incurred as a result of such Authority default.

(c) The failure of the Company to comply with the Project's MBE requirements as found in the Minority Business Enterprise Terms and Conditions.

Notwithstanding the foregoing provisions, in no event shall the Authority's or Counties' failure to deliver Acceptable Waste constitute an Event of Default under this Agreement as neither the Authority nor the Counties guarantee delivery of any minimum quantity of Acceptable Waste.

Section 6.4 Termination on Default

The right of termination for cause may be exercised only by a notice of Termination (the ''Notice of Termination'') given to the party in default. Subject to Section 9.13(b), the proper exercise of the right of termination is in addition to and not in substitution for, such other remedies, whether damages or otherwise, of the party exercising the right of termination. When one party terminates its obligations to the other party in accordance with this Agreement, all of their rights, remedies, powers and privileges under this Agreement are terminated, except as provided in Sections 6.7 and 6.8.

Section 6.5 Termination for Certain Uncontrollable Circumstances

If, as a result of the occurrence of one or more Uncontrollable Circumstances, the Acceptance Facility is closed for 10 (ten) or more consecutive days, then the Authority may terminate this Agreement upon notice to the Company. If this Agreement is so terminated, then neither party shall owe or be liable to the other party for any amounts otherwise due hereunder, except for (i) Service Fee amounts due for Waste actually delivered prior to the effective date of the termination and (ii) amounts due in accordance with Section 5.3 ''Indemnification.''

Section 6.6 Termination for Convenience

Notwithstanding, any other provision of this Agreement to the contrary and subject to State law, the Authority may terminate this Agreement and its obligations to the Company under this Agreement at any time by (i) giving the Company thirty (30) days' notice of such termination, (ii) paying the Termination Settlement Amount and (iii) providing the releases in accordance with Schedule 9.

Section 6.7 Default Termination Damages Payable to the Authority

If this Agreement is terminated by the Authority for cause as a result of an Event of Default by the Company, the Company shall immediately pay, without duplication, to the Authority (i) all amounts necessary to provide for the excess costs to the Authority of substitute performance by another firm, during the Service Agreement's term, not including renewal terms, had the Agreement not been terminated for default, (ii) an amount equal to Alternate Disposal Damages during the then remaining term of this Agreement, and (iii) Alternate Procurement Damages.

With the prior express written consent of the Authority and the County, such consent not to be unreasonably withheld, the Company may mitigate its Default Termination Damages payable under this Section 6.7 by providing the Service using alternative facilities which (i) are in compliance with Applicable Law and, (ii) the Authority has agreed and meets all of the minimum technical requirements in the RFB.

Section 6.8 Survival of Certain Rights and Obligations

The rights and obligations of the parties under Section 5.3 and Articles I and VIII shall survive any termination of this Agreement. No termination of this Agreement limits or otherwise affects the rights and obligations of any party that have accrued before the date of such termination.

Article VII—Term; Renewal

Section 7.1 Term

This Agreement is in effect from its date and, unless sooner terminated, shall continue in effect until December 31, 1999.

Section 7.2 Renewal

This Agreement may be extended at the Authority's option at one year intervals up to an additional three years.

The Authority shall give the Company thirty (30) days notice of its intent to renew the Service Agreement for each additional year.

Article VIII—Representations and Warranties

Section 8.1 Representations and Warranties of the Authority

The Authority hereby makes the following respective representations and warranties, as of the date of execution and delivery of this Agreement, to and for the benefit of the Company:

(a) The Authority is a body politic and corporate validly existing under the Constitution and laws of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The Authority has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.

(c) Neither the execution or delivery by the Authority of this Agreement, nor the performance of the Authority's obligations in connection with the transactions contemplated hereby nor the Authority's fulfillment of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the Authority of this Agreement except those that have been duly obtained or made.

Section 8.2 Representations and Warranties of the Company

The Company hereby makes the following representations and warranties to and for the benefit of the Authority and the Counties:

(a) The Company is duly organized and validly existing as a Corporation under the laws of the State of Maryland with full legal right, power and authority to enter into and perform its obligations under this Agreement, and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State of Maryland.

(b) The Company has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(c) Neither the execution or delivery by the Company of this Agreement, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Company of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default thereunder or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Agreement by the Company, except such as have been duly obtained or made.

(e) Except as disclosed to the Authority, in writing, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Company's knowledge, threatened, against the Company, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Company of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

Article IX—Miscellaneous

Section 9.1 Authority Representative, County Representatives and Company Representative

(a) The Authority Representative is the Executive Director of the Authority.

(b) The Company Representative is the President of the Company or any vice president of the Company who the Company designates as the Company Representative and who is authorized to contractually bind the Company.

(c) The County Representatives are the Directors of Public Works for each County.

(d) Any party may change its authorized representative upon five (5) Business Days' written notice to the other parties. Only the Authority Representative or the Company Representative may make the approvals, requests and notices by a party to the other party under this Agreement.

Section 9.2 Assignment

Neither the Authority nor the Company may assign this Agreement without the prior written consent of the other party except that the Authority may assign its rights, remedies, powers and privileges under this Agreement to any of the Counties without the consent of the Company.

Section 9.3 Notices

All notices, designators, consents, approvals, and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be telexed, cabled, sent by facsimile or delivered by hand or mailed by first call registered or certified mail, return receipt requested, postage prepaid, and in any case shall be addressed as follows:

If to the Authority: Executive Director, Northeast Maryland Waste Disposal Authority, 25 S. Charles Street, Suite 2105, Baltimore, Maryland 21201–3330, Fax: (410) 333–3721.

With a copy to the County Representatives:

Director, Howard County Department of Public Works, 3430 Courthouse Drive, Ellicott City, Maryland 21043, Fax: (410) 313–3408

Director, Anne Arundel County Department of Public Works, 2662 Riva Road, Annapolis, Maryland 21401, Fax: (410) 222–7329

If to the Company: Earl Mikolitch, President, Atlantic Region, Sanifill, Inc., 6525 The Corners Parkway, Suite 540, Norcross, GA 30092.

With a copy to: H. Steven Walton, General Counsel, Sanifill, Inc., 2777 Allen Parkway, Suite 700, Houston, TX 77019–2155.

Any party entitled to receive communications under this agreement may change the address to which its communications are delivered by notice to the other parties. Any communications given by mail in accordance with this Section 9.3 shall be deemed to have been given five (5) business Days after the date of mailing; communications given by any means shall be deemed to have been given when delivered.

Section 9.4 Entire and Complete Agreement

This Agreement (including Schedules 1 through 9 to this Agreement) constitutes the entire and complete agreement of the parties with respect to its subject matter and supersedes all prior or contemporaneous understandings, arrangements, commitments and representation, all of which, whether oral or written, are merged into this Agreement. The Schedules to this Agreement are an integral part of this Agreement and shall be afforded full force and effect as tough incorporated in their entirety in the Articles of this Agreement.

Section 9.5 Binding Effect

This Agreement binds and inures to the benefit of the parties to this Agreement and any successor or assignee acquiring an interest hereunder permitted by Section 9.2.

Section 9.6 Further Assurances and Amendments

Each party shall execute and deliver any instruments and perform any acts necessary and reasonably requested by the other party in order to give full effect to this Agreement.

Section 9.7 Governing Law

The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Agreement.

Section 9.8 Counterparts

The Authority and the Company may execute this Agreement in counterparts, each of which is deemed an original, and all of which, when executed and delivered, together constitute one and the same instrument.

Section 9.9 Amendment or Waiver

Neither the Authority nor the Company may change, modify, amend or waive this Agreement or any provision of this Agreement except by a written instrument signed by the party against whom enforcement of such change, modification, amendment or waiver is ought.

Section 9.10 Relationship of the Parties

No party to this Agreement has any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other party and nothing in this Agreement is deemed to constitute one party a partner, agent or legal representative of any of the other parties or to create any fiduciary relationship between the parties.

Section 9.11 Confidential Information

The rights and obligations of the parties set forth herein with respect to Confidential Information are subject to Applicable Law, including Title 10, Subtitle 6 of the State Government Article of the Annotated Code of Maryland, as amended.

To the extent permitted by Applicable Law, the Authority shall hold Confidential Information in strict confidence and take all reasonable precautions to prevent disclosure to third parties. The Authority shall promptly notify the Company of the identity of any Person who requests a disclosure of Confidential Information. The Authority in its sole discretion shall determine the response to any request for disclosure of Confidential Information and is not required to withhold disclosure of Confidential Information upon a lawful request for information. The Authority shall consider any information or legal arguments presented by the Company before the disclosure of the requested information.

Section 9.12 Severability

If a court of competent jurisdiction determines any provision of this Agreement is, for any reason, invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and make such amendments, modifications or supplements of or to this Agreement, that to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

Section 9.13 Damages

(a) The Alternate Disposal Damages and Alternate Disposal Procurement Damages specified in this Agreement constitute the parties' sole and exclusive remedy for the acts, errors or omissions for which ''Damages'' those Damages are imposed. The parties may recover additional amounts for damages caused by other acts, errors or omissions.

(b) Notwithstanding the foregoing, in no event, whether based upon contract, tort or otherwise, arising out of the performance or nonperformance by the Authority of any obligation under this Agreement, is the Authority liable or obligated in any manner to pay special, consequential or indirect damages, or any other amount except as specifically provided in this Agreement.

Section 9.14 Effect of Authority and County Approvals

(a) No review, comment or approval by the Authority or the Counties under this Agreement affects the rights, remedies, powers or privileges of the Authority or the Counties in connection with (i) licenses, permits, reviews or approvals pursuant to Applicable Law, (ii) the enactment, interpretation or enforcement of any Applicable Law, (iii) any of its other governmental functions, or (iv) matters not related to this Agreement.

(b) Now review, comment or approval, nor any failure to review, comment or give approval, by the Authority or the Counties under this Agreement relieves the Company of any of its obligations under this Agreement or imposes any liability upon the Authority or the Counties.

Section 9.15 Dispute Resolution

The Authority and the Company shall in good faith attempt to resolve any dispute or matter in controversy under this Agreement. All disputes under this Contract, if not resolved by the parties, shall be resolved by courts of competent jurisdiction in the State of Maryland and in accordance with the laws of the State of Maryland.

Section 9.16 Limitation of Liability and Defenses

(a) Notwithstanding any other provision of this Agreement to the contrary, the obligations of the Authority to the Company under this Agreement are limited to the obligations of the Authority under the Waste Disposal Agreements (the ''WDA'') to the extent such obligations are satisfied. Neither the Authority nor the Counties will be liable to the Company for consequential damages of any type. The Authority represents that payments to be received from the Counties under the Waste Disposal Agreement are or will be sufficient to make monetary payments to the Company.

(b) Notwithstanding any other provision of this Agreement to the contrary, the liability and obligations of the Authority for all monetary payments with respect to this Agreement are limited obligations payable solely from WDA Revenues as and to the extent such WDA Revenues are received and available to pay such amounts under Applicable Law. The Authority represents that Revenues to be received from the Counties are or will be sufficient to make monetary payments to the Company. The liability of the Authority for any such monetary payments with respect to this Agreement are not payable from the general funds of the Authority and the incurrence or nonperformance of such obligations or payments shall not constitute or create a legal or equitable pledge of, or lien or encumbrance upon, or claim against, any of the assets or property of the Authority or of its income, receipts or revenues. Notwithstanding any provision of this Agreement to the contrary, the Company may bring legal action against the Authority if WDA Revenues received from the Counties are not sufficient to make monetary payments to the Company.

(c) No recourse for the payment of any amounts due by the Authority under this Agreement or upon any representation, warranty, covenant, agreement or obligation contained in this Agreement or in any document, certificate or instrument that this Agreement requires to be executed and delivered by the Authority or from any claim herein or therein shall be had by the Company, except from WDA Revenues.

(d) The execution and delivery of this Agreement by the Authority shall not impose any personal liability on the members, officers, directors, employees or agents of the Authority. No recourse shall be had by the Company for any claims based on this Agreement against any member, officer, employee or other agent of the Authority in his or her individual capacity, all such liability, if any, being expressly waived by the Company by the execution of this Agreement.

(e) Unless specifically excused by this Agreement, the Company shall not assert impossibility or impracticability of performance, the existence, nonexistence, occurrence or nonoccurrence of a foreseen or unforeseen fact, event or contingency that may be a basic assumption of the Company, or commercial frustration of purpose as a defense against any claim by the Authority or the Counties against the Company.

Section 9.17 Counties as Third Party Beneficiaries

The Counties are singly and jointly third-party beneficiaries of all of the obligations of the Company under this Agreement. The Counties have the right, but not the obligation, to enforce rights, remedies, powers and privileges of the Authority under this Agreement if any of the Counties provides ten (10) days' prior written notice to the Authority and the Company. Unless such prior notice is given by the Counties, it is understood by all parties that the Authority Representative shall have the authority to direct the Company with respect to the Authority's and Counties' rights herein and the Company shall have the right to rely on such direction.

Section 9.18 Nondiscrimination

The Company shall not discriminate or permit discrimination against a Person because of race, color, religion, national origin or sex. This provision prohibiting discrimination is a material term of this Agreement.

Section 9.19 Minority Business Participation Requirements

The Company shall structure its procedures for the performance of the services required by this contract to achieve the Authority's minority business participation goals. Such performance by minority business enterprise shall be in accordance with this Section and Schedule 7. The Company agrees to use its best efforts to carry out the requirements of this Section consistent with efficient performance of the Project.

Section 9.20 Public Ethics

(a) The Authority may terminate the right of the Company to proceed under this Agreement if it is found by the Authority that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Company, or any agent or representative of the Company, to any officer or employee of the Authority or a County with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Agreement; the facts upon which the Authority makes such findings may be reviewed in any competent court.

(b) In the event this Agreement is terminated as provided in paragraph (a), above, the Authority shall be entitled (i) to pursue the same remedies against the Company as it could pursue in the event of a breach of the Agreement by the Company, and (ii) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall be not less than three nor more than ten times the costs incurred by the Company in providing any such gratuities to any such officer or employee.

(e) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

(d) No employee of the State of Maryland, the Authority, or any department, commission, agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while such employee, become or be an employee of the party or parties hereby contracting with the State, the Authority, or any department, commission, agency or branch thereof.

Section 9.21 Impossibility of Performance

if, during the Term of this Agreement, an event occurs that causes either party's performance under this Agreement to be impossible, then each party hereto agrees to negotiate in good faith for a modification to this Agreement that is mutually agreeable to each party. The Company and the Authority acknowledge that no change in Applicable Law that imposes or increases any cost, tax, fee, assessment or charge shall be considered to render the affected party's performance impossible for purposes of this Section.

In witness whereof, the Authority and the Company have executed and sealed this Agreement as of the date first written above.

Witness: [Signature Illegible]

Witness: [Signature Illegible]

Northeast Maryland Waste Disposal Authority [Signature Illegible]

Garnet of Maryland, Inc.

By: _____

Earl Mikolitch,

President.

Schedule 1 to Service Agreement

Description of the Service

The Company shall perform the Services described in this Agreement and in the following documents:

1. The Request for Bids issued on April 16, 1996.
2. The Bid Submittal dated May 13, 1996.
3. Addenda were issued as follows:

—Addendum No. 1 issued on April 17, 1996
—Addendum No. 2 issued on April 26, 1996
—Addendum No. 3 issued on May 6, 1996

In the event of a conflict among these documents, the Service Agreement shall supersede all prior or contemporaneous agreements, representations and understandings. The RFB shall likewise supersede the Bid Submittal.

Incorporated by reference from the bid submittal of Garnet of Maryland, Inc. is the following:

1. A description of the bidder's system.
2. Interim Period Service description.
3. Evidence of Acceptance Facility availability on or before January 1, 1997, if applicable.

Schedule 2 to Service Agreement

Definitions

''*Acceptance Facility*'' means the Facility located at Annapolis Junction Transfer Station, 8077 Brock Bridge Road.

''*Acceptance Facility Delay Damages*'' means an amount equal to twenty-five percent (25%) of the applicable Service Fee during the period beginning on January 1, 1997 in which the Acceptance Facility is not available and the Company is using a County landfill for the Acceptance, Processing and Transfer of Acceptable Waste.

''*Acceptable Waste*'' means all Waste which is not Unacceptable Waste and typically includes:

A. Household garbage, trash, rubbish and refuse of the kinds normally generated by residential housing units and commercial establishments located in the Counties, including, without limitation:

1. Large household items such as beds, mattresses, sofas, bicycles, baby carriages, automobile parts and roofing Wastes of the types that are generally collected by the Counties and private haulers from residential housing units located in the Counties, or which are delivered to drop-off locations operated by the Counties; and

2. Brush, branches, leaves, twigs, grass and plant cuttings.

B. Commercial and light industrial Waste normally generated by governmental, commercial and light industrial and manufacturing establishments located in the Counties.

C. Construction and demolition debris.

D. Residue from a Materials Resource Recovery Facility, or Composting Facility.

E. Acceptable Waste previously deposited in the existing Counties' landfills.

''*Affiliate*'' means any other Person who controls, is controlled by, or is under common control with the Company.

''*Agreement*'' means this Service Agreement between the Authority and the Company (including Schedules 1 through 10 to this Agreement).

''*Agreement Date*'' means August 8, 1996.

''*Alternate Disposal Damages*'' means an amount equal to all reasonable expenses incurred by the Authority and the Counties as a result of the failure of the Company to fulfill its obligations under this Agreement for the cost of acceptance, transfer and disposal of Waste, the cost of statutory or regulatory penalties, counsel fees and reasonable expenses incurred by the Counties or the Authority and which are not foreseeable by the Parties at this time.

''*Alternate Procurement Damages*'' means an amount equal to the reasonable and direct costs estimated to be incurred by the Authority and the Counties to procure another company to provide the Service. In no event must Alternate Procurement Damages exceed actual costs incurred by the Counties and Authority in procuring another Company for this Agreement.

''*Applicable Law*'' means any law, regulation, requirement or order of any Federal, State or local agency, court or other governmental body (including, without limitation, the Anne Arundel County and Howard County Comprehensive Solid Waste Management Plans and all permits, licenses and governmental approvals required as of the date of this Agreement), applicable to: 1) the acquisition, design, construction, equipping, testing, financing, ownership, possession or operation of the Acceptance Facility and the Disposal Facility or any other Facility used to provide the Service 2) the Agreement; or 3) the performance of any obligations under the Agreement or any other agreement entered into in connection with the Agreement.

''*Business Day*'' means any day other than Saturday, Sunday or a day on which either state or national banks in Maryland are not open for normal banking business.

''*Company*'' *means Garnet of Maryland, Inc., and its permitted successors and assigns.*

''*Commencement Date*'' means the first day on which Acceptable Waste is delivered to the Company under this contract, which date is expected to be July 1, 1996.

''*Company Representative*'' means the authorized representative of the Company designed in accordance with Section 9.1.

''*Confidential information*'' means proprietary information of the Company related to solid Waste disposal given to the Authority or the Countries by the Company in connection with this Agreement that (1) the Counties or the Authority (as the case may be) is not required to disclose under Applicable Law, (2) is not in the public domain, (3) is in tangible form, (4) is identified as confidential by the word ''confidential'' conspicuously marked on the upper right hand corner of each page thereof, and (5) is annotated to reference the provisions of Applicable law that authorize non disclosure of such material and information to the public.

''*County*'' *or* ''*Counties*'' means, respectively, Howard County, Maryland, and Anne Arundel County, Maryland, and their respective successors and permitted assigns.

''*County Representative*'' means the Person designated by each County in accordance with Section 9.1.

''*Delivery Delay Damages*'' means an amount equal to fifty percent (50%) of the applicable Service Fee or Out of Hours Delivery Charge for every ton of Waste delivered by the Authority, County or a Designated Hauler for which the delivery vehicle had to wait in excess of 30 (thirty) minutes after arrival at the Acceptance Facility property boundary in order to deposit the Waste.

''*Designated Hauler*'' means any Person who is designated by the Authority, or a County to deliver Waste to the Acceptance Facility, on behalf of the Authority or a County.

''*Disposal Facility*'' means the solid waste disposal facility identified by the Company as the facility for final disposal of Acceptable Waste delivered by the Authority under the Agreement. If the Acceptable Waste is delivered to a waste-to-energy facility, composting facility, or other processing facility the Company must provide a disposal facility for all residue, non-processible and bypass waste.

''*Event of Default*'' means an Event of Default as defined in Article VI.

''*Facility or Facilities*'' means any component of the Company's system which receives, processes, transports and/or disposes of Waste and any residue or byproduct of processing Waste.

''*Fiscal Year*'' means the year commencing on July 1 of any calendar year and ending on June 30 of the succeeding calendar year.

''*GAAP*'' means those principles of accounting set forth in pronouncements to the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, or which have other substantial and nationally recognized authoritative support and are applicable in the circumstances as of the date of a report, as such principles are from time to time supplemented and amended.

''*Guarantor*'' means. _____

''*Hazardous Waste*'' means:

A. Any Waste or substance, the treatment, storage or disposal of which, because of the composition or characteristics of the Waste or substance, is unlawful to treat, store or dispose of at the Acceptance or Disposal Facility or other facilities to be used in providing the Service and is considered hazardous Waste under Applicable Law, including, without limitation, Wastes that are:

1. Regulated as a toxic or hazardous Waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921–6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7–101 *et seq.*, as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or

2. Low level nuclear Wastes, special nuclear Wastes or nuclear by-product Wastes, all within the meaning of the Atomic Energy Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.

B. Any other Wastes which any Governmental Body or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal through facilities of the type being used to provide the Service because of the harmful, toxic, or dangerous composition or characteristics of the Waste or substance. Any such designation would, under the Agreement, be considered an Uncontrollable Circumstance as defined in the Service Agreement.

''*Hazardous Waste Costs*'' means with respect to Hazardous Waste proven to have been delivered to a Facility by the Authority, a County or a Designated Hauler, the actual costs of the removal and disposal of such Hazardous Waste and all other costs and liabilities associated with or arising from the delivery, removal, or disposal or such Hazardous Waste; provided, that Hazardous Waste Costs do not include:

(a) Any costs or liabilities incurred due to the Company's negligence, willful misconduct or failure to adhere to Applicable Law or the Hazardous Waste Protocol in connection with any Waste it knows or should know to be Hazardous Waste;

(b) Any costs incurred by the Company for the operation or maintenance of a Facility as a result of the discovery of Hazardous Waste;

(c) Any costs or liabilities paid by any third party or insurance policy.

Hazardous Waste Costs also include the cost, if approved in writing by the Authority, of any repairs or alterations to a Facility necessitated by the presence or inadvertent Acceptance of such Hazardous Waste and all liabilities, damages, claims, demands, expenses, suits or actions including reasonable appeals, fines, penalties and attorney's fees in connection with any civil or administrative proceeding arising from the presence of such Hazardous Waste at a Facility or the removal or disposal of such Hazardous Wastes including, without limitation, any suit for personal injury to, or death of, any person or persons, or loss or damage to property resulting from the presence, removal, disposal or inadvertent processing of such Hazardous Waste.

''*Holiday*'' means those days listed in Section 2.3 for which an observance date is established by the Authority.

''*Interim Period*'' means July 1, 1996–December 31, 1996 during which time the Company shall provide Service to Anne Arundel County.

''*Labor Action*'' means a strike, lockout or other similar work shutdown or stoppage by workers.

''*Late Payment Rate*'' means an amount equal to Nations Bank N.A. prime rate of interest, as adjusted from time-to-time, plus two percent.

''*Non-performing Party*'' means a party to this Agreement who fails to perform any obligation or comply with any requirement of such party under this Agreement.

''*Notice of Termination*'' means a written notice requiring the termination of this Agreement due to an Event of Default pursuant to Article VI hereof that specifies the factual basis for such termination and the date on which this Agreement will terminate pursuant to Article VI hereof.

''*Performance Bond*'' means the performance bond relating to the provision of the Service in substantially the form set forth in Schedule 5.

''*Person*'' means any individual, corporation, partnership, joint venture, association, joint-stock company or unincorporated organization, or any government unit or agency or political subdivision not otherwise expressly named in this Agreement.

''*Process*'' means to separate, combine, combust, compost, compact, load or otherwise handle Waste delivered to a Facility in accordance with the Applicable Law.

''*Receiving Hours*'' means from 7:00 a.m. until 5:00 p.m. Monday through Saturday, (except Holidays) and until 7:00 p.m. on the first regular collection day following a Holiday, or such other hours as may be established in writing from time to time by the Authority Representative, the Company Representative and the County Representatives.

''*Require Insurance*'' means the types and amounts of insurance set forth in Schedule 6.

''*Service*'' means the acceptance, processing, transportation and disposal of Acceptable Waste delivered to the Company pursuant to this Agreement.

''*Service Fee*'' has the meaning set forth in Article III of this Agreement

''*Subcontractor Default*'' means the failure of any Subcontractor that is not an Affiliate of the Company or other subcontractor or supplier (except an Affiliate of the Company) selected with reasonable care to furnish labor, services, Waste or equipment.

''*Termination Settlement Amount*'' means an amount calculated in accordance with the formula set forth in Schedule 9.

''*Ton*'' means a ''short ton'' of two thousand (2,000) pounds.

''*TPD*'' means Tons Per Day.

''*TPY*'' means Tons Per Year.

''*Unacceptable Waste*'' means:

(a) Hazardous Waste; and

(b) That portion of solid Waste the disposal of which (i) may present a substantial endangerment to public health or safety, or (ii) would cause Applicable Law to be violated, or (iii) is likely to materially adversely affect the operation of a Facility; provided, however, that if such unacceptable Waste (other than Hazardous Waste) is delivered in quantities and concentrations as determined by the Authority and as part of normal collections so as not to have the effect described in clauses (i), (ii) and (iii) above it shall constitute Acceptable Waste unless otherwise directed by State or federal regulatory authorities. The Unacceptable Wastes described in this paragraph (b) shall include:

(1) Pathological and biological Waste, explosives, medical and infectious Waste, cesspool and other human Waste, human and animal remains;

(2) Large automobile and vehicular parts, trailers, agricultural equipment, marine vessels;

(3) Oil sludge or liquid Wastes; and
(4) Radioactive Wastes.

''*Uncontrollable Circumstance*'' means an event or condition listed in this definition, whether affecting the Authority, the Counties or the Company, that has, or may reasonably be expected to have, a material adverse effect on the operation of a Facility, if such event or condition is beyond the reasonable control, and not the result of willful or negligent action or a lack of due diligence, of the Non-performing Party relying thereon as justification for not performing any obligation or complying with any condition required of such party hereunder, for delaying such performance or compliance. The following events or conditions, and no others, shall constitute Uncontrollable Circumstances if they meet the requirements of the preceding sentence:

(a) An act of God (but not including reasonably anticipated weather conditions for the geographic area of a Facility), hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage committed at a Facility by a Person other than an employee or agent of, or visitor invited by, the Company or its Affiliates, or the Company's subcontractors of any tier;

(b) The failure of the jurisdiction in which a Facility is situated or the appropriate federal or state agencies or public utilities having operational jurisdiction in the area or location of the Facility to provide and maintain and assure the maintenance of all utilities services (excluding sewerage and water lines) to the Facility for operation of the Facility, provided they are essential the Facility;

(c) A non-Company or non-subcontractor Labor Action.

(d) Any host fee or surcharge imposed by either Howard or Anne Arundel County after the bid submittal which applies to a solid Waste acceptance facility (which term is defined by Maryland Environmental Code Ann. § 9–501(n)) located in either County.

No other costs of any kind shall be considered an Uncontrollable Circumstance for the purposes of this Agreement.

In no event will Subcontractor Default or a Company Labor Action constitute an Uncontrollable Circumstance.

The term ''reasonable control'' includes investigation or planning that is required by sound management or industry practices. No change in any Applicable Law imposing or increasing any tax, fee, assessment or charge shall constitute an Uncontrollable Circumstance. Neither the Authority nor the Countries shall be liable for the loss of any benefits relating to the Service for any reason whatsoever, if any.

''*Waste*'' means solid Waste including Acceptable Waste, delivered to the Acceptance Facility by, or or behalf of, the Authority and the Counties.

''*Waste Disposal Agreement*'' means the Agreement between the Authority and each County.

''*Waste Disposal Services Revenues*'' means (i) all payments to the Authority by the Counties directly attributable to the Service, and (ii) all other receipts of the Authority directly attributable to the Service.

''*Wrongfully Diverted Waste*'' means any Waste delivered to the Company, but which is rejected by the Company for any reason other than as permitted pursuant to Section 2.2(a) or any other provision of the Service Agreement.

Schedule 3 to Service Agreement

Service Fees

Bid Price for Waste Acceptance, Processing, Transportation and Disposal for July 1, 1996—December 31, 1996 for Anne Arundel County, January 1, 1997—December 31, 1999 for Howard and Anne Arundel Countries with three one-year renewal options held solely by the Counties with no inflation adjustment available and including the option Anne Arundel County reserves for itself to send additional tonnage to the Company during the term of the Service Agreement in an amount anywhere between 1–300 additional tons per day.

Bid Price—$33.00/ton

Schedule 4 To Service Agreement

Reporting Requirements

The Company shall give the Authority Representative and the County Representatives the following reports and information at the times indicated below.

The Company shall deliver the following information:

A. Pre-Commencement Date Documents:

PRE-COMMENCEMENT DATE REPORTS

Information	Delivery date
Copies of Required Insurance, Performance Bond, Letter of Credit, Corporate Guarantee	Prior to Service Agreement Execution Date.

B. Periodic Reports During Operations:

PERIODIC REPORTS DURING OPERATIONS

Report	Delivery date
Monthly Performance Report (see Exhibit A to this Schedule)	Accompany Monthly Invoice for payment.
Scale Certification	Once per year or more frequently if required by Applicable Law.

PERIODIC REPORTS DURING OPERATIONS

Other information	Delivery date
Copies of permits and permit renewals subsequent to the permits submitted as part of the bid submittal.	Within 5 (five) business days of receipt by or delivery to the Company.
Copies of all compliance reports and notices submitted to or received from authorities regulating the Facilities must be submitted to the Authority. Any notices of violation or potential violation at the Facilities must be submitted to the Authority as well as any notice designating the Facility as a Superfund Site or notice of potential National Priority List designation.	Within 5 (five) business days of receipt by or delivery to the Company.
Copies of all reports and notices submitted to or received from a host community pursuant to a host community agreement. Copies of any amendments to any host community agreement for the Disposal Facility.	Within 5 (five) business days of receipt by or delivery to the Company.
Reports or notices of environmental violations of Applicable Law or citations related to violations of Applicable Law relating to the Facilities providing the Service.	Within 5 (five) business days of receipt by or delivery to the Company.

PERIODIC REPORTS DURING OPERATIONS—Continued

Other information	Delivery date
Reports of lawsuits requesting declaratory, injunctive or other equitable relief and lawsuits in excess of $1,000,000 in which the Company, its parent company, or affiliates is a party related to Facilities providing the Service. If the litigation involves any issues relating to the environment, the dispute must be reported without regard to monetary amount.	Within 5 (five) business days of receipt by or delivery to the Company.
Any material adverse change in the financial condition of the Company or Guarantor, if applicable.	Within 5 (five) business days of receipt by or delivery to the Company.
Notice of any proposed transfer of ownership, possession, or control of the Company, Guarantor, if applicable, or Facilities must be given to the Authority. The notice must include identification of the transferee, and other information as specified in RFB Section 1.4.3 D.	60 (sixty) days prior to effective date of action.
Monitoring well water quality analysis and assessment monitoring reports as specified in RFB Section 1.4.3.H.	Semi-annually.

Exhibit A To Schedule 4 To Service Agreement

Monthly Performance Report Forms

The Company must complete the Monthly Tonnages Report Form in Schedule 4 and submit the form to the Authority and the Counties with the monthly invoice for payment.

	Month	Ytd
1. Tonnage [1]		
Acceptable Waste Received:		
Anne Arundel County		
Howard County		
Acceptable Waste Disposed:		
Anne Arundel County		
Howard County		
Unacceptable Waste Received [2]:		
Anne Arundel County		
Howard County		
Unacceptable Waste Disposed [2]:		
Anne Arundel County		
Howard County		
2. *Out of Hours Deliveries* (attach back-up data verifying delivery time)		
Anne Arundel County		
Howard County		

[1] Include all scale records to correspond with the invoiced tonnages.
[2] Describe how the Waste was handled, including copies of any manifests required by Applicable Law.

Schedule 5 To Service Agreement

Form of Performance Bonds

Performance Bond

_____
Principal

_____
Business Address of Principal

_____
Surety

_____
Obligee

a corporation of the State of _____ and authorized to do business in the State of Maryland.

Northeast Maryland Waste Disposal Authority and Anne Arundel County, Maryland, and Howard County, Maryland

_____
Penal Sum of Bond (express in words and figures)

Date of Contract: _____, 19____
Date Bond Executed: _____, 19____

Service Agreement to provide Waste acceptance, processing, transportation and disposal.

Contract Number: _____

Know all men by these presents, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such ability shall be the full amount of the Penal Sum.

Whereas, Principal has entered into or will enter into a contract with the Northeast Maryland Waste Disposal Authority (the ''Authority''), which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as ''the Agreement.''

Now, therefore, during the term of said Agreement, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and

2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Authority to be in default under the Agreement, the Surety may within fifteen (15) days after notice of default from the Authority notify the Authority of its election

to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Authority thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

In witness whereof, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:

_____

Witness

Individual Principal

_____

In Presence of: Witness

_____

_____

_____

Attest:

_____

Corporate Secretary

Partnership Principal

_____

Name of Partnership

_____

_____

_____

Corporate Principal

_____

(Name of Corporation)

_____

President

Affix Corporate Seal

Attest:

_____

Signature

_____

(Surety)

By: _____

Title: _____

Affix Corporate Seal

Business Address of Surety:

_____

_____

_____

Bonding Agent's name:

_____

Agent's Address:

_____

_____

_____

Approved as to legal form and sufficiency this _____ day of _____ 1996.

_____

Assistant Attorney General

Schedule 6 to Service Agreement

Required Insurance

On and after the Commencement Date, the Company shall obtain and keep in force the following insurance with insurance companies licensed and qualified to do business in the State of Maryland rated at least ''A−'' or its equivalent by Best's Key Rating Guide, evidenced by a certificate of insurance and certified copies of all insurance policies.

(a) *Worker's Compensation.*

The Company shall maintain such insurance as required by Maryland Law covering all of its employees as will protect them and save the Counties and Authority harmless from claims. The Company shall maintain Employers' Liability Coverage in the following amounts: $500,000 for each accident; $500,000 for each disease per employee; $500,000 for bodily injury by disease policy aggregate and shall save the Counties and the Authority harmless from claims.

(b) *Commercial General Liability Insurance.*

The Company shall arrange and pay for a general liability policy which will protect the Authority, the Company and the County from public liability for any personal injury, including death or property damage which may arise from his operations or the operations of his Company and Sub-Contractors or by anyone directly or indirectly employed in the work by either of them under this Agreement, as follows:

$1,000,000 per occurrence for bodily injury and property damage

$1,000,000 aggregate for products and completed operations

$2,000,000 general aggregate (on a per project basis)

$1,000,000 per occurrence for personal & advertising injury liability

There shall be no exclusions for explosion, collapse or underground exposures; the Company shall obtain contractual liability coverage, independent contractors coverage, broad from property damage coverage, and shall name the facility operator as an additional insured.

(c) *Business Automobile Liability Coverage.*

The Company shall maintain coverage which extends to all owned, leased, rented or borrowed automobiles in the amount of $1,000,000 for each accident involving bodily injury and or property damage. Coverage must extend to include all monetary state and federal regulations as well as respects uninsured/underinsured motorists coverage, ICC, PUC filings and financial responsibility requirements.

(d) Umbrella/Excess Liability coverage must be obtained in minimum amounts of $10,000,000 per occurrence and in the aggregate. Coverage must at a minimum follow form with applicable underlying insurance.

(e) Professional Liability/Errors & Omissions insurance is required for all professional services performed under the contract in amounts customary for the profession.

(f) *Environmental Impairment Liability covering the Facilities.*

Company shall acquire and maintain Environmental Impairment Liability Insurance including sudden, non-sudden and gradual exposure, for all of Company's operations hereunder, including but not limited to disposal of Waste pursuant to this Agreement. Company shall purchase limits of $1 million per occurrence and $2 million annual aggregate for any release of toxics or hazardous Waste or other hazardous substance requiring monitoring, cleanup or corrective action under CERCLA. A combination of primary and excess coverage is acceptable, provided that there are no pollution exclusions in either policy.

(g) All Companies and subcontractors must submit evidence of required insurance prior to performance.

(h) Each Company must carry property damage insurance for all property owned, leased or loaned by the Company whether to be used in this project or not. Limits should equal the replacement value of such equipment and coverage must be on an ''all risk.''

(i) The Company must provide the Authority with evidence that the disposal site owner carries insurance for site property damage. In addition, the Company must provide the Authority with evidence that the disposal site, if a landfill, carries environmental impairment liability insurance for that site of at least ten million dollars.

Section 2. General

(a) The Authority and the Counties shall be named as additional insurers on the above Commercial General Liability and Environmental Impairment policies.

(b) All losses under the required insurance shall be adjusted to the satisfaction of the Authority and the County.

(c) The Company shall purchase commercial insurance for the above coverages. Approval for deductibles higher than $25,000 for the liability policies will be required from the Authority and the Counties.

(d) All claims made policies shall provide a minimum of five (5) years' discovery period.

(e) The Authority and the Counties shall be advised promptly in writing of the following change in the insurance policies:

(i) Setting up a new retro date.

(ii) Exhausting any aggregate limit under any of the above policies.

(iii) Switching occurrence based coverage to claims made coverage or vice versa.

(f) The Company shall assure that all subcontractors performing services in accordance with this Agreement carry identical coverages as required above, either individually or as an additional insured on the policies of the Company.

Schedule 7 To Service Agreement

Minority Business Participation Policy

The Company shall comply with and meet the minority business participation requirements of the Authority, a copy of which is attached hereto.

Minority Business Enterprise—Terms and Conditions

For Municipal Solid Waste Acceptance, Processing, Transportation and Disposal Services

By the Northeast Maryland Waste Disposal Authority on Behalf of Anne Arundel County, Maryland and Howard County, Maryland

Date: February 5, 1996.

I. MBE Program Goals

The Authority will attempt to obtain the Project's MBE participation goals primarily through two mechanisms: by requiring prime Companies to utilize MBE as subcontractors/suppliers and by encouraging MBE to respond directly to this request for bids. Accordingly, the Authority's MBE participation percentage goal for this Project is 10% of the value of the contract.

II. Responsibilities

The Executive Director of the Authority will be responsible for implementing, coordinating and monitoring the Project's MBE program.

All bidders are expected to take positive steps to use MBEs. These positive efforts should consist of the following:

a. Extending opportunities for subcontracting joint arrangements and material supplying to MBEs.

b. Identifying in *monthly* reports to the Executive Director of the Authority the MBE firms to be used.

c. Maintaining records of MBEs contacted, including negotiation efforts to reach competitive price levels and awards to MBEs.

d. Requiring subcontracts under the contract to comply with the MBE policy.

e. Keeping the Authority informed of all MBE sub-agreements or changes in plans to award subcontracts previously reported as proposed for MBEs.

All Minority Business Enterprises are expected to take the following actions at a minimum:

a. Become involved in the project planning and bid process.

b. Provide capability statements to the Authority.

c. All MBEs must be certified as MBEs by the State of Maryland *or* Howard County *or* Anne Arundel County.

The Authority hereby notifies all bidders responding to this RFP that minority business enterprises will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration of an award.

After bid opening but *prior to contract award,* and execution of the Service Agreement, the apparent low bidder will be required to submit documentation showing minority participation.

After a meeting with the apparent low bidder and evaluation of its compliance to the MBE requirement, the Authority will notify the bidder of the following:

a. Final award of the contract.

b. Apparent low bidders who fail to achieve the desired MBE participation can be declared ''non-responsive'' bidders in which case the next low bidders becomes the apparent low bidder. This process may be repeated until an apparent low bidder meeting the MBE requirement is obtained or the Authority may elect to rebid the Project to obtain both an equitable price and MBE compliance.

III. Contract Compliance Process

a. The Authority will conduct periodic compliance reviews with all prime Companies required to comply with the MBE goal.

b. Companies will be given prior notification of a pending on-site verification and review for contract compliance. During such on-site review, the Company will have the following available for inspection:

1. Copies of Purchase Orders and subcontracts containing EEO clauses.

2. Records to indicate the number, names, dollar value of the minority subcontracts, the amount and dates and the scheduled times for each MBE to be on the job site.

3. Any other appropriate documents requested prior to the on-site visit.

c. The on-site verification and interviews as a minimum will consist of the following:

1. An initial meeting with the Company or his representative to explain visit objectives.

2. Tour of the job site.

3. Interviews of subcontractors, suppliers, etc.

d. At the conclusion of the on-site visit an exit conference will be conducted. This conference will consist of a discussion of the compliance process and determination time frame, and suggestions for corrective action to be taken if necessary.

e. A monthly report indicating compliance status will be prepared and forwarded to the Executive Director of the Authority.

1. If a determination of noncompliance is made, the Authority may conduct further investigation. The Company will be notified and an attempt made informally to remedy any problems of compliance. In the event conciliation fails, the Authority will declare the Company in noncompliance.

IV. Enforcement

If a Company fails or refuses to take corrective action, the Authority will determine which of the following should be imposed to promote the purpose of the Project's MBE Program.

a. Declare an Event of Default under the contract (Service Agreement).

b. Withhold a percentage of progress payment.

c. Assess liquidated damages.

d. Deny the Company or any subcontractor the right to participate in any future contracts awarded by the Authority.

e. Other appropriate action within the discretion of the Executive Director of the Authority.

This MBE policy document is hereby incorporated into the Service Agreement and failure to comply with its terms may be declared an event of default under Section 6.3(c) of the Service Agreement.

Schedule 8 to Service Agreement

Guaranty

This Guaranty, dated as of _____, 199____, is made by _____ (''Guarantor''), to and for the benefit of the Northeast Maryland Waste Disposal Authority (the ''Authority'').

Recitals

_____, (the ''Company'') and the Authority are entering into a Authority Agreement dated as of _____, 199____ (the ''Service Agreement'') under which the Company will provide Waste acceptance, processing, transportation and disposal services to the Authority. The Service Agreement is by reference incorporated in this Guaranty and made a part of it.

The Guarantor has determined that it is in its best interests for the Company to enter into the Service Agreement with the Authority.

The Authority is willing to enter into the Service Agreement only if the Guarantor executes this Guaranty and carries out its obligations under this Guaranty.

The Guarantor is willing to guaranty, as set forth below, the performance of the Company under the Service Agreement.

Now, therefore, as an inducement to the Authority to enter into the Service Agreement, and to and for their benefit, the Guarantor agrees as follows:

1. *Guarantee.*

The Guarantor hereby directly, unconditionally, irrevocably and absolutely guarantees the full and punctual performance by the Company of all the Company's obligations under the Service Agreement in accordance with its terms and conditions.

2. *Guarantee Absolute.*

The Guaranty provided for herein is absolute, unconditional and continuing, and the Authority shall be entitled to enforce any

and all obligations guaranteed hereby directly against the Guarantor. If the Company fails to perform any of its obligations contained in the Service Agreement, when and as the same is required to be performed, the Guarantor shall cause the performance of such obligation.

3. *Nature of Obligations.*

The Guarantor hereby agrees that at any time and from time to time, the Authority may, without in any manner affecting, impairing, lessening, modifying, waiving or releasing any or all of the obligations and liabilities of the Guarantor under this Guaranty, with or without notice to the Guarantor, modify, extend, amend, change, compromise, settle, release, terminate, waive, surrender or otherwise deal with in any manner satisfactory to the Authority, any or all of the provisions of the Service Agreement, so long as such action is taken in accordance with the Service Agreement.

4. *Subordination.*

The payment of any and all past, present and future indebtedness, liabilities and obligations of the Company to the Guarantor of every kind, nature and description is hereby subordinated and postponed by the Guarantor to the obligations set forth in the Service Agreement. The Guarantor agrees that the obligations under the Service Agreement shall have priority in payment, right and remedy over the subordinated obligations to the Guarantor. Nothing in this Section 4 shall impair the right of the Guarantor to receive dividends, distributions or any return of any capital investment or repayment of any loan made to the Company so long as there is not an Event of Default of the Company under any provision of the Service Agreement.

5. *Consent to Jurisdiction, Etc.* This Guaranty shall be governed by and construed in accordance with the laws of the State of Maryland, and the Guarantor irrevocably submits to the jurisdiction of any state or federal court sitting in the State of Maryland over any suit, action or proceeding arising out of or relating to this Guaranty. The Guarantor hereby irrevocably designates and appoints [ ], as the Guarantor's authorized agent to accept and acknowledge on the Guarantor's behalf service of process in any suit, action or proceeding of any nature referred to in this paragraph, provided that duplicate copies thereof be simultaneously delivered to the Guarantor.

6. *Maintenance of Corporate Existence and Credit Rating.* The Guarantor must maintain and do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and material rights and franchises. The Guarantor must not seek or permit the dissolution or liquidation of the Guarantor, in whole or in part, to merge into, consolidate with, enter into a joint venture or partnership with or in any way be acquired by any Person, unless the Guarantor is the surviving corporation, or unless this Guaranty is assumed, in its entirety, by the surviving corporation.

7. *No Set-Off, Etc.*

No set-off or counterclaim, reduction or diminution of, or defense of any kind to, any obligation of the Guarantor hereunder that the Guarantor may have against the Authority, shall be available to the Guarantor against the Authority to reduce its obligations under this Agreement unless it arises out of the Service Agreement.

8. *Notices.*

All notices and other communications hereunder shall be in writing and shall be delivered, or mailed by certified or registered mail, as follows:

If to the Guarantor:

With copy to:

If to the Authority: Executive Director, Northeast Maryland Waste Disposal Authority, 25 S. Charles Street, Suite 2105, Baltimore, Maryland 21201–3330.

With copy to:

or at such other addresses as any party shall furnish to the others in writing.

9. Miscellaneous.

9.1 The Authority or the counties may jointly or severally enforce the performance and observance of this Guaranty.

9.2 No delay or omission to exercise any right, remedy, power or privilege accruing upon any default, omission or failure of performance hereunder shall impair any such right, remedy, power or privilege or be construed to be waiver thereof, but any such right, remedy, power or privilege may be exercised from time to time and as often as may be deemed expedient. In the event any provision contained in this Guaranty shall be breached by the Guarantor and thereafter duly waived in writing by the Authority, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the Authority.

9.3 This Guaranty may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

9.4 The invalidity or unenforceability of any one or more provisions of the Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty.

9.5 This Guaranty shall terminate if all amounts payable or obligations to the Authority by the Company under the Service Agreement have been paid in full or performed, as the case may be, in accordance with the terms of the Service Agreement.

9.6 This Guaranty is solely for the benefit of the Counties and the Authority and shall create no rights in favor of any other person, firm, corporation or governmental entity whatsoever.

In witness whereof, the Guarantor has caused this Guaranty to be signed, sealed and delivered on the day and year first above written.

The Company joins in the execution of this guaranty only so as to signify the Company's acceptance of and consent to the subordination provisions of Section 4 of this Guaranty.

Schedule 9 to Service Agreement

Termination Procedures and Costs

1. If the Authority exercises its right to terminate this Agreement pursuant to Section 6, then the Authority will follow the termination for convenience process as set forth in COMAR 21.07.01.12, which regulation is attached hereto.

Schedule 5 to Service Agreement

Form of Performance Bonds

Performance Bond

Bond No. ESD7617301

Principal: Sanifill, Inc./Garnet of Maryland

Business Address of Principal: 2777 Allen Parkway, Suite #700, Houston, TX 77019–2155

Surety: American Home Assurance Company

Obligee: Northeast Maryland Waste Disposal Authority

a corporation of the State of New York and authorized to do business in the State of Maryland.

Northeast Maryland Waste Disposal Authority and Anne Arundel County, Maryland and Howard County, Maryland

Penal Sum of Bond (express in words and figures): Six Million Seventy Eight Thousand Six Hundred and no/100————Dollars ($6,078,600.00)

Date of Contract: August 8, 1996

Date Bond Executed: August 6, 1996

Service Agreement to provide Waste acceptance, processing, transportation and disposal.

Contract Number: _____

Know all men by these presents, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such ability shall be the full amount of the Penal Sum.

Whereas, Principal has entered into or will enter into a contract with the Northeast Maryland Waste Disposal Authority (the ''Authority''), which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as ''the Agreement.''

Now, therefore, during the term of said Agreement, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and

2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Authority to be in default under the Agreement, the Surety may within fifteen (15) days after notice of default from the Authority notify the Authority of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Authority thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

In witness whereof, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:

_____

Witness

Individual Principal

_____

In Presence of: Witness

_____

_____

_____

Partnership Principal

_____

Name of Partnership

_____

_____

_____

Attest: [Signature Illegible]

_____

Corporate Secretary

Corporate Principal: Sanifill, Inc./Garnet of Maryland

_____

[Signature Illegible]

President/Controller

Affix Corporate Seal

Witness: [Signature Illegible]

_____

Signature

(Surety): American Home Assurance Company

_____

Karen M. Kellner

Title: Attorney-in-Fact

Affix Corporate Seal

Business Address of Surety: 70 Pine Street, New York, NY 10270.

Bonding Agent's name: Marsh & McLennan, Inc.

Agent's Address: 1000 Louisiana—#4000, Houston, TX 77002.

Approved as to legal form and sufficiency this _____ day of _____ 1996.

_____

Assistant Attorney General

Endorsement "A"

Provided, however, that the Obligee accepts the bond subject to the following conditions and provisions:

1. The bond is for the term beginning August 12, 1996 and ending August 12, 1997

2. The bond may be extended for additional term(s) of twelve (12) months at the option of the surety, by continuation certificate executed by the surety. At no time will the period of exposure under the bonds exceed twelve (12) months. Notification of Non-Renewal shall be given by Certified Mail to the Obligee no later than thirty (30) days prior to the expiration date of the bonds. Failure of the surety to issue a Continuation Certificate or otherwise extend the term, shall not constitute a default under the Performance Bond.

3. In the event of default by the Principal in performance of the contract during the term of the bond, the surety shall be liable only for the loss to the Obligee due to actual excess costs of performance of the contract up to the termination of the term of the bonds. Maximum aggregate liability of the surety is limited to the penal sum of the bond.

4. Any suit under the Performance Bond must be instituted before the expiration of two (2) years from the last day of the term of the Performance Bond and any continuation hereof. If this limitation is made void by any law controlling the contract therof, such limitation shall be deemed to be amended to equal the minimum period of limitation permitted by such law.

5. The bond is to secure the Principal's obligation as it relates to the Northeast Maryland Waste Authority/Sanifill, Inc.-Garnet of Maryland Bond No. ESD7617301.

The Power of Attorney form from American Home Assurance Co. is not being published in the **Federal Register**. A copy of the consent decree with this page included can be obtained from the Antitrust Division, Documents Group at 325 7th St., N.W., Rm 215, Washington, D.C. 20530 or (202) 514–2481

United States District Court, Northern District of Ohio, Eastern Division

United States of America; State of Ohio; State of Arizona; State of California; State of Colorado; State of Florida; Commonwealth of Kentucky; State of Maryland; State of Michigan; State of New York; Commonwealth of Pennsylvania; State of Texas; State of Washington; and State of Wisconsin, Plaintiffs, v. USA Waste Services, Inc.; Dome Merger Subsidiary; and Waste Management, Inc., Defendants. Civil Action No. 1:98 CV 1616; Judge Aldrich. Filed July 23, 1998.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 16, 1998, the United States, and the states of Ohio, Arizona, California, Colorado, Florida, Maryland, Michigan, New York, Texas, Washington and Wisconsin, and the commonwealths of Kentucky and Pennsylvania (''the governments'') filed a civil antitrust complaint, which alleges that the proposed acquisitions by USA Waste Services, Inc. (''USA Waste'') of Waste Management, Inc. (''WMI'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that in many markets across the country, USA Waste and WMI are the two of the most significant competitors in commercial waste collection, or disposal of municipal solid waste (''MSW'') (*i.e.*, operation of landfills, transfer stations and incinerators), or both services.

The Complaint alleges that a combination of USA Waste and WMI would substantially lessen competition in commercial waste collection services in twelve highly concentrated, relevant

geographic markets: Akron, Cleveland and Columbus, Ohio; Allentown and Pittsburgh, Pennsylvania; Denver, Colorado; Detroit, Michigan; Gainesville, Florida; Houston, Texas; Louisville, Kentucky; Portland, Oregon; and Tucson, Arizona.

The Complaint alleges the merger also would substantially lessen competition in disposal of municipal solid waste in seventeen highly concentrated markets: Akron/Canton, Cleveland and Columbus, Ohio; Baltimore, Maryland; Denver, Colorado; Detroit, Flint, and Northeastern Michigan; Houston, Texas; Los Angeles, California; Louisville, Kentucky; Miami, Florida; Milwaukee, Wisconsin; New York, New York; Pittsburgh and Philadelphia, Pennsylvania; and Portland, Oregon.

According to the Complaint, the loss of competition would likely result in consumers paying higher prices and receiving fewer or lesser quality services for the collection and disposal of waste. The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Cat; and (2) a permanent injunction that would prevent USA Waste from acquiring control of or otherwise combining its assets with WMI.

At the same time the suit was filed, the governments also filed a proposed settlement that would permit USA Waste to complete its acquisition of WMI, but require it to divest certain waste collection and disposal assets in such a way as to preserve competition in the affected markers. This settlement consists of a Hold Separate Stipulation and Order, proposed Final Judgment, and a letter that outlines defendants' views as to which commercial waste collection routes should be divested and that sets forth the standard by which the governments determined whether routes that serve a given geographic area should be divested under the Judgment.[1]

The proposed Final Judgment orders USA Waste and WMI to divest commercial waste collection routes in each of the relevant areas in which the Complaint alleges the merger would substantially reduce competition in commercial waste collection services. In addition, the Judgment orders USA Waste and WMI to divest landfills, transfer stations, or disposal rights in such facilities in each of the relevant markets in which the merger would substantially reduce competition in disposal of municipal solid waste. (A summary of the commercial waste collection and waste disposal assets that defendants must divest pursuant to the Judgment appears below in Appendix A.) USA Waste and WMI must complete their divestitures of the waste collection and disposal assets within 120 days, or five days after entry of the Final Judgment, whichever is later.

The Hold Separate Stipulation and Order (''Hold Separate Order'') and the proposed Final Judgment ensure that until the divestitures mandated by the Judgment are accomplished, the currently operable waste collection and disposal assets that are to be divested, whether owned by USA Waste or WMI, will be maintained and operated as saleable, economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of the combined company. USA Waste and WMI will appoint a person or persons to manage the operations to be divested and ensure the parties' compliance with the requirements of the proposed Judgment and Hold Separate Order.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Violation Alleged in the Complaint

A. The Defendants and the Proposed Transaction

USA Waste is the third largest waste collection and disposal firm in the United States. Based in Houston, Texas, it provides waste collection and disposal services throughout the country. In 1997, USA Waste's total operating revenues exceeded $2.6 billion.

WMI, based in Oak Brook, Illinois, is the nation's largest waste collection and disposal firm. it also provides waste collection and disposal services throughout the country, often in direct competition with USA Waste. In 1997, WMI had total operating revenues of over $9 billion.

In March 1998, USA Waste announced its agreement to acquire WMI in a stock transaction worth nearly $14 billion. This transaction, which would combine two of the nation's largest waste collection and disposal firms and substantially increase concentration in a number of already highly concentrated, difficult-to-enter markets, precipitated the governments' suit.

B. The Competitive Effects of the Transaction

Waste collection firms, or ''haulers,'' contract to collect municipal solid waste (''MSW'') from residential and commercial customers; they transport the waste to private and public disposal facilities (*e.g.*, transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. USA Waste and WMI compete in operating waste collection routes and waste disposal facilities.

1. The Effects of the Transaction on Competition in the Markets for Commercial Waste Collection

Commercial waste collection is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard containers for waste storage, and front-end loader vehicles for collection and transportation—is uniquely well suited to commercial waste collection service. Providers of other types of waste collection services (*e.g.*, residential and roll-off services) are not good substitutes for commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (*e.g.*, garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.*,) rear- or side-load trucks), which for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by

[1] A copy of this correspondence appears in Appendix B. Defendants are required to divest front end loader (FEL) commercial waste collection routes that serve certain geographic areas specified in the Judgment. Since some FEL routes may serve more than one area, the governments agreed to apply a *de minimis* standard for determining whether defendants' routes that serve a given area are subject to divestiture under the Judgment. If a defendant's FEL route obtained 10% or more of its commercial revenues form a geographic area set forth in the Judgment, §§ II(D)(1)–(12), in the route's most recent year of operation, defendants must divest the FEL route. Applying this rule in Detroit, for instance, would require defendants to divest any WMI FEL commercial route from which 10 percent or more of its revenues derive from customers located in either the City of Detroit or Wayne County, MI.

Defendants USA Waste and WMI have specifically identified and listed the FEL commercial routes they believe must be divested under the Judgment. The governments, however, have not verified defendants' representations.

commercial accounts, and hence, are rarely used on commercial waste collection routes. For purposes of antitrust analysis, commercial waste collection constitutes a line of commerce, or relevant service, for analyzing the effects of the merger.

The Complaint alleges, that provision of commercial waste collection services takes place in compact, highly localized geographic markets. it is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, commercial waste collection firms concentrate their customers and collection routes in small areas, often limited to metropolitan area. Firms with operations concentrated in distant area cannot easily compete against firms whose routes and customers are locally based. Sheet distance may significantly limit a distant firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that twelve areas—Akron, Cleveland and Columbus, Ohio; Allentown and Pittsburgh, Pennsylvania; Denver, Colorado; Detroit, Michigan; Gainesville, Florida; Houston, Texas; Louisville, Kentucky; Portland, Oregon; and Tucson, Arizona—constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of USA Waste and WMI in the provision of commercial waste collection services. In each of these markets, USA Waste and MWI are two of the largest competitors, and the combined firm would command from 50 to 90 percent or more of total market revenues. These twelve commercial waste collection markets generate from $2 million to well over $45 million in annual revenues.

Significant new entry into these markets would be difficult, time consuming, and is unlikely to occur soon. Many customers of commercial waste collection firms have entered into ''evergreen'' contracts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, i.e., selectively (and temporarily) charge unbeatably low prices to customers targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be very unprofitable to serve. The existence of long term contracts and price discrimination substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Complaint alleges that a combination of USA Waste and WMI would likely lead to an increase in prices charged to consumers of commercial waste collection services. The acquisition would diminish competition by enabling the few remaining competitors to engage more easily, frequently, and effectively in coordinated pricing interaction that harms consumers. This is especially troublesome in markets where entry has not proved an effective deterrent to the exercise of market power.

2. The Effects of the Transaction on Competition in the Markets for Disposal of Municipal Solid Waste

A number of federal, state and local safety, environmental, zoning and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. MSW can only be sent for disposal to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste risks severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for disposal of MSW without losing significant sales to other firms. For these reasons, there are no good substitutes for disposal of MSW.

Disposal of MSW tends to occur in highly localized markets.[2] Disposal costs are a significant component of waste collection services, often comprising 40 percent or more of overall operating costs. It is expensive to transport waste significant distances for disposal. Consequently, waste collection firms strongly prefer to send waste to local disposal sites. Sending a vehicle to dump waste at a remote landfill increases both the actual and opportunity costs of a hauler's collection service. Natural and man-made obstacles (*e.g.*, mountains and traffic congestion), sheer distance and relative isolation from population centers (and collection operations) all substantially limit the ability of a remote disposal site to compete for MSW from closer, more accessible sites. Thus, waste collection firms will pay a premium to dispose of waste at more convenient and accessible sites. Operators of such disposal facilities can—and do—price discriminate, *i.e.*, charge higher prices to customers who have fewer local options for waste disposal.

For these reasons, the Complaint alleges that, for purposes of anitrust analysis, seventeen areas—Akron/Canton, Cleveland and Columbus, OH; Baltimore, MD; Denver, CO; Detroit, Flint, and Northeastern Michigan; Houston, TX; Los Angeles, CA; Louisville, KY; Miami, FL; Milwaukee, WI; New York, NY; Pittsburgh and Philadelphia, PA; and Portland, OR—are relevant geographic markets for disposal of municipal solid waste. In each of these markets, USA Waste and WMI are two of only a few significant competitors. Their combination would command from over 50 to well over 90 percent of disposal capacity for municipal solid waste, in markets that generate annual disposal revenues of from $10 million to over $200 million annually.

Entry into the disposal of municipal solid waste is difficult. Government permitting laws and regulations make obtaining a permit to construct or expand a disposal site an expensive and time-consuming task. Significant new entry into these markets is unlikely to occur in any reasonable period of time, and is not likely to prevent exercise of market power after the acquisition.

In each listed market, USA Waste's acquisition of WMI would remove a significant competitor in disposal of

[2] Though disposal of municipal solid waste is primarily a local activity, in some densely populated urban areas there are few, if any, local landfills or incinerators available for final disposal of waste. In these areas, transfer stations are the principal disposal option. A transfer station collects, processes and temprarily stores waste for later bulk shipment by truck, rail or barge to a more distant disposal site, typically a sanitary landfill, for final disposal. In such markets, local transfer stations compete for municipal solid waste for processing and temporary storage, and sanitary landfills may compete in a broader regional market for permanent disposal of area waste.

The Complaint in this case alleges that in three relevant areas—New York, NY; Baltimore, MD; and Philadelphia, PA—transfer stations are the principal method for disposal of MSW. In other markets (*e.g.*, Miami, Louisville, Akron, Cleveland and Columbus), distant landfills may compete with local disposal facilities (incinerators or landfills) through the use of transfer stations. Regional landfills also compete for permanent disposal of waste from these areas. In some areas, however, the proposed Final Judgment requires defendants to divest transfer stations because such divestures may aid in the competitive viability of a companion landfill, the divestiture of which, the governments believe, is essential for effective relief.

municipal solid waste. With the elimination of WMI, market incumbents will no longer compete as aggressively since they will not have to worry about losing busines to WMI. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents likely ensure that consumers will pay substantially higher prices for disposal of MSW, collection of commercial waste, or both, following the acquisition.

III. Explanation of the Proposed Final Judgment

The relief described in the proposed Final Judgment will eliminate the anticompetitive effect of the acquisition in commercial waste collection in and disposal of MSW from the relevant markets by establishing new, independent and economically viable competitors in each affected market. The proposed Final Judgment requires USA Waste and WMI, within 120 days after the filing of the Complaint in this matter, or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell certain commercial waste collection assets (''Relevant Hauling Assets'') and disposal assets (''Relevant Disposal Assets'') as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the relevant state. The collection assets to be divested include front-end loader commercial waste collection routes, trucks and customer lists. The disposal assets to be divested include landfills, transfer stations, disposal rights in such facilities, and certain other assets (e.g., leasehold and renewal rights in the particular landfill or transfer station, garages and offices, trucks and vehicles, scales, permits, and intangible assets such as landfill or transfer station-related customer lists and contracts).

If USA Waste and WMI cannot accomplish the divestitures within the prescribed time, the Final Judgment provides that, upon application of the United States, the Court will appoint a trustee to complete the divestiture of each relevant disposal asset or relevant hauling asset not sold. The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, after consultation with the relevant state, that the assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste collection or disposal that can compete effectively in the relevant area. Defendants must take all reasonable steps necessary to accomplish the divestitures, and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that USA Waste and WMI will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants USA Waste and WMI. The United States could have brought suit and sought preliminary and permanent injunctions against USA Waste's acquisition of WMI. The United States is satisfied, however, that defendants' divestiture of the assets described in the Judgment will establish, preserve and ensure viable competitors in each of the relevant markets identified by the governments. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent USA Waste's acquisition of WMI from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [3] Rather.

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also, Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted.'' [5]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 22, 1998.

Respectfully submitted,

Anthony E. Harris,

Illinois Bar No. 1133713. U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Appendix A—Summary of Waste Disposal and Collection Assets That Must be Divested Under the Proposed Final Judgment

II. Waste Disposal Assets

The proposed Final Judgment (§§ II(C)(1) and (2), IV and V) requires USA Waste and WMI to divest certain ''relevant disposal assets.'' In general, this means, with respect to each landfill or transfer station, all tangible assets, including the garage and related facilities; offices; landfill-related or transfer station-related assets including capital equipment, trucks and other vehicles, scales, permits, and supplies, and all intangible assets of the landfill or transfer station, including landfill-related or transfer station-related customer lists, contracts, and accounts, or options to purchase any adjoining property. The list of disposal facilities that must be divested includes properties and permits in the following locations, under the listed terms and conditions:

A. Landfills and Airspace Disposal Rights

1. Akron/Canton, OH

WMI's Countrywide R&D Landfill, located at 3619 Gracemont Street, SW, East Sparta, OH 44626 (known as the ''Countrywide Landfill'');

2. Columbus, OH

USA Waste's Pine Grove Landfill, located at 5131 Drinkle Road, SW, Amanda, OH 43102;

3. Denver, CO

USA Waste's Front Range Landfill, located at 1830 County Road 5, Erie, CO 80516–8005; and at purchaser's option, a two-year waste supply agreement that would require defendants to dispose of a minimum of 150 tons/day of waste at the Front Range Landfill, at disposal fees to be negotiated between purchaser and defendants;

4. Detroit, MI

USA Waste's Carleton Farms Landfill, located at 28800 Clark Road, New Boston, MI, subject to two conditions, viz, USA Waste's obligations to (1) dispose of ash from the Greater Detroit Resource Recovery Center's incinerator at a separate monofill cell on this site pursuant to an existing contract, and (2) dispose of waste from the Greater Detroit Resource Recovery Center's bypass transfer station at this landfill, until defendants transfer such obligation to another landfill, which they shall use their best efforts to accomplish expeditiously;

5. Flint, MI

USA Waste's Brent Run Landfill, located at Vienna Road, Montrose Township, Genesee County, MI;

6. Houston, TX

(1) USA Waste's Brazoria County Landfill, located at 10310 FM–523, Angleton, TX 77515; and

(2) Airspace disposal rights at WMI's Security Landfill, located at 19248 Highway 105E, Cleveland, TX, or WMI's Atascocita Landfill, located at 2020 Atascocita Road, Humble, TX, or both, pursuant to which defendants will sell to one or more purchasers rights to dispose of at least 3.0 million tons of waste, over a ten-year period.

7. Los Angeles, CA

USA Waste's Chiquita Canyon Landfill, located at 29201 Henry Mayo Drive, Valencia, CA 91355;

8. Louisville, KY

USA Waste's Valley View Landfill, located at 9120 Sulphur Road, Sulphur, KY 40070;

9. Miami, FL

Airspace disposal rights at USA Waste's Okeechobee Landfill, controlled by a subsidiary of USA Waste, and located at 10800 NE 128th Avenue, Okeechobee, FL 34972, pursuant to which defendants will sell a total of 4.3 million tons of airspace, over a 20-year time period, to one or more purchasers.

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[3] 119 Cong. Rec. 24598 (1973). *See, United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See*, H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[4] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d at 565.

[5] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) *quoting United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

10. Milwaukee, WI

USA Waste's Kestrel Hawk Landfill, located at 1989 Oakes Road, Racine, WI 53406; and WMI's Mallard Ridge Landfill, located at W. 8470 State Road 11, Delavan, WI 53115;

11. New York, NY/Philadelphia, PA

WMI's Modern Landfill & Recycling, located at 4400 Mt. Piscah Road, York, PA 17402, and known as the ''Modern Landfill'';

12. Northeast Michigan

USA Waste's Whitefeather Landfill, located at 2401 Whitefeather Road, Pinconning, MI; and Elk Run Sanitary Landfill, located at 20676 Five Mile Highway, Onaway, MI;

13. Pittsburgh, PA

WMI's Green Ridge Landfill, located at 717 East Huntington Landfill Road, Scottsdale, PA 15683 (variously known as the ''Green Ridge Landfill,'' the ''Y&S Landfill,'' or the ''Greenridge Reclamation Landfill'');

14. Portland, OR

USA Waste's North WASCO Landfill, located at 2550 Steele Road, The Dalles, OR 97058; and

B. Transfer Stations, Disposal Rights and Throughput Agreements

1. Akron/Canton, OH

Throughout disposal rights of a maximum of 400 tons/day of waste, for a ten-year time period, at WMI's Akron Central Transfer Station, located at 389 Fountain Street, Akron, OH, under the following terms and conditions;

(a) The purchaser (or its designee) can deliver waste to the Akron Central Transfer Station for processing and, at the purchaser's option, load the processed waste into the purchaser's (or its designee's) vehicles for disposal;

(b) For each purchaser of such disposal rights (or its designee), defendants must commit to operate the listed Akron Central Transfer Station's gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

2. Baltimore, MD

Disposal rights of at least 600 tons of waste/day, pursuant to which defendants will sell to one or more purchasers rights to dispose, for a five-year time period, under the following terms and conditions:

(a) The purchaser(s) or its designee(s) may dispose of waste at any one or any combination of the following facilities, as specified in its purchase agreement: Southwest Resource Recovery Facility (known as ''Baltimore RESCO'' or ''BRESCO''), located at 1801 Annapolis Road, Baltimore, MD 21230; Baltimore County Resource Recovery Facility, located at 10320 York Road, Cockeysville, MD; Western Acceptance Facility, located at 3310 Transway Road, Baltimore, MD; or Annapolis Junction Transfer Station, located at 8077 Brock Bridge Road, Jessup, MD 20794. If more than one person purchases the disposal rights, the minimum daily disposal rates, and the total of all purchasers' maximum disposal amounts at all facilities specified shall be no less than 600 tons/day;

(b) For each purchaser of disposal rights (or its designee), defendants must commit to operate the listed Baltimore, MD area facilities' gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Maryland, except as to price and credit terms;

3. Cleveland, OH

At purchaser's option, either USA Waste's Newburgh Heights Transfer Station, located at 3227 Harvard Road, Newburgh Heights, OH 44105 (known as the ''Harvard Road Transfer Station''); or all of WMI's right, title and interest in the Strongsville Transfer Station, located at 16099 Foltz Industrial Parkway, Strongsville, OH; provided, however, that the City of Strongsville, owner of the transfer station, approves such sale or assignment. Defendants will exercise their best efforts to secure the assignments to the purchaser of all their rights, title and their interests in the Strongsville Transfer Station, and in the event the purchaser selects Strongsville, defendants will not reacquire any right, title or interest in the Strongsville transfer station. If the contract is not assigned defendants will enter into a disposal rights agreement with the purchaser (or purchasers), which will provide, in effect, that the purchaser(s) will enjoy all disposal rights and privileges now enjoyed by defendants at the Strongsville Transfer Station, and that defendants will operate the facility's gate, scale house, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

4. Columbus, OH

WMI's Reynolds Road Transfer Station, located at 805 Reynolds Avenue, Columbus, OH 43201;

5. Detroit, MI

WMI's Detroit Transfer Station, located at 12002 Mack Avenue, Detroit, MI 48215;

6. Houston, TX

USA Waste's Hardy Road Transfer Station, located at 18784 East Hardy, Houston, TX;

7. Louisville, KY

USA Waste's Popular Level Road Transfer Station, located at 4446 Poplar Level Road, Louisville, KY;

8. Miami, FL

All USA Waste's right, title, and interest in the Reuters Transfer Station Rights, as conveyed to Chambers Waste Systems of Florida, a subsidiary of USA Waste, pursuant to the Final Judgment in *United States* v. *Reuter Recycling of Florida, Inc.*, 1996–1 Trade Cas. (CCH) ¶ 71,353 (D.D.C. 1996);

9. New York, NY

(a) WMI's SPM Transfer Station, located at 912 east 132nd Street, Bronx, NY 10452, and all rights and interests, legal or otherwise, that WMI now enjoys, has had or made use of out of the SPM Transfer Station, to deliver waste by truck to rail siding at the Oak Point Rail Yard in the Bonx, NY, and at the Harlem River Yards facility, located at St. Ann's and Lincoln Avenues at 132nd Street, Bronx, NY 10454;

(b) All rights, title, and interest in USA Waste's pending application to construct and operate a waste transfer station located at 2 North 5th Street, Brooklyn, NY 11211 (known as the ''Nekboh Transfer Station''); and

(c) USA Waste's All City Transfer, located at 246–252 Plymouth Street, Brooklyn, NY 11202; and

(d) WMI's Brooklyn Transfer Station, located at 485 Scott Avenue, Brooklyn, NY 12222, but only in the vent that USA Waste's Nekboh Transfer Station has not been licensed or permitted to accept waste within one year from the date of entry of the Final Judgment; and

10. Philadelphia, PA

USA Waste's Girard Point Transfer Station, located at 3600 South 26th Street, Philadelphia, PA 19145; and USA Waste's Quick Way Inc. Municipal Waste Transfer Station, located at SE Corner, Bath and Orthodox Streets, Philadelphia, PA 19137, subject to the conditions that (1) the existing City of Philadelphia waste contract is transferred to a WMI transfer station, which defendants must use their best efforts to accomplish, and (2) until such transfer is effected, USA Waste will be granted throughput capacity at the Quicky Way Transfer Station to handle this contract.

II. Commercial Waste Collection Assets

The Final Judgments also orders USA Waste and WMI to divest certain commercial waste collection assets. Those assets primarily include, capital equipment, trucks and other vehicles, containers, interests, permits, used to service customers along the routes, in the following locations:

A. Akron, OH

USA Waste's and American Waste Corporation's front-end loader truck (''FEL'') commercial routes that serve Summit County, Ohio;

B. Allentown, PA

WMI's FEL commercial routes that serve the cities of Allentown and Northampton and Lehigh County, PA;

C. Cleveland, OH

WMI's FEL commercial routes that serve the City of Cleveland, portions of Cuyahoga, and very limited portions of Geauga and Lake County, Ohio;

D. Columbus, OH

WMI's FEL commercial routes that serve Franklin County, Ohio;

E. Denver, CO

USA Waste's FEL commercial routes that serve the City of Denver, and Denver and Arapahoe County, CO;

F. Detroit, MI

WMI's FEL commercial routes that serve the City of Detroit, and Wayne and limited portions of Oakland and Macomb County, MI;

G. Houston, TX

WMI's FEL commercial routes that serve the City of Houston, the Dickinson area, and Harris County, TX;

H. Louisville, KY

USA Waste's FEL commercial routes that serve the City of Louisville and Jefferson County, KY;

I. Pittsburgh, PA

WMI's FEL commercial routes that serve Allegheny County and Westmoreland County, PA, and the garage facility (real estate and improvements) located at the Y&S Landfill;

J. Portland, OR

WMI's FEL commercial routes that serve the City of Portland, OR;

K. Tucson, AZ

USA Waste's FEL commercial routes that serve the City of Tucson and Pima County, AZ; and

L. Gainesville, FL

WMI's FEL commercial routes that serve Alachua County, FL.

Appendix B

Correspondence Between with Counsel for USA Waste Services, Inc. and Dome Merger Subsidiary and Counsel for the United States, dated July 14, 1998.

July 14, 1998.

By Facsimile

Anthony E. Harris, Esq.,
Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Washington, DC 20530

Re: USA Waste Services, Inc. acq. of Waste Management, Inc.

Dear Tony: The purpose of this letter is to set USA Waste Services, Inc's (''USA Waste'') and Waste Management, Inc.'s (''Waste Management'') understanding of the front-end loader routes that are to be divested by pursuant to Section I D of the Stipulation and Hold Separate Order and Section II D of the Proposed Final Judgment that are to be filed with the Court in this matter (collectively ''the Consent Decree''). USA Waste's and Waste Management's agreement to enter into the Consent Decree is based on this understanding.

I have listed below, for each area described in the Consent Decree, all of the front-end loader routes operated by the company whose routes will be divested that generated at least ten percent (10%) of their revenues in the area in the most recent year of operation. The only exception is Waste Management of Pittsburgh route 226, which we agreed will not be divested. It is the defendants' understanding that these routes are all those that need to be divested pursuant to the terms of the Final Judgment.

Akron/Canton, OH

Akron Hauling routes 70, 90–92, 94, 96 and 97.

Allentown, PA

Waste Management of Allentown routes A60–62, A64 and A65.

Cleveland, OH

Waste Management of Ohio—Cleveland routes F01, F04–F10, 17 and 18.

Columbus, OH

Waste Management of Ohio—Columbus routes 001–019.

Denver, CO

USA Waste of Colorado routes 1301–1308, 6320–6322, 6326–6328, 7317–7320, 1398, 1399 and 6399.

Detroit, MI

Waste Management North Detroit routes 901–915.

Waste Management—Metro Detroit routes 003, 005, 006, 010, 015 and 017.

Efficient Sanitation in Clinton Twp. route 003 serving Macomb.

Houston, TX

Waste Management of Houston routes 702–724.

Waste Management of Southeast Texas—Dickinson routes 2–4.

Louisville, KY

USA Waste Services of Kentucky routes 514, 515, 526–528, 574 and 576.

Pittsburgh, PA

Waste Management of Pittsburgh routes 227–231.

Waste Management of Laurel Valley routes 200 and 202–205, as well as the garage at the Y&S Landfill.

Portland, OR

Waste Management of Oregon routes 201, 203, 204, 206 and 207.

Tucson, AZ

USA Waste of Arizona, Inc. Tucson District routes 301–305 and 391.

Gainesville, FL

Alachua Waste Management routes G–20 and G–12.

The United States and each of the Relevant States, as defined in the Final Judgment and Hold Separate Order, have agreed only that all front-end loader routes of the designated company that generated (10%) or more of the revenues in the most recent year of operation in an area described in the Consent Decree (with the exception of Pittsburgh route 226 referenced above) are to be divested pursuant to its terms. The United States and each of the Relevant States have not, at this stage, verified USA Waste's and Waste Management's representations as to which individual routes must be divested under the Consent Decree.

Sincerely yours,

James R. Weiss,

Counsel for USA Waste Services, Inc.

Neal R. Stoll,

Counsel for Waste Management, Inc.

Acknowledged for United States of America:

Anthony E. Harris

United States District Court, Northern District of Ohio, Eastern Division

United States of America; State of Ohio; State of Arizona; State of California; State of Colorado; State of Florida; Commonwealth of Kentucky; State of Maryland; State of Michigan; State of New York; Commonwealth of Pennsylvania; State of Texas; State of Washington; and State of Wisconsin, Plaintiffs, v. USA Waste Services, Inc.; Dome Merger Subsidiary; and Waste Management, Inc., Defendants. Civil Action No. 1:98 CV 1616; Judge Aldrich.

Certificate of Service

I, Anthony E. Harris, hereby certify that on July 16, 1998, I caused copies of the foregoing Competitive Impact Statement to be served on plaintiffs—the states of Ohio, Arizona, California, Colorado, Florida, Maryland, Michigan, New York, Texas, Washington and Wisconsin, and the commonwealths of Kentucky and Pennsylvania—and defendants USA Waste Services, Inc., Dome Merger Subsidiary, and Waste Management, Inc., by mailing a copy of the pleading first-class, postage paid, to a duly authorized legal representative of those parties as follows:

James R. Weiss, Esquire,

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Neal R. Stoll, Esquire,

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Mitchell L. Gentile,

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First Asstant Attorney General.

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Terry A. Lupia,

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Counsel for Plaintiff State of Wisconsin:

Anthony E. Harris, Esquire,

Illinois Bar No. 1133713. U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

[FR Doc. 98–24974 Filed 9–23–98; 8:45 am]

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Federal Register

Thursday
September 24, 1998

Part III

Environmental Protection Agency

State Program Requirements; Approval of Application to Administer the National Pollutant Discharge Elimination System (NPDES) Program; Texas; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6166–3]

State Program Requirements; Approval of Application to Administer the National Pollutant Discharge Elimination System (NPDES) Program; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Approval of the Texas Pollutant Discharge Elimination System (TPDES) under the Clean Water Act.

SUMMARY: On September 14, 1998, the Regional Administrator for the Environmental Protection Agency (EPA), Region 6, approved the application by the State of Texas to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters of the State. The authority to approve State programs is provided to EPA in Section 402(b) of the Clean Water Act (CWA). The approved state program, i.e., the Texas Pollutant Discharge Elimination System (TPDES) program, is a partial program to the extent described in this Notice (see section titled ''Scope of the TPDES Program''). The TPDES program will be administered by the Texas Natural Resource Conservation Commission (TNRCC). In making its decision, EPA has considered all comments and issues raised during the public comment periods. Summaries of the comments and EPA responses are contained in this notice. The comments and public hearing record are contained in the administrative record supporting this notice.

EFFECTIVE DATE: Pursuant to 40 CFR 123.61(c), the TPDES program authorization was approved and became effective on September 14, 1998.

ADDRESSES FOR VIEWING/OBTAINING COPIES OF DOCUMENTS: The Administrative Record (Docket 6WQ–98–1) and copies of the final program documents for the TPDES program are available to the public during normal business hours, Monday through Friday, excluding holidays, at EPA Region 6's 12th Floor Library, 1445 Ross Avenue, Dallas, Texas 75202. A copy is also available for inspection from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays, at Record Services, Room 1301, Building F, TNRCC, 12100 Park 35 Circle, Austin, Texas 78753. You may contact Records Services at (512) 239–0966.

Copies of the principal TPDES program documents (MOA, Program Description, and Statement of Legal Authority) are accessible on the Internet through the EPA Region 6 Water Quality Protection Division's web page *http://www.epa.gov/earth1r6/6wq/6wq.htm* and the TNRCC web page *http://www.tnrcc.state.tx.us.*

FOR FURTHER INFORMATION CONTACT: TNRCC expects to have a toll-free number for people to call with questions regarding the TPDES program operational by September 21, 1998. The TNRCC number is 1–888–479–7337.

SUPPLEMENTARY INFORMATION: Section 402 of the CWA created the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402(b) requires EPA to authorize a State to administer an equivalent state program, upon the Governor's request, provided the State has appropriate legal authority and a program sufficient to meet the Act's requirements.

On February 5, 1998, the Governor of Texas requested NPDES major category partial permit program approval [1] for those discharges under the authority of the TNRCC. Supplements to the State application were received by EPA Region 6 on February 12, March 16, April 15, and May 4, 1998. EPA Region 6 determined that Texas' February 5, 1998, approval request, supplemented by this additional information, constituted a complete package under 40 CFR 123.21, and a letter of completeness was sent to the Chairman of the TNRCC on May 7, 1998. EPA then proceeded to consider the approvability of the complete program application package.

The documents were described in the **Federal Register** Notice of June 19, 1998, (63 FR 33655) in which EPA requested comments and gave notice of public hearing. Further notice was also provided by way of notices published in the following nineteen newspapers on various dates from June 21–26, 1998: Tyler Morning Telegraph; Austin American Statesman; El Paso Times; Lubbock Avalanche Journal; Forth Worth Star Telegram; Odessa American; San Antonio Express; Wichita Falls Record-News; Abilene Reporter News; 10 San Angelo Standard-Times; Dallas Morning News; Amarillo News; Beaumont Enterprise; Houston Chronicle; Corpus Christi Caller-Times; Daily Sentinel (Nacogdoches); Brownsville Herald; Laredo Morning Times; and Longview News Journal.

As a part of the public participation process, both a public meeting and hearing were held in Austin, Texas, on July 27, 1998. The public meeting provided as an informal question and answer session, and began at 1:00 p.m. The hearing started at 7:00 p.m. Oral comments were recorded during the hearing and are contained in the administrative record supporting this action. Comments were accepted by EPA on all aspects of the TPDES program authorization through the close of the public comment period, which was extended by the Hearing Officer to August 10, 1998. EPA also accepted comment through August 24, 1998 on some more detailed clarifying information on resources for the TPDES program, provided in TNRCC's comments submitted at the July 27, 1998, public hearing. All comments presented during the public comment process, either at the hearing or in writing, were considered by EPA in its decision. EPA's responses to the issues raised during the comment period are contained in the Responsiveness Summary provided in this notice. A copy of EPA's decision and its Responsiveness Summary has been sent to all commenters and interested parties (those persons requesting to be on the mailing list for EPA actions in Texas).

The Regional 6 Administrator notified the State of the program approval decision by letter dated September 14, 1998. Notice of EPA's final decision is being published in the newspapers in which the public notice of the proposed program appeared (listed above). As of September 14, 1998, EPA suspended issuance of NPDES permits in Texas (except for those permits which EPA retained jurisdiction as specified below in the section titled ''Scope of the TPDES Program'').[2]

[1] Major category partial permit program approval is provided for under Section 402(n)(3) of the CWA. Pursuant to that section, EPA may approve a partial permit program covering a major category of discharges if the program represents a complete permit program and covers all of the discharges under the jurisdiction of the agency seeking approval, and if EPA determines the program represents a significant and identifiable part of the State program required by Section 402(b) of the Act. As discussed below under ''Scope of the Partial Program,'' TNRCC seeks permitting authority for all facilities that have discharges within its jurisdiction. However, TNRCC does not have jurisdiction over all discharges within the State of Texas. A small portion of the State's discharges fall under the jurisdiction of the Texas Railroad Commission.

[2] Had EPA been unable to meet the statutory deadline for action on the pending NPDES program authorization request (September 14, as extended by the TNRCC), then EPA would have had to suspend the issuance of NPDES permits on that date (other than for those activities retained by EPA via our Memorandum of Agreement). However, failure to meet the deadline would not have meant that the TNRCC automatically gained NPDES authority. It is EPA's interpretation that a State agency would not gain NPDES authority unless and

Scope, Transfer of NPDES Authority, and Summary of the TPDES Permitting Program

A. Scope of the Partial Program

The TPDES program is a partial program which conforms to the requirements of Section 402(n)(3) of the CWA. The TPDES program applies to all discharges covered by the authority of the TNRCC. This includes most discharges of pollutants subject to the federal NPDES program (e.g., municipal wastewater and storm water point source discharges, pretreatment, most industrial wastewater and storm water point source discharges, and point source discharges from federal facilities), including the disposal of sewage sludge (in accordance with Section 405 of the Act and 40 CFR Part 503).

The TNRCC has the authority to regulate discharges from industrial facilities covered by all Standard Industrial Classification (SIC) codes except for those facilities classified as 1311, 1321, 1381, 1382, 1389, 4922, and 4925, which are regulated by the Texas Railroad Commission. Some activities at facilities within these SIC codes are regulated by the TNRCC, and a list of the ten facilities currently affected is included in Appendix 2–A of the TPDES application. EPA retains NPDES permitting authority and primary responsibility for enforcement over all discharges not under the jurisdiction of TNRCC and therefore not subject to the TPDES program, including those within the jurisdiction of the Texas Railroad Commission. The TNRCC has authority to regulate discharges of storm water associated with industrial activity and discharges of storm water from municipal separate storm sewer systems, except at facilities regulated by the Texas Railroad Commission (see above). The TNRCC has primary responsibility for implementing a Pretreatment Program and a Sewage Sludge Program. The TNRCC has authority to regulate discharges from publicly owned and privately owned treatment works and for discharges from concentrated animal feeding operations (CAFOs) within the TNRCC's jurisdiction.

EPA retains permitting authority and primary enforcement responsibility over discharges from any CAFOs not subject to TNRCC jurisdiction. EPA and TNRCC are currently unaware of any CAFOs that are not under the jurisdiction of TNRCC. However, there is the potential that certain CAFOs that began using playas as waste treatment units before July 10, 1991, could claim exemption from State water quality standards in limited circumstances—effectively removing them from the jurisdiction of the TPDES program. This issue is discussed in detail in the response to comments sections of today's notice. EPA is simply taking this opportunity to inform the public that the Agency will retain NPDES jurisdiction over any such CAFO that falls outside of TNRCC's jurisdiction under the TPDES program.

TNRCC does not have, and did not seek, the authority to regulate discharges in Indian Country (as defined in 18 U.S.C. 1151). EPA retains NPDES permitting authority and primary enforcement responsibility over Indian Country in Texas.

B. Transfer of NPDES Authority and Pending Actions

Authority for all NPDES permitting activities, as well as primary responsibility for NPDES enforcement activities, within the scope of TNRCC's jurisdiction, have been transferred to the State, with some exceptions. EPA and the State agreed to these exceptions in the MOA signed September 14, 1998. In addition to the exceptions listed below, EPA retains, on a permanent basis, its authority under Section 402(d) of the CWA to object to TPDES permits proposed by TNRCC, and if the objections are not resolved, to issue federal NPDES permits for those discharges. EPA also retains, on a permanent basis, its authority under Sections 402(I) and 309 of the CWA to file federal enforcement actions in those instances in which it determines the State has not taken timely or appropriate enforcement action.

1. Permits Already Issued by EPA

40 CFR 123.1(d)(1) provides that EPA retains jurisdiction [3] over any permit that it has issued unless the State and EPA have reached agreement in the MOA for the state to assume responsibility for that permit. The MOA between EPA and the TNRCC provides that the TNRCC assumes, at the time of program approval, permitting authority and primary enforcement responsibility over all NPDES permits issued by EPA prior to program approval, with the following exceptions:

a. Jurisdiction over those discharges covered by permits already issued by EPA, but for which variances or evidentiary hearings have been requested prior to TPDES program approval. Jurisdiction over these discharges, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities with Outstanding Compliance Issues), will be transferred to the State once the variance or evidentiary hearing request has been resolved and a final effective permit has been issued.

b. Jurisdiction over all existing discharges of storm water associated with industrial or construction activity [40 CFR 122.26(b)(14)], including allowable non-storm water, authorized to discharge as of the date of program approval under one of the NPDES storm water general permits issued by EPA prior to approval of the TPDES program. The storm water general permits affected are: Construction storm water general permit (63 FR 36490), NPDES permit numbers TXR10*###; Baseline non-construction storm water general permit (57 FR 41297), NPDES permit numbers TXR00*###; and Multi-sector storm water general permit (60 FR 51108, as modified) [4], NPDES permit numbers TXR05*###. (For an individual facility's permit number, the * is a letter and the #'s are numbers, e.g., TXR00Z999). Jurisdiction over these storm water discharges, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities with Outstanding Compliance Issues), will be transferred to TNRCC at the earlier of the time the EPA-issued general permit expires or TNRCC issues a replacement TPDES permit, whether general or individual.

c. Jurisdiction over new discharges of storm water associated with industrial or construction activity, including allowable non-storm water, eligible for coverage under one of the NPDES storm water general permits issued by EPA prior to TPDES approval and listed above. Facilities eligible for but not currently covered by one of these

until EPA approves the State program, consistent with CWA 402(b), and 40 CFR 123.1.

[3] 40 CFR 123.1(d)(1) uses the term ''jurisdiction'' to describe the fact that EPA may retain administration over any permits issued by EPA, and for that reason, the term ''jurisdiction'' is used in this section. However, use of this term does not mean that EPA retains permit issuance authority for new permits, or that TNRCC does not have authority to issue TPDES permits for discharges covered by the permits over which EPA retains administration.

[4] The Multi-sector general permit was modified on August 7, 1998, to clarify permit coverage for storm water discharges covered under Sector G, Metal Mining. A further modification is currently awaiting publication in the **Federal Register** to expand the scope of coverage to all types of facilities previously covered under the 1992 baseline general permit. However, because permit modification does not trigger the transfer of permit jurisdiction under this section, the Multi-sector storm water general permit will remain under EPA's jurisdiction until it expires or is replaced by a TNRCC permit regardless of whether it is modified prior to program approval.

general permits may continue to apply to EPA for coverage. Jurisdiction over these storm water discharges, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities with Outstanding Compliance Issues), will transfer to TNRCC at the earlier of the time the EPA-issued general permit expires or TNRCC issues a replacement TPDES permit, whether general or individual.

Except as provided in paragraphs 2 and 3 below, EPA does not retain, even on a temporary basis, jurisdiction over discharges from individual storm water permits; storm water outfalls in waste water permits; and storm water discharges designated by the State in accordance with 40 CFR 122.26(a)(1)(v). The state has jurisdiction and permitting authority, including primary enforcement responsibility, over these discharges.

d. Jurisdiction over all discharges covered by large and medium Municipal Separate Storm Sewer System (MS4) permits issued by EPA prior to TPDES program approval. Jurisdiction over EPA-issued MS4 permits, including primary enforcement responsibility (except as provided by paragraph 3 below—Facilities with Outstanding Compliance Issues), will transfer to TNRCC at the earlier of the time the EPA-issued permit expires or TNRCC issues a renewed, amended or replacement TPDES permit.

2. Permits Proposed for Public Comment but not yet Final

EPA temporarily retains NPDES permitting authority, (except as provided by paragraph 3 below—Facilities with Outstanding Compliance Issues), over all general or individual NPDES permits that have been proposed for public comment by EPA but have not been issued as final at the time of program approval. Although Section 402(c)(1) of the Act establishes a 90-day deadline for EPA approval or disapproval of a proposed state program and, if the program is approved, for the transfer of permit issuing authority over those discharges subject to the program from EPA to the state, this provision was intended to benefit states seeking NPDES program approval. As a result, and in the interest of an orderly and smooth transition from federal to state regulation, the time frame for transfer of permitting authority may be extended by agreement of EPA and the state. See, for example, 40 CFR 123.21(d), which allows a state and EPA to extend by agreement the period of time allotted for formal EPA review of a proposed state program. In order to render programmatic transition more efficient and less confusing for permit applicants and the public, the State of Texas and EPA entered into an MOA that extends the time frame for transfer of permit issuing authority over those permits that EPA has already proposed for public comment, but which are not yet final at the time of program approval. Permitting authority and primary enforcement responsibility will be transferred to the State as the permits are finalized.

3. Facilities with Outstanding Compliance Issues

EPA will temporarily retain primary NPDES enforcement responsibility for those facilities which have any outstanding compliance issues. EPA will retain jurisdiction of these facilities until resolution of these issues is accomplished in cooperation with the State. Files retained by EPA for the reasons given above will be transferred to the state as the actions are finalized. Facilities will be notified of this retained jurisdiction and again when the file is transferred to the State. Permitting authority over these facilities will transfer to the State at the time of program approval.

A list of existing Permittees that will temporarily remain under EPA permitting jurisdiction/authority is included as part of the public record and available for review. Texas will continue to provide state-only permits for those dischargers over which EPA temporarily retains permitting authority, and which need state authorization to discharge.

No changes were made to the proposed TPDES program documents based on information obtained in the public comments received. However, TNRCC did provide some updates to its Continuing Planing Process (CPP) prior to its approval on September 10, 1998. More information on the CPP and these updates are found in comments and responses in the Responsiveness Summary section of today's notice.

Responsiveness Summary

EPA received a large number of comments on this authorization request. Many comments expressed the concern that the TNRCC may not be able to implement the program as described in their application package (e.g., due to possible future resource constraints). While EPA appreciates the concerns expressed in these comments, conjecture on future actions is not a basis for program disapproval. Texas has made a solid commitment to this program and has demonstrated that it meets minimum EPA requirements. TNRCC is not required to show that its TPDES program will exceed Federal requirements. Because the federal requirements are geared to ensure continuous environmental improvement, this ensures continues water quality improvement under the TPDES program. As part of its oversight role (including quarterly program reviews), EPA will review the implementation of the TPDES program to ensure that the program is fully and properly administered

The following is a summary of the issues raised by persons commenting on TNRCC's application for authorization of the TPDES program and EPA's responses to those issues. Due to the interconnected nature of many issues EPA received comment on, a degree of repetitiveness was unavoidable in the responses to comments. In an attempt to minimize redundancy, while still allowing those interested in a particular aspect of an issue to find an answer to their question, the responsiveness summary was structured by subject area. This resulted in related aspects of several issues being addressed in more than one subject area. Unless otherwise noted, all references to ''MOA,'' ''statement of legal authority,'' ''program description,'' and ''chapter [1–8]'' refer to the corresponding documents in the TPDES program submittal by TNRCC. Likewise, ''TPDES application'' or ''application'' refers to the TPDES program submittal as a whole. Unless otherwise indicated, ''the **Federal Register** notice'' when used without reference to a specific date or citation refers to the June 19, 1998, notice of Texas's application for NPDES authorization (63 FR 33655–33665).

Overall Support/Opposition Comments

1. Issue: General Statements of Support or Opposition

Many industries, trade groups, and regulated entities in the State of Texas expressed strong support for approval of the TNRCC application to administer the NPDES program in Texas. Most of these letters of support looked forward to the opportunity to reduce the additional confusion, time and expense of dealing with two regulatory agencies with largely duplicative permitting systems. Several citizens and public interest groups sent in strong letters of opposition, requesting EPA disapprove TNRCC's application. Many of these citizens and organizations believe the checks and balances of two permitting programs afford the State's ecosystems and waters, and its citizens, a greater level of protection than one system run by the State. Many of the letters EPA received were form letters from citizens

opposing the authorization of the TPDES program and highlighting two major concerns: (1) adequacy of TNRCC's resources and commitment to implement and enforce the program, and (2) concerns about public participation under the Texas-run program. Several comments, both for and against, related their information and issues directly to EPA's specific request in the **Federal Register** for public input on ten aspects of the proposed TPDES program (63 FR 33662).

Response: EPA agrees with the regulated public that a single regulatory agency eliminates duplicative efforts by both the regulated public and the governmental agencies trying to provide protection for our natural resources. It was clearly Congress' intent that states have every opportunity to directly administer the NPDES program and that EPA's main role would be providing national consistency and guidelines in an oversight role. EPA was only intended to run the NPDES program until states could develop programs adequate to protect the waters of the U.S. To this end, EPA had never been fully funded to do all the jobs required for full direct implementation of the NPDES program. This is the responsibility of State-run programs, and provides incentives for states to take over the program. States that wish to directly ensure protection of its State resources, and equitable treatment of its regulated public will take over the responsibilities of the NPDES program as Texas has applied to do. EPA does understand the concern citizens may have about State agencies replacing the federal presence. Some citizens are concerned that states are more easily influenced by political pressures. Some enjoy the double opportunity to separately participate in the regulatory process at both the State and Federal level to ensure protection of the natural resources important to their health, livelihood, and recreation.

EPA believes that the program outlined by the State of Texas will provide protection of these resources. EPA intends to work closely with the State in an oversight role to ensure the described program is implemented in accordance with the requirements of the CWA. EPA's continued authority to review and approve water quality standards, the Continuing Planning Process (CPP), and Water Quality Management Plans, oversee State-issued permits (and object if necessary), directly inspect dischargers, and over-file State enforcement actions affords the same level of CWA protection to the surface waters in Texas as if there were still separate State and EPA permits. EPA appreciates all of the input it received on the ten areas it specifically requested comments on in the **Federal Register** Notice. The comments below summarize all of the issues, information, and concerns which EPA received during the comment period; they include those on these ten specific topics and others of concern to the public.

In addition, EPA has reviewed comments that were submitted during the process of reviewing the TPDES program for completeness. Although these were sent prior to the official comment period, EPA has reviewed the issues and information in those letters, and incorporated all relevant issues in this response to comments. EPA has done this to ensure the public is provided with all the information germane to EPA's decision. This responsiveness summary serves as EPA's response to comments on the authorization of the TPDES program.

Issues on Which EPA Specifically Requested Public Input

Public Participation

2. Issue: Limits on Use of Federal Citizen Suits

One comment argued that provisions in Texas law would limit the ability of the public and local governments to use the citizen suit provisions of the Clean Water Act. Suggested first is that TNRCC's provisions for temporary orders or emergency orders could be used to authorize what would otherwise be a violation, in effect immunizing a violator from a citizen suit for the violation. The comment asserts that orders issued in the past under Chapter 7 of the Texas Water Code ''often'' authorized discharges of partially-treated or untreated wastewater or wastewater with constituent concentrations in excess of permit standards.

Response: Texas SB 1876 consolidated various statutory provisions governing emergency and temporary orders under new TWC Chapter 5, Subchapter L. Although some categories of orders might have been used in the past regarding pre-TPDES permits to provide exemptions under State law, Chapter 5 contains specific provisions making this authority inapplicable to provisions approved under the federal NPDES program. TWC § 5.509. (See also 30 TAC 35.303). Accordingly, the situations under which TNRCC will be able to use Chapter 5 emergency orders and temporary orders under the TPDES program (see 23 TX Reg 6907) will not result in ''authorizations'' pursuant to new or modified permits, nor provide a shield to citizen suits. See also specific comment on emergency orders and temporary orders. EPA will also be provided a copy of draft emergency and temporary orders for review and approval in accordance with MOA section IV.C.6.&7. The temporary and emergency orders also provide for public notice, public comment, and the ability of affected parties to request a public hearing. EPA does not agree with the comment's claim that this authority could be used to ''immunize'' violators.

3. Issue: Defenses Under TWC 7.251 Limit Use of Citizen Suits

One comment maintained that the defense under Section 7.251 of the Texas Water Code limits the use of the federal citizen suit provisions. The comment argues that federal law, unlike Texas law, does not provide excuses from violations and requires the operator to be prepared for reasonable worst case conditions. See also comments on strict liability.

Response: TWC § 7.251 provides only a narrow defense for innocent parties. As interpreted by the Texas Attorney General, TWC § 7.251 in effect requires the operator to be prepared for reasonable worst case conditions, because it does not excuse violations that could have been avoided by the exercise of due care, foresight, or proper planning, maintenance or operation. In addition, the provision does not shield a party from liability if that party's action or inaction contributed to the violation. There is a violation where a permittee allows a discharge to continue, in cases where the permittee could have taken steps to stop the discharge from continuing, but failed to do so. There appears to be no reason why the existence of the narrow defense in this law would impair citizens' right to bring suit.

Moreover, CWA § 505(a)(1) allows citizens to bring suit against any person alleged to be in violation of an effluent standard or limitation. As discussed in the **Federal Register** notice, EPA and the courts have interpreted the CWA as a strict liability statute. The defenses outlined in TWC § 7.251 are not recognized in the federal law. Accordingly, EPA does not believe that the authority in CWA § 505(a)(1) would be affected by TWC § 7.251.

4. Issue: Potential for Use of Penalties Not Recovering Economic Benefit to Block Citizen Suits

One comment suggests that Texas law does not require TNRCC to consider economic benefit in determining the

amount of a penalty. Therefore, the comment concludes, TNRCC can bring and has brought civil enforcement actions that seek less than the economic benefit and can thereby block civil enforcement actions brought by citizens or EPA.

Response: On page 2 of its July 27, 1998, comments, TNRCC states that the TNRCC statutory and regulatory authority as interpreted in its policy for penalties (included in its TPDES application as Appendix 6) ''does consider and account for all the factors required by state and federal law, including the economic benefit gained through noncompliance.'' TNRCC also asserts that, although the TNRCC does not use the same method of penalty calculation as EPA, under its policy, the actual penalties assessed will be appropriate, will not be generally or consistently less than those assessed by EPA, and will be consistent with federal law. EPA believes that the TNRCC's penalty authority does not prevent the program from satisfying the requirement in 402(b) of the Act and 40 CFR 123.27 that States have enforcement authority, including civil and criminal penalties, adequate to abate violations of a permit or the permit program.

As noted in the **Federal Register** notice (63 FR at 33664), Texas is not required to follow EPA's penalty policy. The comment did not argue that the statutory and regulatory requirements for approval require that TNRCC's statutory and regulatory procedures for assessing penalties be identical to EPA's. Accordingly, the comment has not provided any specific reasons why the TNRCC's authority imposes an inappropriate limitation on citizen access to CWA § 505.

The same response also applies to the extent that the comment is arguing that TNRCC's statutory and regulatory penalty authority imposes an inappropriate limitation on EPA ability to bring an enforcement action. In addition, as noted in the **Federal Register** notice, EPA may over-file as necessary to assure that appropriate penalties are collected nationwide. EPA reserves the right to over-file if a state has taken enforcement action but assessed a penalty that EPA believes is too low, consistent with CWA §§ 309 and 402(i).

5. Issue: Texas Audit Privilege Act Limits Access to Audit Documents in Citizen Suit Proceedings

A comment maintained that the Texas Audit-Privilege Law could be used to block EPA or a citizen from getting an audit through discovery. More generally, the comment noted that there is no case law holding that a more restrictive State evidentiary rule would apply in a federal action brought under the CWA.

Response: EPA does not agree that the Texas Audit-Privilege Law may apply to EPA enforcement actions or citizen suits that raise federal questions under the CWA in federal court. The law is an evidentiary rule that applies to administrative and judicial actions under State law. EPA believes that this rule would not apply in a federal action, brought by EPA or a citizen's group, and that under Federal Rule of Evidence 501, federal procedural requirements would be controlling. EPA's information-gathering authority under federal law, including CWA 308, is broad and allows the Agency to obtain information as required to carry out the objectives of the Act. There is nothing in section 308 or 309 of the Act that suggests a State evidentiary rule could be used to block EPA's use of this information.

There is no reason to think that if the issue came before a federal court, the court would apply a more restrictive State evidentiary rule rather than the federal rule. EPA believes it unlikely that the Texas Audit-Privilege Law will be held applicable in federal enforcement actions, and the mere ''possibility'' cited by the comment is therefore not a sufficient basis upon which to deny authorization of the Texas program. If in the future EPA were to receive an adverse decision on this issue, the Agency could consider its options at that time, including requesting Texas to revise its law.

6. Issue: Public Comment on Inspections

A comment expressed the concern that by deferring negotiation of the annual inspection plan, the public has no opportunity to comment, thereby ''deny[ing] Texas citizens due process of law.''

Response: EPA does not believe that the regulations define, with no flexibility, a precise number or type of inspections that must occur. Rather, as explained elsewhere, the regulations require States to show that they have ''procedures and ability'' to inspect all major discharges and all Class I sludge management facilities, where applicable. 40 CFR 123.26(e)(5). Thus, the regulations require a showing of capacity and a commitment to a level-of-effort for inspections, reserving discretion to the two sovereign governments to decide what number of inspections to undertake, and the identity of the facilities to be inspected. These judgments are matters of enforcement discretion, which are not reviewable, and the exercise of which do not raise due process issues. (See *Heckler* v. *Chaney,* 470 U.S. 821, 832 (1985))

7. Issue: Overview of Public Participation Issues

EPA received comments from seven different individuals or groups, concerning the public participation aspects of the proposed Texas NPDES authorization. Four similar comments expressed the opinion that Texas had established regulations and procedures that provided extensive public participation and, in fact, provided more opportunity to participate than required by the federal rules. One comment stated that there were extensive deficiencies in the State's statutes and rules in a number of separate areas regarding public participation requirements. These included issues regarding State standing not being as broad as federal standing, inadequate rules and procedures governing notice and comment for permitting and enforcement actions, and the State's inability to provide adequate information in a timely manner when claimed confidential by a permittee. Two additional comments raised concerns about the State failing to adequately address complaints and respond to comments, and one was concerned about the adequacy of the Texas standing statute and regulations.

Response: Responses are provided in the sub-issues below.

8. Sub-issue on Public Participation: Inadequate Notice and Comment of Permitting Actions

Several comments expressed concern that Texas' requirements for public notice and comment of permitting actions were not adequate for program assumption.

Response: EPA believes that they are adequate. EPA has carefully reviewed, based on the issues raised by the comments, Texas' requirements for public notice and comment of permitting actions found at 30 TAC Chapters 55 and 80. These provisions were enacted to ensure that Texas could meet the requirements of 40 CFR 123.25. As several comments asserted, TNRCC has enacted several revisions to its notice and comment procedures and EPA has found that the Texas regulations in this area meet the requirements of 40 CFR 123.25. One comment stated that there were differences between EPA's rules and TNRCC' rules concerning notice and comment in this area but did not identity what those differences were, and EPA in its review of the matter

could not identify any such differences. One comment also noted that TNRCC had streamlined its public participation procedures so as to ''get government off the back of industry,'' thereby eliminating public participation. Once again, there was no specific TNRCC rule or policy identified and no statement as to what specific authorization requirement of EPA's is not being met. Our review of Texas rules has not identified any such conflict and TNRCC's rules, as identified above, meet CWA requirements.

9. Sub-issue on Public Participation: TNRCC Consideration of Public Comments on Permitting Actions

Several comments expressed doubt that TNRCC will sincerely consider public comments on permitting actions.

Response: TNRCC is clearly required by § 55.25(c) to consider and, where appropriate, make changes to proposed permitting actions based on public comments. If an aggrieved party feels that TNRCC does not act appropriately, the party can often appeal the decision to the appropriate civil court (TWC § 5.351). In addition, EPA will be providing oversight of the Texas NPDES program, as it does every authorized program, to help ensure compliance with the authorization requirements.

10. Sub-issue on Public Participation: Adherence to Federal Requirements for Notice and Comment of Permitting Actions

One comment stated that Texas' program was deficient because the Texas program does not strictly adhere to all elements of EPA's policy or provisions of 40 CFR Part 25 involving public participation.

Response: EPA disagrees Texas is deficient in this area. Requirements on public participation for authorized programs are included in 40 CFR Part 123, State Program Requirements, including requirements for permitting, compliance evaluation and enforcement efforts. Neither the early 1981 EPA policy statement nor the full content of 40 CFR Part 25 cited in the comment constitute requirements for state programs.

11. Sub-issue on Public Participation: Opportunities for Public Participation in Enforcement Actions

One comment stated that Texas law does not provide the required opportunities for public participation in enforcement actions.

Response: EPA disagrees. Texas has elected, in accordance with 40 CFR 123.27, to provide for public participation in enforcement actions by providing assurances that it will (1) investigate and provide written responses to all citizen complaints, (2) not oppose permissive intervention, and (3) provide 30 days' notice and comment on any proposed settlement of an enforcement action. (See 40 CFR 123.27) TNRCC has procedures and/or enacted regulations to implement all of these requirements. (See 30 TAC 80.105, 109, and 254; see also Texas Water Code Ann. § 5.177 for complaint process)

12. Sub-issue on Public Participation: Definition of Settlement in Enforcement Actions

One comment stated that the above rules failed to define ''settlement'' and therefore were too vague to provide effective public participation.

Response: EPA does not find this to be a defect in the Texas program. First, it should be noted that the term ''settlement'' is not defined in EPA regulations. EPA also notes that both EPA and TNRCC regulations state that there will be notice and comment upon ''settlement of enforcement actions.'' (See, 40 CFR 123.27(d)(2)(iii) and 30 TAC 80.254) EPA believes this provides a sufficient definition of the type of settlement covered (i.e., any agreement between parties resolving an agency enforcement action). Also, TNRCC stated in its preamble in adopting 30 TAC 80.254 that, while ''settlement'' was not defined in the regulations, it believed that settlement has a well known meaning and stated settlement means ''the resolution of issues in controversy by agreement instead of adjudication.'' EPA does not find this definition to be at odds with the intent of its authorization criteria in this area. EPA does note that the comment did not state what kind of ''settlement'' of an enforcement action the TNRCC was failing to notice and comment, but it is clear the proper regulation is in place and TNRCC's interpretation of the rule is acceptable.

13. Sub-issue on Public Participation: Publication of Notices Only in the Texas Register

One comment noted that TNRCC's decision to publish notice and ask for comments on proposed settlements of enforcement actions in the ''Texas Register only'' does not provide effective notice.

Response: EPA believes that the use of the Texas Register provides adequate notice and meets the intent of the authorization criteria. While the comment does not explain reasons for this view that the Texas Register is not adequate, EPA finds notice in the Texas Register to be acceptable and, indeed, EPA and the Department of Justice provide for notice of its civil judicial settlements in the **Federal Register**. Registers provide a place where all citizens may go to inform themselves of actions proposed by various governmental bodies. TNRCC's use of this system is appropriate and provides effective public participation by using this statewide method to inform its citizenry of its proposed settlements.

14. Sub-issue on Public Participation: Permissive Intervention in Enforcement Actions

Some comments stated that the permissive intervention provision in 80 TAC 109 was inadequate because the rule stated that intervention would not be allowed where it would unduly delay or prejudice the adjudication.

Response: EPA disagrees with this assertion. Rule 24(b) of the Federal Rules of Civil Procedure contains the very same language. In addition, EPA's own rules on intervention found at 40 CFR 22.11(c) contain the very same language. It is important for administrative law judges and officers to have the ability to protect the rights of all parties and ensure that cases are administrated appropriately. Contrary to the comment's assertion, undue delay or prejudice have well-defined meanings in the case law. EPA does not feel that the use of these two terms creates a public participation problem. EPA fully expects that the state administrative law officers will appropriately apply these standards.

15. Sub-issue on Public Participation: TNRCC Executive Director's Control Over Enforcement Petitions

A comment expressed concern about the provision in the Texas regulation that states only the Executive Director may amend or add to the violations alleged in the petition. See 80 TAC 115.

Response: EPA disagrees with the comment that this prevents effective and meaningful public participation. As seen above, permissive intervention may have certain justifiable restrictions. It would seem that TNRCC seeks to reserve its enforcement discretion in determining which violations it will pursue with its enforcement resources. In addition, an intervening party has full rights to present evidence, especially as to the appropriate penalty amount and, even more importantly, the appropriateness of any required compliance or corrective action that may be included in a settlement or order issued to bring the facility into full compliance with the regulations. In addition, CWA § 505 allows a citizen to bring suit in federal court with regard to

any violation of the approved state program which the state is diligently prosecuting. This ensures an effective process whereby violations not addressed by the state agency may be resolved.

16. Sub-issue on Public Participation: TNRCC Authority to Promulgate Regulations Affecting Public Participation in Enforcement Actions

Two comments also raised the issue that TNRCC did not have statutory authority to promulgate the regulations and that there were certain procedural defects in the promulgation of some of its regulations. There was a specific concern regarding the state regulation allowing permissive intervention in enforcement actions.

Response: TNRCC has broad authority under the Texas Water Code §§ 5.102, 5.103, and 5.112 and Chapter 26 to promulgate rules to protect the waters of the State and to provide for public participation in carrying out this legislative purpose. Clearly it was TNRCC's intent, when it added the permissive intervention rule, to meet EPA's requirement for public participation in enforcement actions. The Texas Attorney General has issued an opinion stating that TNRCC has the authority to implement the federal NPDES program. Promulgations are entitled to a presumption of regularity and EPA accepts the state's assurances that they were valid. Further, these regulations have been fully promulgated and are currently effective, and, therefore, this could not be a basis on which to deny authorization. If the State is challenged in court on this matter and receives an adverse ruling striking down the permissive intervention regulation or any other state regulation required to maintain this federally authorized program, the State would be required to remedy any defect in order to maintain program authorization.

17. Sub-issue on Public Participation: Public's Right to Appeal Settlement of an Enforcement Action

A comment stated the State did not provide a right to appeal a settlement of an enforcement action subsequent to the notice and comment period.

Response: EPA does not believe this raises an authorization problem. 40 CFR 123.27(d)(2)(iii) does not require the state to provide an appeal procedure based on public comment in the settlement of an enforcement action. Nor does EPA provide such an appeal right in its administrative cases. In fact, EPA does not provide for notice and comment on CWA administrative case settlements at all, much less a right to appeal a settlement on that basis. EPA believes as a policy matter that it is important for the public to be able to raise concerns and issues regarding the settlement of enforcement cases so as to give the prosecuting agency an opportunity to reconsider its settlement decision if new, significant and material facts are brought to light. Having said this, an enforcement settlement agreement is significantly different from a permitting action. The safeguards to ensure public participation also can be different. 40 CFR 123.27(d)(2)(iii) regarding administrative enforcement settlements does not require that an appeal process be available. In 40 CFR 123.30, EPA specifically requires that civil judicial appeals of permitting decisions be provided by authorized states. There are other safeguards or public participation avenues available such as the right to permissive intervention and anyone who intervenes clearly has a right to appeal the settlement decision in a case to which he or she is a party. The Agency believes that another significant safeguard that provides assurances that comments will be properly considered is that prior to final entry of the settlement a judge (in a civil action) or the administrative law officer or commissioners must approve a settlement. (See TWC § 7.075) These officials normally have broad authority to take notice of any fact or information, including public comments, to ensure that any settlement they recommend or sign is in the public interest and not contrary to law or statute. This is certainly the case in the federal courts. *Citizens for a Better Environment,* 718 F.2d 1117, 1128 (D.C. Cir.) 1983, *cert. denied* 467 U.S. 1219 (1984).

It should also be noted that CWA civil judicial settlements are not required by statute to be subject to notice and comment, but notice and comment is provided for in accordance with 28 CFR 50.7 and this Department of Justice regulation does not provide for an appeal process.

18. Sub-issue on Public Participation: Texas ''Standing'' Requirements

Several comments expressed concern that Texas' requirements for ''standing'' in permitting and enforcement procedures limited public participation.

Response: As one comment pointed out, EPA has been concerned with state standing requirements and EPA believes that ''broad standing to challenge permits in court to be essential to meaningful public participation in NPDES programs.'' (61 FR 20976, May 8, 1996) EPA issued a rule providing the standard for States that administer NPDES programs regarding ''judicial review of approval or denial of permits.'' 40 CFR 123.30, as follows:

''States * * * shall provide an opportunity for judicial review in State Court of the final approval or denial of permits by the State that is sufficient to provide for, encourage, and assist public participation in the permitting process. * * * *A State will meet this standard if State law allows an opportunity for judicial review that is the same as that available to obtain judicial review in federal court of a federally-issued NPDES permit* [see § 509 of the Clean Water Act]. A State will not meet this standard if it narrowly restricts the class of persons who may challenge the approval or denial of permits. * * *''

Id. (emphasis added) EPA was concerned during its review of Texas' draft NPDES submissions that the State law governing citizen standing in Texas judicial proceedings would not meet the applicable standard. In response to issues, the State Attorney General examined applicable law and gave his opinion that Texas law is substantially equivalent to the federally-prescribed standard. This opinion can be found in the Statement of Legal Authority by the Texas Attorney General. The Texas Attorney General has stated that civil judicial standing in the Texas courts is the same as associational standing in the Federal courts and very similar to the federal requirement for individual standing. The AG has supported his opinion by reviewing the Texas case law in this area. Considering the current state of the case law, EPA finds the AG's evaluation sufficient to support the Agency's conclusion that the program meets the requirements of 40 CFR 123.30, and gives the evaluation deference. According to the Attorney General, an Attorney General Opinion carries the weight of law unless and until it is overruled by a state court. (Attorney General Dan Morales, ''Legal Matters'' (last modified July 1998)) —http://www.oag.state.tx.us/WEBSITE/NEWS/LEGALMAT/9807opin.htm—An Attorney General Opinion is entitled to great weight in courts. See *Jessen Assoc., Inc.* v. *Bullock,* 531 S.W.2d 593, 598 fn6 (Tex. 1975); *Commissioners' Court of El Paso County* v. *El Paso County Sheriff's Deputies Ass'n,* 620 S.W. 2d 900, 902 (Tex. App.-El Paso 1981, writ ref.n.r.e.); *Royalty* v. *Nicholson,* 411 S.W. 2d 565, 572 (Tex. App.-Houston [14th Dist.] 1973, writ ref. n.r.e. The Attorney General's authority to issue legal opinions is governed by the Texas Constitution, Article 4, section 22, and the Texas Government Code §§ 402.041–045.

It should be noted that State law provides two avenues of appeal of an NPDES permit: (1) the evidentiary hearing process, which is subject to appeal in accordance with Texas Administrative Procedure Act (APA), Texas Government Code Ann. § 2001.001 et. seg. and (2) a direct appeal to state court based on comments TWC § 5.351. The ''affected person'' provisions of TWC § 5.115(a) and 30 TAC 55.29 apply only to evidentiary

hearings and not to an appeal of an NPDES permit directly to state court based on comments. The court would decide standing based on State case law; therefore, EPA is determining approval of this element of the Texas program on the basis that at a direct appeal to civil judicial courts is provided for permitting actions under Texas law and the civil courts will determine standing based on the common law. The public is not required to file for an evidentiary hearing. Therefore, there is a direct avenue of appeal via the public comment process (TWC section 5.351), and EPA is basing its evaluation of standing on that appeal right.[5]

As part of EPA oversight of this program, we will be carefully reviewing any state court rulings in this area that may be handed down to ensure that standing and the appeal process continue to meet the requirements of 40 CFR 123.30. Should the Texas Supreme Court, which has not yet directly addressed the question of individual standing, ultimately articulate a test that is more restrictive than the federal standard, EPA will need to reconsider the adequacy of the public participation elements of the Texas NPDES program.

19. Issue: Impediments to Public Access to Permitting and Enforcement Information

One comment asserts that public access to permitting and enforcement information may be impaired where confidentiality claims or state agency information processes slow access or prevent access to information.

Response: The comment correctly asserts that ''Texas law for public access to information is generally equivalent to the federal law,'' and instead complains about perceptions of information mismanagement. These are not issues which impede authorization of the state program (TPDES), but do present matters which state and federal environmental officials will want to monitor during program implementation. The comment asserts that the state environmental agency is unwilling to summarily deny claims of business confidentiality or, in some cases, fails to do so in a timely manner. EPA has determined that Texas Open Records Act and EPA's regulations (40 CFR Part 2) are substantially equivalent. In both agencies, confidentiality decisions are made by the legal office, not the permit program. The permitting authority has little control over how or when this determination will be made. This issue has arisen from time to time during EPA's permitting process and EPA, where it is reasonable to do so, has suspended permit issuance during the resolution of claims of business confidentiality for permit application data. The facts surrounding these claims should be reviewed carefully by permit issuing entities. Actions should be taken to ensure information is made available to the public and that confidentiality claims do not prevent the public from being able to make informed comments. TNRCC can and should examine the equities of doing so, but this is not a program authorization issue. Similarly, the comment correctly asserts that ''on paper TNRCC's central records system could be adequate,'' but then complains that in fact it is not, noting ''a history of problems with the management of files'' by that agency. The comment asserts that TNRCC has implemented a record ''retention'' policy, a feature of most public record systems, including EPA's (e.g., see 40 CFR 2.105(b)). We agree with the comment that TNRCC has made recent efforts to improve its record's management, filing, and public responsiveness and EPA will continue to review this process during program oversight to ensure that any barriers which might arise to timely public access to information are addressed.

Texas' Regulatory Flexibility Under Texas Water Code 5.123

20. Issue: Texas' Regulatory Flexibility under Texas Water Code 5.123 (Senate Bill 1591)

EPA received several comments indicating that TWC § 5.123 (Senate Bill 1591) does not affect EPA's ability to approve the TPDES program. TWC § 5.123 gives TNRCC flexibility to exempt from State statutory or regulatory requirements an applicant proposing an alternative method or alternative standard to control or abate pollution. EPA also received two comments claiming that § 5.123 would prevent EPA from approving the TPDES program. One comment in support of approval believes that the assurances from the Texas Attorney General and TNRCC are sufficient to address EPA's concerns, and that implementation of § 5.123 should not interfere with the approval of Texas' application to administer the NPDES program in Texas. The two other comments expressed belief that the MOA language is unnecessary, but support its addition if EPA believes that it will clarify the issue.

Of the two comments opposed to approval on the basis of TWC § 5.123, one alleges that because § 5.123 allows TNRCC to waive any state standard or requirement, including water quality standards and reporting requirements, EPA cannot approve the Texas program. The comment also states that EPA cannot approve a program that includes § 5.123 because the regulatory flexibility given to TNRCC makes it impossible for EPA to determine what standards TNRCC will apply in any situation. The comment also notes that the phrase ''not inconsistent with federal law'' is not defined in TWC § 5.123. Furthermore, the comment claims that the assurances given by the Texas Attorney General and TNRCC are insufficient to repeal or nullify the clear language in a Texas law. The other comment opposes approval because of the flexibility given to TNRCC to exempt firms from State statutory and regulatory requirements.

Response: In the **Federal Register** Notice, EPA discussed the implications of TWC § 5.123, which, as discussed above, gives TNRCC flexibility to exempt from State statutory or regulatory requirements an applicant proposing an alternative method or alternative standard to control or abate pollution. As part of its application, Texas submitted a supplemental statement from its Attorney General stating that TWC § 5.123 does not authorize TNRCC to ''grant an exemption that is inconsistent with the requirements for a federally approved program.'' This statement of the Attorney General is persuasive and entitled to consideration. See *Jessen Associates, Inc.* v. *Bullock,* 531 S.W. 2d 593 (TX 1975). TNRCC also submitted a letter from TNRCC Commissioner Ralph Marquez, clarifying TNRCC's position that TWC § 5.123 does not authorize TNRCC to grant permits or take other actions that vary from applicable federal requirements. Because TNRCC is charged with implementing TWC § 5.123, its interpretation is also entitled to great weight. (*Yates Ford, Inc.* v. *Ramirez,* 692 S.W.2d 51 (TX 1985)).

In MOA Section III.A.22, TNRCC states that ''The regulatory flexibility authority in Senate Bill 1591 will not be used by TNRCC to approve an application to vary a federal requirement or a State requirement which implements a federal program requirement under § 402(b) of the Clean Water Act, EPA regulations implementing that Section, or this MOA, including but not limited to inspection, monitoring or information collection requirements that are

[5] Although it was not necessary for EPA to review the standing requirements of the evidentiary hearing process, the Agency notes with approval the recent Texas Court of Appeals decision in *Heat Energy Advanced Technology, Inc. et al.,* v. *West Dallas Coalition for Environmental Justice,* 962 S.W.2d 288 (1998 Tex. App.) regarding standing in the evidentiary hearing process under the ''affected person'' provisions of 30 TAC section 55.29.

required under § 402(b) of the Clean Water Act, EPA regulations implementing that Section or this MOA to carry out implementation of the approved federal program.'' Failure to comply with the terms and conditions of the MOA is grounds for withdrawal of the NPDES program from Texas (40 CFR 123.63).

Based on the foregoing, EPA believes that the assurances and interpretations given by the Texas Attorney General (the chief law officer of the State) and TNRCC are sufficient to assure that TNRCC will not use TWC § 5.123 to approve an application to vary a federal requirement or a State requirement which implements a federal program requirement under section 402(b) of the Clean Water Act, or the EPA regulations implementing section 402(b). If TNRCC's ability to vary state statutes and regulations does not include those statutes or regulations which encompass the federally approved TPDES program, there would be no effect on the federally approved TPDES program. If there would be no effect on the federally approved TPDES program, there is no reason to disapprove the Texas application on this basis.

Furthermore, both the Texas Senate and House Committee Reports for S.B. 1591 (TWC § 5.123) support this conclusion. According to these Reports, the purpose of S.B. 1591 was to give TNRCC the authority to exempt companies from those state requirements *which exceed federal requirements* (emphasis added). The alternative requirements would have to be at least as protective of the environment and public health as current standards. As the Reports state:

> ''This legislation provides specific statutory authorization for state programs which exceed federal law to serve as models for regulatory flexibility. This authorization is important for delegation of the federal Title V air-permitting program to Texas, so Texas can allow flexibility in those areas where Texas law exceeds federal law.'' (Senate Committee Report—Bill Analysis (S.B. 1591)—4/4/97; House Committee Report—Bill Analysis (S.B. 1591)—4/29/97)

Because the language and the legislative history of TWC § 5.123 do not support an argument that this provision would allow the State to waive federal requirements, we conclude that TWC § 5.123 does not render the TPDES program unapprovable.

In addition, TNRCC recently published regulations implementing TWC § 5.123 (23 TexReg 9347, September 11, 1998). In the preamble to those regulations, the TNRCC addressed the issue of whether the regulations could be interpreted to allow TNRCC to vary federally approved programs without EPA approval as follows:

> The commission * * * reiterates that orders entered under the authorizing statute, Water Code § 5.123, and this rule will not conflict with legal requirements for federally delegated or authorized programs. Neither the authorizing statute nor this rule authorizes the commission to grant an exemption that is inconsistent with the requirements for a federally approved program. The attorney general of Texas has so informed EPA, in his letter dated March 13, 1998, concerning the commission's application for NPDES authorization. As EPA points out in its comment, to vary the required elements of a federally authorized program without federal approval would violate (that is, be inconsistent with) federal law. As the attorney general noted, the authorizing statute does not authorize this.

This interpretation by TNRCC is also entitled to great weight. *Yates Ford, Inc.* v. *Ramirez,* 692 S.W. 2d 51 (TX 1985). While it may have been clearer to the public and the regulated community had the TNRCC included in the regulations EPA's suggested language on this point, EPA is satisfied that the State's interpretation is consistent with EPA's. As part of our oversight function, EPA will ensure that the Texas Regulatory Flexibility Rules are implemented in a manner that fully conforms to the interpretation set out in the preamble to those rules, and in the letters to EPA referenced above.

Texas' Defense to Liability for Acts of God, War, Strike, Riot, or Other Catastrophe

21. Issue: Texas' Defense to Liability for Acts of God, War, Strike, Riot, or Other Catastrophe

Section 7.251 of the Texas Water Code provides that if an event that would otherwise be a violation of a statute, rule, order or permit was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of that statute, rule, order, or permit. One comment asserts that Texas law creates defenses to violations that are not compatible with EPA's minimum federal requirements for state NPDES programs. Specifically, the comment argues that States must have authority to seek injunctions for violations and to assess or seek civil penalties appropriate to the violation. The comment argues that the affirmative defense in TWC § 7.251 creates a barrier to that enforcement authority, and is therefore prohibited.

The comment also asserts that the State application violates 40 CFR 123.27(b)(2), which requires that ''the burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act.'' In other words, State law should not include additional elements of proof for civil violations.

The comment further suggests that approving a Texas program that includes TWC § 7.251 countervenes an EPA interpretation set out in a 1982 settlement agreement with NRDC. Finally, the comment suggests that the defenses under Texas law will restrict citizens' ability to file citizen suits for violations.

Response: The comment's major concern appears to be that the defenses in TWC § 7.251 are ''inconsistent with federal requirements for holding a permittee responsible for the release of pollutants.'' EPA raised similar questions during its review of the TNRCC program authorization package. In response to those concerns, the State provided two clarifications: an addendum to its Attorney General's statement and a letter from TNRCC Commissioner Ralph Marquez, both of which are included in the administrative record to this action.

As interpreted by the Texas Attorney General, TWC § 7.251 provides an affirmative defense under State law only if the event causing the discharge was completely outside the control of the person otherwise responsible for the discharge, and only if the discharge could not have been avoided by the exercise of due care, foresight, or proper planning, maintenance or operation. Section 7.251 does not shield a party from liability if that party's action or inaction contributed to the violation, and it would not prevent the imposition of penalties for a violation persisting after the original force majeure event ceases to be the sole cause of the discharge (e.g., in the case of a continuing discharge).

Under State law, the State of Texas would have the ability to bring an enforcement action to address violations when the facility owner or operator should have taken steps to prevent the discharge by care and foresight, proper planning, or maintenance. For example, if the event could have been anticipated—such as a 50-year flood in a 50-year flood plain, or the need to provide training on pollution control equipment for replacement workers used during a strike— and the owner did not take proper precautions, then the failure to have done so could subject the owner or operator to an enforcement

action.[6] The Agency disagrees with the comment's statement that ''vandalism can be used as a defense, apparently, even if such an action could have been anticipated or if the entity responsible for the discharge did not take an appropriate response to the risk of vandalism to minimize the size or impact of the discharge.'' Such a scenario contemplates a discharge that could have been prevented through proper planning and foresight, and the owner or operator's failure to exercise that planning or foresight would render the defense unavailable to him.

The State has also demonstrated that TNRCC has the authority to enjoin any discharges or to order the cleanup of those discharges. As discussed in EPA's **Federal Register** notice, the Attorney General's Statement explains that TWC § 7.251 does not affect a court's authority to issue an injunction to enforce any TWC requirement or prohibition, including the requirement that a party comply with any permit, rule or order issued by the TNRCC. The TNRCC can enjoin by suit in state court any violation or threat of violation of a statute, rule or permit under the TPDES program. Thus, the Agency believes that the State had demonstrated adequate authority to seek injunctions as required in 40 CFR 123.27.

TWC § 7.251 applies only to actions brought under state law, but does not provide a defense to enforcement actions brought by EPA or citizens pursuant to the federal CWA. As discussed in the **Federal Register** notice of the TPDES application (63 FR 33662), the federal CWA is a strict liability statute recognizing as a defense to liability only the federal upset defense (at 40 CFR 122.41(n)), which is a very narrow affirmative defense for violations of technology-based effluent limitations.

EPA does not view TWC § 7.251 as a defense to liability under the federal CWA, and indeed, the Attorney General has stated that the language of § 7.251 will not be placed into TPDES permits. EPA also does not view § 7.251 as affecting the burden of proof for establishing a violation under State law. The burden of proof is unchanged from the federal system, and the elements of proof are unchanged. Rather, § 7.251 merely establishes a potential affirmative defense under State law. The person asserting the defense must assume the burden to plead and prove the defense. This means showing that the discharge was caused entirely by other persons or by factors over which they had no control, and that the discharge was not reasonably foreseeable or preventable. As noted in the **Federal Register** notice, even EPA would rarely seek penalties in such cases.

As to the comment's assertion that the Texas law is inconsistent with an alleged EPA interpretation set out in a 1982 settlement agreement with NRDC, without more specific information, EPA has been unable to locate this reference. However, as discussed above, the interpretation of Texas laws by the Attorney General recognizes that the federal CWA is a strict liability statute, and the Texas statute does not affect that standard of liability.

EPA also disagrees that the defenses under Texas law will restrict citizens' ability to file citizen suits for violations. As noted above, the affirmative defense language of TWC § 7.251 will not be incorporated into NPDES permits. Texas could not allow discharges disallowed by federal law; accordingly, TWC § 7.251 would not remove violations of federal law from the scope of CWA § 505(a). Thus, the CWA's citizens suit provision affords those in Texas the same right and opportunity to bring citizens suits as those in other States.

Inspections

22. Issue: Inspection Commitments

Some comments expressed support for the TNRCC inspection strategy, stating that inspections should be focused on those facilities not meeting permit limitations, and on impaired watersheds. However, others State that TNRCC should be required to perform inspections on 100% of the ''majors'' and Class I sludge facilities annually. They also state that TNRCC does not have adequate resources to inspect the required universe of facilities. In addition they State that TNRCC has failed to allocate resources to inspect enough CAFOs, pretreatment programs, ''92–500 minors'' (smaller municipal wastewater treatment plants built with federal construction grants authorized under Public Law 92–500), and to adequately respond to citizen complaints.

Response: In Chapter V of the MOA TNRCC states it has the procedures and ability in place to inspect the facilities of all major dischargers and Class I sludge facilities. TNRCC's statement is consistent with 40 CFR 123.26(e)(5). However, EPA's guidance on inspection coverage recognizes that minor Permittees may also cause significant risks to the environment and human health, and some resources may be shifted to inspect them. Any shift in resources must be negotiated and agreed upon between EPA and TNRCC annually.

Under the terms of the proposed MOA, the TNRCC will develop an annual inspection plan that establishes priorities, lists the major and minor dischargers to be inspected, and demonstrates that the plan is substantially equivalent to the annual inspection of all major dischargers and Class I sludge management facilities, where applicable. The TNRCC will have to inspect majors at some regular interval while expending resources on minors equivalent to 100% of the majors annually. As discussed in more detail below, the TNRCC will also have to demonstrate environmental benefits of inspecting other facilities, such as, improved compliance of targeted facilities in priority watersheds and decreased loadings of pollutants of concern. Under the proposed MOA, if EPA and the TNRCC are unable to reach agreement on the universe of majors/minors to be inspected under the annual inspection plan by the beginning of the following fiscal year, TNRCC agrees to inspect 100% of the majors and all Class I sludge management facilities.

EPA has reviewed the resource allocation for inspections, and believes that the 27 existing FTEs (full time equivalent, e.g., one person working 40 hours per week or two people working 20 hours per week), 12 new FTEs which will be hired following authorization, and 14 (nine existing and five additional) inspectors dedicated to sludge, CAFOs and pretreatment, will be adequate. In discussions with TNRCC regarding their July 27, 1998, submittal, TNRCC staff stated that the 30 inspections referenced assumes there are other activities that the staff must perform annually. If these factors were not taken into consideration, then inspectors would be able to perform more than the indicated 30 inspections per year. The federal regulations do not require a State to make specific commitments for CAFO, pretreatment or minor inspections. Additionally, in its July 27, 1998, submittal providing additional detail, TNRCC indicated that they would inspect approximately 24% of the pretreatment facilities in the first year and 38% in the second year. As part of annual inspection negotiations EPA will further discuss the adequacy of these inspection numbers.

23. Issue: Potential Misuse of Annual Inspection List

Some comments oppose a proposed annual agreement between EPA and

[6] These general comments should not be construed as an opinion on any specific set of facts, such as in the Crown Central case cited in the comment.

TNRCC regarding inspection commitments in which an inspection plan would be developed that would list the facilities to be inspected annually. They believe that such a list would allow the regulated community to know which facilities would be inspected annually, thereby reducing the incentive for compliance.

Response: EPA and TNRCC annually work together in developing a list of major and minor dischargers which will be inspected. The Agencies will continue to do so as described in Chapter V of the MOA. TNRCC currently has and will continue to have a notification policy under which a facility is notified one to two weeks prior to a State inspection. However, any facility that will be inspected by EPA or inspected jointly by EPA and TNRCC will not be notified. Further, EPA does not agree that the list of facilities to be inspected will be known prior to the inspections. Texas Government Code, Chapter 552, describes the circumstances under which information can be withheld under the Texas Public Information Act. The Texas Attorney General makes this decision. This is addressed on Page 6 of the MOA. Under the Federal Freedom of Information Act, the list of inspections to be performed are considered enforcement confidential and are not released to the public.

24. Issue: Discrepancy between MOA and Federal Register Notice Regarding Inspection Plan

One comment noted that there was a discrepancy between the **Federal Register** notice and the MOA regarding the proposed inspection plan. Specifically, the **Federal Register** notice indicated TNRCC would have to demonstrate water quality improvements as a result of shifting resources from major inspections to minor inspections. The MOA does not specifically State this.

Response: The inspection plan discussed in the MOA will be the framework for annual negotiations of a comprehensive enforcement agreement between the two agencies regarding the number and type of inspections, type of facilities to be inspected, location of facilities (watersheds) etc. If TNRCC proposes to shift some inspection resources from major to minor dischargers, it must demonstrate to EPA that this strategy—in conjunction with other water program efforts set forth in their plan—will result in environmental benefits over time, such as improved compliance rates of targeted facilities in priority watersheds and decreased loadings of pollutants of concern. If over time, these efforts do not show such improvements, then EPA and the TNRCC will reassess the proper allocation of inspection resources between major and minor dischargers as part of the annual inspection plan negotiations.

Timely and Appropriate Enforcement

25. Issue: Timely Enforcement

Some comments assert that TNRCC will not complete enforcement actions in a timely manner and has only committed to initiating such actions in a timely fashion. While some comments assert that TNRCC does have a program that will ensure that timely and appropriate actions will be taken, they also note that EPA does not in all cases take timely and appropriate action.

Response: EPA encourages States to adopt its guidance on timely and appropriate enforcement actions, however, the federal regulations do not require States to adopt EPA guidance. To address EPA's concerns with TNRCC in these areas, language is included in the MOA that states that in cases where TNRCC cannot meet the timely and appropriate criteria in EPA's Oversight Guidance, TNRCC agrees to notify EPA. EPA reserves its right to take timely and appropriate enforcement if TNRCC fails to finalize its actions in a timely manner (see MOA Part V.E.). In cases where EPA believes a formal action must be taken, EPA initiates timely and appropriate action. However, there are instances when formal action is not appropriate, e.g., facility has returned to compliance, facility is on a long-term construction schedule and is compliant with the schedule, etc.

26. Issue: Enforcement on Small Businesses

One comment states that TNRCC has ''not committed to enforce adequately against small businesses, given the limitations in Chapter 2006, Subchapter A of the Texas Water Code.''

Response: Chapter 2006, Subchapter A of the Texas Government Code requires a state agency that is considering adoption of a rule that would have an adverse economic effect on small businesses to reduce that effect if doing so is legal and feasible. EPA does not find this subchapter limits TNRCC's ability to enforce against small businesses. Subchapter A of Chapter 2006 does not apply to enforcement actions brought against ''small businesses'' as defined by the Texas Government Code. There is nothing to indicate the TNRCC is not committed to enforcing its statutes, rules, orders, permits, and other authorizations no matter the size of the permitted entity.

27. Issue: TNRCC Commitment to Use EPA's SNC Criteria

One comment stated that TNRCC has not committed to use EPA's significant noncompliance criteria (SNC), and has not developed the procedures or ability to utilize the national database, the Permit Compliance System in a timely manner.

Response: TNRCC has committed to prepare the Quarterly Noncompliance Reports (QNCR) in accordance with the federal regulations at 40 CFR 123.45. In order to prepare the QNCR, TNRCC will be required to report facilities in reportable noncompliance (RNC), per 40 CFR 123.45. The more serious (due to magnitude or duration) Significant Noncompliance (SNC) violations make up a subset of RNC violations. As a result, TNRCC will have to use the SNC definition as SNC facilities in Texas will be automatically flagged by PCS. Training of TNRCC staff on the operation of PCS has been ongoing, and the Region 6 offices will continue to provide necessary training and support after program assumption by TNRCC.

TPDES Penalties

28. Issue: Adequate Penalties

Some comments expressed belief that TNRCC does not have the procedures to assess adequate penalties and to collect economic benefit gained through the violations. Others state that the TNRCC penalty authority is adequate and does ensure that no party gain an unfair economic advantage by avoiding noncompliance, but support EPA's right to over-file.

Response: Although EPA urges the states to implement penalty authority in a manner equivalent to EPA's, it is not required by the regulations or the Clean Water Act. While authority to collect economic benefit exists, TNRCC's policy allows for mitigation of penalties to zero in some instances. Therefore, there is no guarantee that economic benefit, at a minimum, will be collected by TNRCC in all cases. Through its oversight role EPA will work with the TNRCC to ensure that the penalties collected under the TPDES program are consistent with those required by the NPDES program including, where appropriate, the collection of an economic benefit. In cases where EPA believes appropriate penalties have not been assessed, EPA has reserved its right to over-file in accordance with CWA §§ 309 and 402(i).

29. Issue: TNRCC SEP Policy

One comment implied that TNRCC's Supplemental Environmental Project (SEP) Policy is inconsistent with EPA's policy.

Response: TNRCC is not required by regulation or statute to have a SEP policy that is equivalent to the EPA policy. In any event, on pages 6–14 of the TPDES Enforcement Program Description, TNRCC has cited potential SEP projects that are comparable to projects that would be approved under the EPA policy. In cases where TNRCC approves an inappropriate SEP that results in an inadequate penalty, EPA reserves its right to over-file in accordance with CWA 309 and 402(i).

30. Issue: Appropriate Penalties

One comment stated that EPA penalties against builders and developers are excessive. In addition they are concerned with EPA's ability to over-file because they would ''never really know'' what the penalty amounts would be for specific violations.

Response: The Clean Water Act sets statutory maximum penalties that would be used in litigation, and EPA utilizes its Clean Water Act Settlement Penalty Policy to calculate the minimum penalty for which the Agency would be willing to settle a case. The policy has provisions for addressing type of violation, duration, size of business, and ability of business to pay a penalty. This penalty policy is applied equally to all CWA enforcement including the construction ''industrial activity'' category (x) as found at 40 CFR 122.26(b)(14)(x). Due to EPA retaining administration of EPA-issued MS4 and storm water general permits, TNRCC responsibility for enforcement of the bulk of the storm water program will not begin for approximately two years (when the first of these permits expires). At that time, EPA will review the penalties assessed in these actions as part of its oversight authority, to assure that the penalty amounts are adequate to abate violations of a permit or permit program (40 CFR 123.27), EPA has reserved its right to over-file if they believe an adequate penalty has not been assessed.

31. Issues: Improper Barrier to Recovery of Penalties Where Violator Gained Economic Benefit From Violation

One comment alleged that the Texas audit privilege act establishes an improper barrier to recovery of penalties for violations where the violator gained an economic benefit from the violations.

Response: 40 CFR 123.27(a) and (c) require the State to have the authority to recover civil penalties for violation of any NPDES permit condition, filing requirement, regulation, or order as well as to assess civil penalties which are appropriate to the violation. Section 10(d)(5) of the Texas Audit privilege act [Tex. Civ. Statute art. 4447cc (1998)] allows recovery of civil or administrative penalties for ''substantial economic benefit which gives the violator a clear advantage over its business competitors.'' This language will enable Texas to obtain civil penalties appropriate to the violations, including those resulting in a substantial economic benefit. For those dischargers engaged in business competition, the law would also require proof of clear advantage deriving from that economic benefit. Under section 10(g) of the law, the enforcement authority does not bear the burden of proof concerning exceptions to immunity stated in section 10(d).

32. Issue: Improper Barrier to Recovery of Penalties for Continuous and Repeat Violations

One comment expressed concerns that the Texas audit privilege act would impose barriers to recovery of penalties for continuous and repeat violations.

Response: There is no civil or administrative penalty immunity under Texas Civil Statutes Article 4447cc if the disclosure ''has * * * repeatedly or continuously committed significant violations, and * * * not attempted to bring the facility or operation into compliance, so as to constitute a pattern of disregard of environmental [law].'' To show a ''pattern,'' the entity must have ''committed a series of violations that were due to separate and distinct events within a three-year period at the same facility or operation.'' By its terms, this provision provides Texas with authority to address continuous violations and repeat violations. Texas also retains authority to address all violations by issuing administrative or judicial consent orders and by seeking penalties for any subsequent violation of such orders.

Independent Applicability of Water-Quality-Based Limits

33. Issue: Application of Water Quality Standards for Discharges Not Subject to a Technology-Based Effluent Guideline

Several comments supported EPA's conclusion that TNRCC had the authority, and had actually committed to apply water-quality based effluent limitations regardless of whether or not there was a promulgated technology-based effluent guideline for a particular discharge. However, these comments also stated that there was no objection to EPA and TNRCC clarifying this issue in the MOA.

Response: EPA appreciates the support expressed by the comments and repeats the Agency's position for the benefit of those members of the public that did not review the June 19, 1998, **Federal Register** notice. In a brief filed February 12, 1998, in the U.S. Court of Appeals for the Fifth Circuit on behalf of the State of Texas and the Texas Railroad Commission in *Texas Mid-Continental Oil & Gas Association* v. *EPA* (No. 97–60042 and Consolidated Cases), the Texas Attorney General took the position that EPA did not have the authority to include water quality-based effluent limitations in an NPDES permit unless technology-based effluent guidelines had been developed (emphasis added). EPA vigorously disagrees with this position and continues to maintain that under the CWA, technology-based and water quality-based effluent limitations are independently applicable in determining appropriate effluent limitations for an NPDES permit.

While confident that the Texas Attorney General's position on EPA's authority to independently require compliance with water quality standards will not be upheld by the courts, EPA also believes it was not necessary to wait for a final ruling by the courts before acting on the TPDES program proposed by TNRCC. The Texas Attorney General's statement confirms that TNRCC has full authority under State law to impose effluent limitations for any discharge as necessary to insure compliance with approved water quality standards. In addition, the following language is included in Section IV.B of the MOA:

''Water quality based effluent limitations are part of the federally approved program and the State will impose such limitations in TPDES permits unless technology-based effluent limitations are more stringent.''

Therefore, the proposed TPDES program will function in a manner consistent with EPA's interpretation of the requirements of the CWA and its implementing regulations.

TPDES Resource Needs

34. Issue: Generic Comments on Adequacy of TNRCC Resources

Some comments stated belief that TNRCC had provided adequate information to address funding issues. Other comments expressed concern over TNRCC's ability to run their TPDES program without the use of federal funds. They also claimed that TNRCC had not adequately demonstrated that

they had sufficient resources or staffing to assume the program on the day of program assumption.

Response: Pursuant to the requirements of 40 CFR 123.22(b), the State of Texas submitted a description of the cost of establishing and administering the proposed TPDES program for the first two years after program approval in Chapter 7 of its application. That submittal indicated that 217 full time employees would be tasked with different aspects of the program, and that $12.3 million in funding would be available to run the program. Prior to the comment period on the proposed TPDES program, the Agency received letters from two concerned parties suggesting that more detail was needed to fully understand how the personnel and funds set out in the Texas application were to be used. EPA agreed that it would be helpful to understand more fully such information and, thus, asked the State to provide additional detail (63 FR 33664).

The State did so in comments submitted at the public hearing on the proposed State program approval on July 27, 1998, and made copies available to many of the attendees. The State's comments were also made available on July 28, 1998, at both the TNRCC and EPA offices. EPA further took the step of sending copies of the State submittal to all persons who had attended the public hearing or who had commented on the State program. To allow time for any additional comment on the resource question, the Agency extended the comment period on that single issue from August 10 until August 24, 1998.

Chapters 2, 6, 7, and Appendix 7–A, of the Program Description provided detailed information on TNRCC's organizational structure, positions, projected costs, and sources of funding, including a projection of enforcement resource needs. TNRCC has acknowledged, on page 8 of the MOA, that it is their responsibility after program approval to run and manage the TPDES, Pretreatment and Sewage Sludge programs with or without the assistance of Federal funding. The Federal regulations require States seeking program approval to submit an itemization of the sources and amounts of funding, ''including an estimate of Federal grant money,'' expected to be available for the first two years of program administration (40 CFR 123.22(b)(3)); the State of Texas has provided this information.

EPA has reviewed the resources TNRCC will devote to the TPDES program, the staffing requirements and qualifications, and the training necessary to utilize existing staff to operate the program on day one, and determined that TNRCC has the capacity to administer the program upon assumption. As part of EPA's oversight responsibilities, the agency will monitor the resources TNRCC is devoting to the TPDES program to ensure compliance with the regulatory requirements for a state-run program.

35. Issue: Under-Funding of TNRCC's Permitting Program

Several of the comments contend that the water quality permitting program is woefully underfunded. In its August 27th comments, the State provided an explanation of how the resources dedicated will be marshaled to administer the NPDES program.

Response: In its July 27 letter, the TNRCC discussed with great specificity why the resources described in Chapter 7 of its application would be sufficient to administer the NPDES program in Texas. In Exhibit A of that letter, the TNRCC used ''the number of [permit] applications processed'' as the most accurate measure of the work they could process. Looking at the prior ten-year period, the TNRCC found that an average of 727 applications were processed each year, not including NPDES permits processed for EPA under a Federal grant. While noting that permit applications in some areas of the State (principally central Texas) had increased, TNRCC expected the total number of permits required state-wide would remain relatively constant. TNRCC pointed to the workload-leveling effect of its basin permitting rule and its intent to expand use of general permits as justification for this assumption. Based on the total number of permits, they estimate approximately 651 permit renewals per year. Using these figures, the TNRCC concludes that it has adequate staff to handle the needs of the NPDES program:

> ''Assuming that the permitting universe will remain static at 3256 permits [given the movement toward issuing general—rather than individual—permits and other reasons set out by TNRCC], TNRCC predicts that an average permit writer would need to be responsible for processing 30 renewal permits each year (651÷21.5). Ample staffing is available to additionally process incoming new or amendment requests, since an existing staff of 18.5 has historically processed an average of 39 permits/person/year (727÷18.5).'' (July 27, 1998, letter, Exhibit A.)

The TNRCC went on to explain that new personnel positions in several categories have been funded in order to carry out the NPDES program. Taken together, the information provided by the State appears to demonstrate adequate resources to implement the NPDES program in Texas.

As a sub-point, a comment expresses concern that the application does not account for the resources necessary to process the approximately 3,000 NPDES applications now pending at EPA Region 6 that are to be transferred to the State. In response, as the comment concedes, it is somewhat unfair to ask the State to show readiness to pick up an entire program prospectively and to demonstrate that it can eliminate a backlog not of its own creation; other states seeking authorization have not been asked to make such a showing. However, it is EPA's understanding that Texas does plan to eliminate the backlog over the course of one permitting cycle (five years). Under the status quo pre-authorization, every discharger that has (or should have) a Federal NPDES permit has (or should have) a water permit under State law. Thus, as the State proceeds to renew or issue permits (in accordance with the State watershed priority system approved by EPA), it will in effect replace two permits (one State and one Federal) with one State-issued TPDES permit. The TNRCC explained its plan to address the EPA backlog as follows:

> ''In effect, EPA has allowed a situation where a significant number of discharges were never authorized under NPDES. These applications are to be passed to TNRCC for processing. This load of applications is assumed to equate to applications for the same discharges also received by the state. As TNRCC works on its own applications, it will also be combining the workload and eliminating EPA's backlog.'' (July 27 letter, Exhibit A., p.2)

36. Issue: Workload Analysis

Some public comments argued that States must provide a detailed workload analysis as required by EPA guidance.

Response: EPA agrees that its guidance asks that States set out their resources in the form of a workload analysis; however, this is not a requirement of statute or regulation. In any event, the State provides a workload analysis in response to EPA's request for additional detail on the application. (See July 27 letter, Exhibit D.)

37. Issue: Future Resources for Storm Water Program

One comment expressed concern that TNRCC does not currently have resources to operate the storm water program in Texas and has not ''laid out any clear plan for obtaining them over a specified period of time.'' This comment also expressed concern that TNRCC would not immediately have adequate resources for inspection of

storm water permittees they will administer upon authorization. In response to EPA's request for public input on future resource needs, TNRCC submitted comments that contained an acknowledgment that additional resources will be needed when EPA-issued storm water general permits and municipal separate storm sewer system permits expire and administration transfers to the State. TNRCC pointed out that the Texas legislature has already authorized increases in permit fees, contingent upon NPDES authorization. TNRCC also stated in its comments that ''* * * appropriations for the storm water permitting program elements initiated in fiscal year 2001 will be an exceptional item request in the TNRCC LAR [legislative appropriations request] for 2000–2001.''

Response: At the time of program assumption, EPA will only transfer administration of those storm water discharges included as part of an individual industrial permit to TNRCC. EPA will continue to administer discharges authorized under municipal separate storm sewer permits and storm water general permits for some time after program authorization. Administration of discharges covered by EPA's multi-sector storm water general permit transfers by October 1, 2000. Administration of discharges covered by EPA's construction storm water general permit transfers by July 6, 2003. Administration of discharges covered by EPA's permits for the nineteen municipal separate storm sewer systems in Texas starts to transfer in 2000, but most of these permits will not expire until 2003. Therefore, TNRCC will not need additional resources for permitting and enforcement on storm water-only discharges right away. Since administration passes at the time each storm water permit expires, or earlier if TNRCC issues a replacement permit, TNRCC's permit fee program would be available to provide resources. Under TNRCC's current procedures for conducting inspections, storm water outfalls at industrial facilities (the permits that would transfer to TNRCC at program authorization) are routinely included in the overall inspection of the facility.

EPA also notes that while, as with any governmental agency, TNRCC is dependent on funding by a legislature that has sole power on appropriations, it has committed to seek additional resources for these resource needs. On August 19, 1998, the TNRCC formally adopted its Legislative Appropriations Request (LAR) for the 2000–2001 biennium. Included is a request for additional appropriation authority for full State implementation of the NPDES storm water program using the existing permitting options available to TNRCC. For FY 2000, TNRCC has requested $3.4 million and 58 additional positions. For FY 2001, the request increases to $4.2 million and a total of 80 positions. These staffing levels and budget estimates are based on the existing limitations in State law regarding the use of general permits for storm water discharges (which could easily exceed the current 500,000 gallons per day cap allowed for a general permit issued by TNRCC under TWC § 26.040). Both agencies understand that this initial request is subject to change if the current statutory limits on the use of general permits are removed or modified.

38. Issue: Statements to the Legislature

Several comments assert that TNRCC's statements seeking additional funding for deficient parts of the Water Quality Program (which the comment describes as ''core elements of the NPDES/TPDES program'') demonstrate that the proposed TPDES program is underfunded.

Response: In TNRCC's letter of July 27, the TNRCC explains that wastewater permitting is only one of the State's water resource programs, and that permitting discharges covered by NPDES is only part of the wastewater permitting program (other water programs include the development of surface water standards, water quality assessment, modeling, etc.). According to TNRCC, the legislative initiative referred to by the comments ''related to other aspects of the [the State's] water programs,'' other than TPDES.

With specific regard to the NPDES program, the State indicated that ''the funding and positions (44 FTEs) had already been determined and authorized by the Legislature''; the reference to the NPDES program, and the 44 new FTEs associated with it, was included to make clear that the resource needs for the water quality programs were in addition to the resources already authorized for NPDES.

The TNRCC letter also points out that the testimony before the State legislature expressed a lack of financial support that affects the agency's ability to fulfill its statutory responsibilities at ''optimal levels,'' not its ability to run its water programs at levels that meet federal standards. Virtually all agencies—including EPA—frequently make the case for additional resources without implying that they are not performing their duties on an acceptable level.

39. Issue: Resources Beyond 2 Years

Some comments assert that more detail is required on those resources that will be required to run the storm water program, administration of which will pass to Texas in the fall of the year 2000. Others allege that despite the fact that TNRCC has not yet submitted its legislative appropriations request for 2000–2001, the TNRCC should have submitted at least reasonably detailed projections of wastewater permitting, data management and field inspection resource needs for FY 2000, which the comment sees as the second year of any TPDES program that could be authorized at this point.

Response: The federal regulations only require the State to provide information on the first two years of the program—i.e., FY 1999 and FY 2000. See 40 CFR 123.22. The State submitted a complete package on May 5, 1998, triggering EPA's statutory review period which was to end on August 3, 1998.[7] The State provided resource information for the two fiscal years running from September 1, 1998 to August 31, 1999, and from September 1, 1999 to August 31, 2000. The federal regulations do not require States to submit resource data for more than two years.

For the ''out years'' (more than two years after approval), as EPA noted in the June 19 **Federal Register** notice, the State will need to provide adequate resources for this period in a timely manner, and the State (in its July 27 letter) expressed the intention to do so. Specifically, the TNRCC indicated that it would seek—above and beyond the base budget of FY 1999, which already includes some increases—appropriation authority for administration of storm water permits in FY 2001. (If a state were to fail to ensure adequate resources to administer an authorized program, there could be potential grounds for program withdrawal under 40 CFR 123.63.)

40. Issue: Resources for Laboratory Chemists

One comment stated that TNRCC does not have an adequate number of laboratory chemists to perform TPDES program functions, and provides no details on the personnel and positions.

[7] By letters dated July 10, 1998, and July 28, 1998, EPA and TNRCC agreed to extend the deadline by which EPA must make a final decision on the State's request for approval of the TPDES program until September 1, 1998. In an August 31, 1998, letter from Jeffery Saigas, TNRCC Executive Director, to Gregg Cooke, EPA Regional Administrator, the TNRCC agreed to give EPA additional time (until September 14, 1998) to complete its approval review.

Response: TNRCC provided information on the allocation of resources for the laboratory in Figure 2–1, Tables 1 and 2, of the Program Description, which shows the staffing level for the laboratory will be nine chemists, one laboratory manager, and one Quality Assurance Specialist. The description of these personnel and positions are included in Appendix 7–A and 7–B of the Program Description. EPA finds that this level of laboratory support does not prevent the TPDES program from functioning, especially since laboratory services could also be contracted out, if necessary due to intermittent surges in demand.

41. Issue: Comparisons with Other State's Program Resources

One comment states that TNRCC has a much higher facility to FTE ratio than either Louisiana or Oklahoma, and that this indicates the TPDES program is underfunded.

Response: As discussed above, EPA does not agree that the TPDES program is underfunded at this time. In addition to the facility to FTE comparison, EPA also reviewed the resource allocations for the enforcement program by job functions such as inspections and compliance monitoring. As stated in the response to comments regarding inspection commitments, EPA believes that the 27 existing FTEs for inspections, the 12 new FTEs which will be hired following authorization, and 14 inspectors dedicated to sludge, CAFOs, and pretreatment, will be adequate to run the NPDES inspection program. EPA did however, have some concerns regarding the adequacy of FTEs allocated for compliance monitoring activities and as a result, requested additional information from TNRCC. In TNRCC's July 27, 1998, submittal of additional detail, TNRCC indicated that in addition to the seven FTEs already available for compliance monitoring, they had three FTEs that could provide additional support if needed. EPA agrees with the comment that the facility to FTE ratio is higher in Texas than in Louisiana and in Oklahoma, but based on the original submittal, the July 27, 1998 clarification, and the fact that only about 54.5% of the minors, 94.6% of the 92–500 minors, and 52.7% of the major facilities will be transferred to TNRCC within the first two years, EPA believes that TNRCC will have the capacity to administer the program for the first two years.

42. Issue: Adequacy of Resources for Compliance Monitoring

One comment alleges that TNRCC analyzed the adequacy of its resources for ''compliance monitoring'' on the basis of only doing reporting for majors, significant minors and 92–500s, or approximately 718 facilities. The comment notes that compliance monitoring functions must be performed, however, for all NPDES permits for which TNRCC takes action, and that TNRCC, therefore, seriously understated the universe of facilities that the reporting staff must cover.

Response: NPDES states are only required to track majors, 92–500 minor facilities, and significant minors in PCS. TNRCC has indicated in their July 27, 1998, submittal that they have three additional positions available that can be used for compliance monitoring functions. Based on the July 27, 1998, submittal and the original package, EPA has determined that TNRCC has the capacity to perform compliance monitoring on those facilities which they will receive during the first two years.

Funding Sources Available for the TPDES Program

43. Issue: Funds Raised From Increased Permit Fees

Some comments indicate encouragement regarding the State Legislature's support for increased funding for the TPDES Program through an increase on the annual cap related to wastewater fees. Others commented that any increases in fees should be related to services actually rendered to that permittee.

Response: EPA can only require that the TPDES program be adequately funded. Choices as to the sources of the fund, e.g., general revenue taxes, permit fees, etc., are at the discretion of the Texas Legislature. It would be neither appropriate, nor constitutional, for the federal government to dictate exactly how a State government must fund its State programs. TNRCC also has the authority to raise fees assessed on numerous permittees who currently pay a fee far below the $25,000/year cap set by the Texas Legislature, should federal grant funds decrease substantially.

44. Issue: Funds for Water Quality Programs

Some comments also expressed concerns that a permit fee-based funding mechanism would not adequately account for increased funding needs related to general water quality programs which are not tied directly to a single permit.

Response: The TPDES application and associated supplemental documentation is reflected in TNRCC's application for FY 99 funding in support of its overall water quality program. Much of this funding is expected to be obtained through TNRCC's Performance Partnership Grant (PPG). Commitments associated with the PPG are included in TNRCC's FY 99 Performance Partnership Agreement (PPA). The PPA is a carefully negotiated document which is designed to be consistent with all statutes, regulations, and formal agreements associated with affected programs. Accomplishment of commitments included in the PPA and achievement of environmental results related to those commitments is reported by TNRCC and tracked by an oversight team at EPA. Any identified problems are addressed through renewed negotiation and appropriate follow-up actions.

Environmental Justice

45. Issue: Concerns Regarding Environmental Justice in Implementation of the TPDES Program

A few comments raised the issue of environmental justice. One comment asserted that EPA has failed to carry out its legal responsibilities under the President's Executive Order on Environmental Justice (E.O. 12898) in that EPA did not consider the impacts of approval of Texas' application on minority and low-income communities. This same comment also noted E.O. 12898 is based on Title VI of the Civil Rights Act, and that EPA has promulgated regulations implementing Title VI. Another comment asserted E.O. 12898 requires EPA to reject Texas' NPDES application, unless TNRCC can demonstrate that it has ''made environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations. * * *'' (E.O. 12898, § 1–101).

Response: EPA is committed to upholding the principles of environmental justice contained in the President's Executive Order on Environmental Justice and to ensuring compliance with Title VI of the Civil Rights Act, as amended, by recipients of EPA assistance. EPA believes that it has carried out its legal responsibilities and maintains that it has advocated environmental justice to the full extent of its legal authority in this action. EPA notes that nothing in the Clean Water

Act, E.O. 12898, or Title VI of the Civil Rights Act requires the Agency to reject Texas' application for lack of an environmental justice program. As one comment noted, the Clean Water Act and EPA's implementing regulations do not require that a State have a specific program or method for addressing environmental justice issues. Thus, EPA may approve a program that lacks an environmental justice program entirely. EPA has encouraged TNRCC to include an environmental justice program as part of its proposed TPDES program. In a letter dated February 6, 1998, TNRCC indicated that it did have an environmental justice program, although that program is not a part of the TPDES application.

Additionally, EPA notes that the obligations of E.O. 12898 to make ''environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations * * *'' apply to Federal agencies, not the TNRCC, as was suggested by one comment. (E.O. 12898, § 1–101). Furthermore, the obligations of E.O. 12898 are to be implemented in a manner consistent with, and to the extent permitted by, existing law. The Executive Order does not, by its own terms, create any new rights, benefits, or trust responsibility, substantive or procedural. (E.O. 12898, §§ 6–608, 6–609). Thus, EPA cannot go beyond the authority granted to it by the Clean Water Act in making its decision to approve or reject Texas' proposed program.

Finally, as one comment noted, EPA has promulgated Title VI implementing regulations that prohibit the recipients of EPA assistance from using criteria or methods of administering federally funded programs in a manner that results in discriminatory effects based on race, color, or national origin. See, 40 CFR Part 7. Also, EPA can provide TNRCC help in complying with the non-discrimination provisions of Title VI of the Civil Rights Act. These implementing regulations also set forth the process by which aggrieved parties may file complaints with the EPA. This is the proper process to by which to address individual claims under Title VI.

Other Statutory and Legal Issues

Issue: TNRCC Authority Over Discharge of Pollutants

One comment asserted that Texas lacks the authority to prohibit the range of discharges that are prohibited under federal law. In particular, the comment argues that Section 26.121(a) of the Texas Water Code does not enable TNRCC to prohibit discharge of pollutants that do not (1) qualify as sewage or recreation, agricultural, or industrial wastes or (2) qualify as ''other waste,'' within the meaning of Section 26.121(b), because they do not meet the definition of ''pollution'' found in Section 26.001 of the Texas Water Code. Section 26.001 defines ''pollution'' to mean ''the alteration of physical, thermal, chemical, or biological quality of, or the contamination of, any water in the State that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.'' The comment argues that the showing of harm, detriment, or injury required by this definition impermissibly renders the scope of the Texas discharge prohibition less expansive than required by federal law.

Response: EPA agrees that the definition of ''pollution'' found in Section 26.001 of the Texas Water Code renders the prohibitions found in Section 26.121(a) of the Code less expansive than federally required; however, Texas has resolved this problem by enacting revised Sections 26.001 and 26.121 that take effect upon NPDES program authorization. The revised Section 26.121 contains a subsection (d) that states:

''Except as authorized by the commission, no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.''

While the sewage and waste definitions remain unchanged, the revised Section 26.001 adds a definition of ''pollutant'' (as opposed to ''pollution'') that matches, almost word-for-word, our definition of ''pollutant'' found at 40 CFR 122.2. Accordingly, Section 26.121(d) of the Texas Water Code enables Texas to prohibit the full scope of pollutants that Texas must be able to prohibit under federal law.

46. Issue: Conflicts of Interest

One comment contended that ''Texas does not meet the requirements for conflicts of interests and other ethical limitations for TNRCC decision-makers for NPDES programs.'' The comment also specifically asserted that the appointment of Rafael B. Marquez as Commissioner of the Texas Natural Resource Conservation Commission by Governor George Bush on May 1, 1995, was not, or is not, in compliance with Federal requirements for State programs.

Response: Section 304(i)(2)(D) of the Clean Water Act and 40 CFR 123.25(c) constitute the Federal authorities for the proposition that no State board or body with authority to approve permit applications shall include (or will include at the time of approval of the State permit program) as a member any person who receives, or who has received during the past two years, a significant portion of his income directly or indirectly from permit holders or applicants. Specifically, 40 CFR 123.25(c) states:

''State NPDES programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.''

EPA's analysis of the Texas Water Code, specifically Sections 5.052, 5.122, 5.053, 5.054, 5.059 and 5.060, as well as 30 TAC 50.33 satisfies the Agency that the State has met the Federal conflict of interest requirements. Specific attention was given to the appointment of Rafael B. Marquez as Commissioner of the Texas Natural Resource Conservation. TWC § 5.053(b), which is effective upon authorization of NPDES permit authority, states:

''In addition to the eligibility requirements in subsection (a) of this section, persons who are appointed to serve on the Commission for terms which expire after August 31, 2001, must comply at the time of their appointment with the eligibility requirements established under 33 U.S.C. Sections 1251–1387, as amended.''

The terms of all Commissioners currently appointed to the TNRCC expire on or before August 31, 2001. However, only Commissioner Marquez was not subject to the current conflict of interest rule at the time of his appointment. Commissioner Marquez was appointed and confirmed in May, 1995 and during that calendar year received a significant portion of his income from Monsanto Company, his former employer and a permit holder. Since 1995, Commissioner Marquez has received no portion of his income from a permit applicant or a permit holder. Therefore, more than two years have passed since a potential conflict of interest could have existed. Accordingly, we believe the provisions of Section 304(i) of the Clean Water Act have been satisfied in that more than two years have passed since Commissioner Marquez last received

significant income from a permit holder. His first participation in the TPDES process will take place after a two-year period in which he received no portion of his income from a permit applicant or a permit holder. Furthermore, since his term expires prior to August 31, 2001, the provisions of Section 5.053(b) of the Texas Water Code regarding compliance ''at the time of * * * appointment'' are inapplicable as to Mr. Marquez. It should also be noted that, under Section 5.054, Commissioners may be removed for failure to maintain the qualifications required for their appointment.

The State of Texas has provided other assurances that the Federal conflict of interest provisions will be carried out. Commissioners' standards of conduct are set forth in Chapter 572 of the Texas Government Code, which requires personal financial disclosure and prohibits conflicts of interest. These safeguards closely resemble Federal standards of conduct and set forth similar procedures for oversight and reporting.

EPA Region 6 has also received the Texas Attorney General's opinion regarding conflict of interest issues associated with the contemplated assumption of NPDES authority by the State of Texas. Based on this opinion, and our own assessment, we are satisfied that no conflict of interest exists.

47. Issue: Improper Partial Phased Program

Some citizens and organizations commented that the proposed TPDES partial program is improperly ''phased.'' The comments reach this conclusion by arguing that (1) the Texas program, although partial, would not be a ''major category partial program'' within the meaning of subsection 402(n)(3), and (2) the program, although not a ''major component partial program'' within the meaning of subsection 402(n)(4), would still be phased.

The comments first assert that the program would be partial because it would not cover those discharges regulated by the Texas Railroad Commission. Nonetheless, the comments contend that the program would not meet the requirements of subsection 402(n)(3) because it would not cover all discharges within the jurisdiction of TNRCC. In particular, the contention is that the proposed Texas program does not cover discharges from CAFOs into play as, certain Municipal Separate Storm Sewer System (MS4) discharges, and storm water discharges associated with industrial activity.

Next, the comments contend that the program would not meet the requirements of 402(n)(4) because TNRCC does not commit to assume jurisdiction over the discharges regulated by the Texas Railroad Commission. Nonetheless, the comments also assert that the Texas program would still be phased. They contend that various alleged inadequacies in TNRCC authority and resources leave the agency with no choice but to phase-in parts of the proposed program.

Response: CWA § 402(n)(3) allows EPA to approve a ''major category partial permit program,'' while authorization of a ''major component partial permit program'' is permissible under CWA § 402(n)(4). A major category partial permit program is commonly called a ''partial program'' and CWA 402(n)(3) describes that a State (or agency of a state) may apply for that portion of the NPDES program for which it has jurisdiction, as long as it reflects all of that agency's jurisdiction, and includes a significant number of the point source categories regulated under NPDES. A major component partial permit program [CWA 402(n)(4)] is commonly called ''phased'' because it allows a State to take that portion of the NPDES program for which it has jurisdiction, so long as it commits and sets forth a plan for obtaining authority to regulate (consistent with CWA) the rest of the point source categories under the CWA within a 5-year period. These two options were included in the CWA to allow states like Texas, with more than one agency regulating categories of point sources, to apply for NPDES program authorization for at least one of its agencies, and follow, either in the phased approach, or completely separately, its other regulatory agencies. Since the program described by Texas in its application covers all discharges subject to the NPDES program that are under the authority of the TNRCC, the TPDES program is a ''major category, partial permit program'' (i.e., partial) and not a ''major component partial program'' (i.e., phased).

The Texas application does describe a program for the regulation of CAFO, storm water, and all wastewater discharges under the authority of the TNRCC. Texas describes the processes for issuing and enforcing all permits in the program description and makes the necessary commitments to issue needed general and individual permits in the MOA (see Part III.A of the MOA). Moreover, the Texas program would not categorically exclude coverage of any class of CAFO discharges. The language in the **Federal Register** Notice describing the Texas program application was merely intended to indicate that EPA believed that there was the potential (discussed in the response to specific comments on this issue) that certain CAFOs that began operation prior to July 10, 1991, could fall outside the authority of the TNRCC. The Agency's intent was merely to provide notice to the public that any such CAFOs would remain under the jurisdiction of EPA. Accordingly, the Agency believes that the program described in the TPDES application covers all discharges within the jurisdiction of the TNRCC and, therefore, qualifies as a major category partial permit program under subsection 402(n)(3).

Nonetheless, the comments assert that the Texas program would be impermissibly phased because TNRCC allegedly (1) lacks the resources and staff, and (2) has failed to issue general permits necessary to administer parts of the described program. Subsection 402(n)(4) of the Act provides that a State regulatory agency may phase into its program permitting authority for those types of point source discharges over which it does not yet have jurisdiction. While the TNRCC has agreed under 40 CFR 123.1(d)(1) that EPA would retain jurisdiction to administer particular storm water permits that have already been issued, TNRCC proposes to immediately assume permitting authority over all types of point source discharges within its jurisdiction. The fact that the EPA has retained jurisdiction to administer certain storm water permits that have already been issued does not mean that the State Program is ''phased'' the State Program would be ''phased'' within the meaning of subsection 402(n)(4) only if it proposed to assume jurisdiction to issue permits for an entire class of point source discharges at some date after program approval. Under 30 TAC 281.25, Texas adopted by reference 40 CFR 122.26, requiring NPDES permits for storm water discharges. As noted above, TNRCC would have the authority to issue permits for all types of point source discharges within its jurisdiction on the date of program approval; accordingly the program, although partial, would not be phased.

48. Issue: TNRCC Emergency Orders and Temporary Orders

One comment included examples of how TNRCC has, and uses, the authority to issue temporary or emergency orders under TWC Chapters 5 and 26 to authorize discharges in excess of permit limitations or where there is no permit to authorize a discharge. The comment

noted that under federal law, a discharge cannot be made except in compliance with the authorization granted by a permit. The comment expressed concern that such orders would authorize what would otherwise be a violation of an existing permit and could be used to authorize a discharge without following the procedures and requirements for permits (including requiring compliance with technology and water quality standards). The comment further indicated that such actions by Texas would eliminate reporting requirements for violations of the original permit (limiting availability of information to the public) and would also ''immunize'' a violator from a citizen suit for the violation.

Response: On July 3, 1998, Texas proposed regulations implementing TWC, Chapter 5, Subchapter L, concerning temporary and emergency orders (23 TexReg 6899). EPA has reviewed these proposed regulations and has found them to be consistent with requirements to authorize the TPDES program. Specific restrictions on the use of temporary and emergency orders to anticipated bypasses in the TPDES program, consistent with CWA requirements, have been continued in the proposed revisions to 30 TAC 35.303. Under 30 TAC 305.21 (Consolidated Permits), TNRCC would also have the authority to allow temporary or emergency orders for discharges to waters—subject to the restrictions of the 30 TAC 35.303 section on water quality permits. TNRCC will only use emergency orders to provide authorization for bypasses which meet the conditions of 40 CFR 122.41. Any other use of emergency or temporary orders would be outside the scope of an approved program.

The comments may have been the result of concerns related to provisions in the proposed regulations, which provide TNRCC authority in other programs, to ''* * * by these orders issue temporary permits or temporarily suspend or amend permit conditions.'' Also, in the past, temporary and emergency orders have been used, or proposed for use, in the pre-TPDES State water quality permitting program for purposes such as an emergency order authorizing discharge of contaminated non-process wastewater at pollutant levels exceeding permit limitations from an ammonium phosphate and ammonium thiosulfate fertilizer manufacturing plant in Pasadena (TNRCC Docket No. 98–0320–IWD); and a temporary order authorizing the discharge of storm water associated with industrial activity from a steel manufacturing and fabrication facility in Morris County (TNRCC Docket No. 97–0746–IWD). As a result of the specific restrictions in 30 TAC 35.303 that become effective upon TPDES program authorization, TNRCC is aware that its authority to issue emergency and temporary orders cannot be used under the TPDES program in all situations allowable under the pre-TPDES State permitting program. While TNRCC has used temporary and emergency orders in the past to authorized discharges in ways that could not be allowed under the NPDES program, EPA and TNRCC agree that procedures under the new TPDES program must be consistent with federal requirements. EPA therefore believes that the existing rules and finalization of the proposed rules, and use of temporary and emergency orders by TNRCC in the context of the TPDES program will be consistent with the CWA.

With regard to the comment's expressed concerns regarding the 40 CFR 123.29 (and CWA § 402(a)(5)) prohibition on a State issuing a permit when EPA objects, EPA would like to point out that emergency orders authorizing bypasses of TPDES facilities will not be permits, but temporary emergency exceptions to the enforcement of some TPDES permit conditions. EPA agrees that the State may not issue a TPDES permit over the objection of EPA, but as discussed above, TNRCC will not have the authority to issue permit-type discharge authorizations via emergency or temporary orders under the TPDES program.

49. Issue: Identification of Discharges Not Under TNRCC Jurisdiction

One comment stated that TNRCC must provide identification of discharges not in TNRCC jurisdiction. The comment insisted that TNRCC list all permitted facilities which EPA permits but the State does not, and further explain why each such facility is not permitted under TNRCC's program. It was stated that this information is necessary to understand the division of jurisdiction between EPA and TNRCC with respect to CAFO discharges, discharges from oil and gas related industries, and radioactive waste.

Response: TNRCC is not required to provide such lists for approval of the TPDES program, and in fact EPA believes the request to be onerous and unnecessarily burdensome. The MOA clearly states which Standard Industrial Classification (SIC) codes are not within the regulatory authority of TNRCC (regulated by the Texas Railroad Commission). As previously stated, neither EPA nor TNRCC is aware, at this time, of a CAFO facility which is not subject to TNRCC authority. Additionally, EPA has very limited authority over radioactive wastes under NPDES. TNRCC has at least the same authority to regulate those wastes now addressed in the NPDES permits. TNRCC's authority in this area is discussed in the MOA and in Chapter II, page 2–5, of the TPDES application. EPA believes TNRCC's authority over CAFOs, oil and gas facilities and radioactive waste discharges is adequately described. In order to ensure that permittees are not confused about their NPDES regulatory authority after this authorization, EPA is providing separate notice by letter to the regulated facilities affected by this authorization, notifying each of its status under either EPA or transfer to TNRCC authority. EPA does not believe there is any matter of division of authority that must be resolved before TNRCC can be approved.

50. Issue: TNRCC Using EPA Guidance and Policy Only to Extent it Does Not Conflict With State Law or Policy

One comment expressed concern that Section III.A.7 of the MOA states that ''TNRCC will utilize EPA national and regional policies and guidance to the extent there is no conflict with Texas statutes, a specific State policy, or guidance adopted by TNRCC.'' The comment stated that this was backwards in that Texas was required to demonstrate equivalency with the federal requirements.

Response: Since policies and guidance are not legal requirements, TNRCC's is not bound to follow them exactly. For example, EPA has a policy that the application requirements for large and medium municipal separate storm sewer systems contained in 40 CFR 122.26(d) were intended to apply only to first-time permit issuance, and less information is required for permit re-issuance. While TNRCC will be following this EPA policy, if State law separately and specifically requires all this information, TNRCC could not legally ignore State law simply to follow an EPA policy. A State's right to have requirements more stringent or extensive than those of in the federal NPDES program is recognized in 40 CFR 123.1(i).

51. Issue: TNRCC Authority To Assume Existing NPDES Permits

One comment indicated that TNRCC had no authority to assume or enforce EPA's permits and particularly had no authority to adopt or enforce an EPA-issued general permit that did not limit

discharges to the 500,000 gallons per day limit imposed on TPDES general permits.

Response: 30 TAC 305.533 specifically provides for the State to adopt EPA-issued permits and pretreatment programs upon assumption of the TPDES permit program. This conforms with common practice in the NPDES State authorization process for a State and EPA to make arrangements in the MOA for the State to assume responsibility for EPA-issued permits. (See 40 CFR 123).

EPA does agree that the current limitations on maximum discharges that can be authorized under a general permit issued by TNRCC could affect the manner in which NPDES general permits transferred to the State for administration will be handled at their expiration. TNRCC will be notifying dischargers authorized under the EPA-issued general permits it assumes that their authorization to discharge in excess of 500,000 gallons per day will not be available under the replacement TPDES general permit, when it is issued, and they will need to apply for coverage under an individual permit should they need authorization for discharges over that amount. The general permits with the most potential to be authorizing discharges exceeding 500,000 gallons per day are the storm water general permits that EPA will be administering until they expire (or earlier if replaced by a TPDES permit). As discussed in responses to comments on program resources for the storm water program, TNRCC has requested the additional resources to administer the storm water program using individual permits due to the 500,000 gallons per day limitation on its authority regarding general permits.

52. Issue: Appropriateness of EPA's Completeness Determination

Several comments asserted that additional information provided in comments submitted by TNRCC on July 27, 1998, indicate that the TPDES application was not complete at the time of EPA's completeness determination on May 7, 1998.

Response: Contrary to the assertion of these particular comments, EPA does not view the supplemental detail provided by the State to call into question the completeness of the State's application. There is a distinction between the ''completeness'' of the application and the ''approvability'' of the application. On May 7, 1998, the Agency determined that Texas' February 5, 1998 program approval request (as supplemented by additional information received on February 12, March 16, April 15, and May 4), constituted a complete package under 40 CFR 123.21, i.e., one containing all the element necessary for EPA to make a decision on approvability. That package included a chapter on resources to run the program (Chapter 7), with numbers of State employees and funds that would be devoted to the running of the program. Thus, there was information on resources, but members of the public (and then EPA) asked for additional detail on the source of these funding resources and the precise use of personnel so that a more informed decision could be made about the sufficiency of those resources—the approvability question.

The structure of the federal regulations themselves makes clear that the completeness determination is distinct from the approvability determination. The regulations first require a decision as to whether or not a package has been received that includes all required elements (the Governor's letter, program description, Attorney General's statement, applicable State laws and regulations, etc.), as required at 40 CFR 123.21(a). Once EPA decides that the State Program submission is complete, the statutory review period ''for formal EPA review of a proposed State Program under CWA'' shall be deemed to have begun (40 CFR 123.21(b)(1)). EPA then embarks on a second decision as to whether the complete package should be approved. This distinction between the completeness determination and the approvability determination is also discussed in EPA guidance.

The regulations go on to provide that if, during the statutory review period, there is a ''material change'' in a package previously determined to be complete, then the statutory review period shall begin again upon receipt of the revised information (40 CFR 123.21(c)). This is consistent with generally accepted principles of notice-and-comment rulemaking. See Section 553(b)–(d) of the Administrative Procedure Act, 5 U.S.C.A. § 553(b)–(d); *Paralyzed Veterans of America* v. *West,* 138 F.3d 1434 (1988); *Asiana Airlines* v. *FAA,* 328 US App. D.C. 237, 134 F.3d 393 (1988); *National Electric Mfrs. Assn.* v. *EPA,* 321 US App. D.C. 319, 99 F.3d 1170 (1996); *Fertilizer Inst.* v. *US EPA, 290* US App. D.C. 184, 935 F2d 1303 (1991). However, EPA does not view the clarifications submitted by Texas as constituting a material change in the application. The additional detail provided was merely corroborative of the original application—the number of persons assigned to the proposed TPDES program did not change, and the amount of funding did not change. The dollars specified in the tables are different, but only to reflect changes made by TNRCC (unrelated to TPDES) in initiating career ladders, etc. EPA and the public were simply afforded a deeper understanding of the direction and management of those resources by the applicant State agency.

53. Issue: Appropriateness of Basing Approval Decision on Information Received During the Public Comment Period

One comment argued that ''EPA must make its authorization decision on the materials in the application, not on some new information submitted by TNRCC after the comment period has begun.''

Response: EPA does not agree. On its face, the comment appears to suggest that EPA is limited in its consideration to only the application, and may not consider any information that came in during the comment period; such a reading would negate the purpose of the comment period and cannot be correct. Further, it is not correct that EPA can consider the comments of all members of the public other than the State. The State is perhaps the most directly affected member of the public on this application, and has a great deal of information and insight into the application package that might be helpful to EPA in reaching a decision and avoiding erroneous interpretations (especially of TNRCC statements); EPA believes strongly that the State, like every other part of the public, is welcome to file comments on this notice of a proposed program. Indeed, here—as in almost every such case—the Agency specifically asked the State and other interested parties to comment on the many issues at stake in the approval decision.[8]

If, as the comment suggests, the receipt of mere clarifying comments (like those provided by the TNRCC) act to require the restarting of the statutory review period and a new 45-day public comment period, then the Agency and the public would be faced with a never-ending do-loop of notice and comment periods. As the courts have recognized in the context of notice-and-comment rulemakings, an agency must be able to learn from the comments it receives without facing the peril of starting a new round of comment. *International*

[8] See, e.g., 63 FR at 33662 (''EPA will consider all comments on the TPDES program and/or its approval in its decision''); 63 FR at 33664 (''EPA intends to seek clarification from the TNRCC regarding certain aspects of the information provided. Any additional comments by the public will also be considered * * *.'').

Harvester Co. v. *Ruckelshaus*, 478 F.2d 615, 632 n. 51 (D.C. Cir. 1973); *City of Stoughton, Wis.* v. *U.S. EPA*, 858 F.2d 747, 753 (D.C. Cir. 1988). Here, the Agency concluded that the clarifying information was not a material change in the application; however, because the Agency had alerted the public that the additional details might be important to the final decision, EPA did provide interested parties an additional opportunity to provide comment to the Agency on that information. Whereas a 45-day comment period had been provided for public review of the entire 4106-page application, members of the public had up to 27 days (for those at the public hearing) or up to 14 days (those notified only by mail) in which to submit comments on the 20 pages of detail provided by the State. EPA believes that this procedure gave all interested parties a fair and ample opportunity to review the State's clarifying information on resources.

54. Issue: Use of Surface Waters as Treatment Units Under State Law

Several comments contend that EPA should disapprove the TPDES program because the universe of surface waters protected by Texas law is allegedly narrower than the universe protected by CWA. According to these comments, TNRCC allows some operators to use impoundments of naturally occurring waters and isolated waters (e.g., playa lakes for waste treatment purposes). They contend that the CWA prohibits such uses of ''waters of the United States'' and that Texas's permitting practices allow dischargers to avoid imposition of appropriate regulatory controls. They claim EPA should require TNRCC to adopt enforceable regulations prohibiting the use of waters of the United States for waste treatment systems and procedures for identifying and correcting its past errors in allowing such use; several specific examples of such alleged errors were provided.

Response: As a practical matter, all NPDES permitting agencies must distinguish between waste treatment systems and protected waters. Otherwise, they could not identify the physical location at which effluent limitations apply. For this reason, EPA's definition of ''waters of the United States'' at 40 CFR 122.2 excludes ''waste treatment systems'' even though some of those systems have characteristics similar to protected waters. With one exception identified below, the comment's description of TNRCC's regulatory practices appears consistent with that exclusion.

The comment incorrectly assumes CWA affirmatively prohibits conversion of waters of the United States to waste treatment systems, perhaps because a portion of 40 CFR 122.2, as codified, appears to prohibit such conversions. That portion of the regulation has been long suspended. *See* 45 FR 48680 (July 21, 1980). Currently, nothing in CWA § 402 or EPA's implementing regulations *per se* prohibits using impounded portions of naturally occurring surface waters as waste treatment systems or, as sometimes occurs, using an entire isolated water body as a waste treatment system. Construction of improvements to convert waters of the United States to waste treatment systems frequently requires an authorizing permit issued under CWA § 404, however, and may also be subject to regulation under State or local laws, such as TWC Chapter 11 prohibition on impoundment or diversion of State waters unless permitted.

EPA has promulgated no regulations and little guidance on distinguishing waste treatment systems from waters of the United States. Whether or not a particular discharge is to a waste treatment system or a water of the United States may occasionally thus raise issues for resolution in permit or enforcement actions under NPDES programs. In *In re Borden Inc., Colonial Sugars,* 1 EAB 895, 908–912, NPDES Appeal No. 83–8 (September 25, 1984), for instance, EPA rejected a discharger's claim that an unimpounded portion of a swamp was a ''waste treatment system'' in a permitting action, holding that segregation of waste from the surrounding environment during treatment was an indispensable condition for waste treatment. TNRCC has a definition of waste treatment system in 30 TAC Chapter 307. EPA has no reason to believe TNRCC's lack of detailed guidance on waste treatment systems will render it unable to resolve such issues in TPDES permit actions.

EPA acknowledges that difficult issues may arise from application of the waste treatment system exclusion to playa lakes (a.k.a. ''playas'') under both federal and State law. In their natural state, playas are frequently ephemeral and hydrologically separated from other surface waters. Under the CWA, isolated intrastate waters like playas are ''waters of the United States'' only if their ''use, degradation, or destruction could affect foreign,'' a factor which renders federal jurisdiction over them case-specific (40 CFR 122.2). Many playas possess the requisite commerce *nexus*, but those that lack it are not generally subject to regulation under the CWA. Moreover, an entire playa which would otherwise be a water of the United States may, under some circumstances, be considered a waste treatment system, rendering discharges to that playa beyond the ambit of CWA § 301(a) (but sometimes subjecting them to regulation under other authority, e.g., the Resource Conservation and Recovery Act). Determining whether a specific playa lake is a water of the United States or a waste treatment system is thus a highly case-specific undertaking requiring substantial judgment on the part of a permitting or enforcement authority. *See, e.g.,* 58 FR 7610, 7620–7621 (February 8, 1993).

As pointed out in the comment, there was a time when Texas viewed playas as privately owned waters not subject to regulation under TWC, even though the definition of ''waters in the State'' at TWC § 26.001 and ''Surface water in the state'' at 30 TAC 307.2(40) were (and are) plainly broad enough to encompass isolated waters. Since 1990, however, the State has interpreted that statutory definition as encompassing playas. Because Texas requires no interstate or foreign commerce *nexus,* its assertion of permit jurisdiction over playas is arguably broader than CWA's. Its current ''Playa Lake Policy Statement'' (Appendix 3–E of the Program Approval Request), moreover suggests TNRCC will not regard ''new discharges of industrial and municipal wastewater to playa lakes not previously authorized to be used as wastewater treatment or retention facilities before July 10, 1991'' as discharges to waste treatment systems, a factor which arguably renders the State's policy more protective of the ecological values and functions of natural playas than CWA and EPA regulations.

In one somewhat limited situation, however, TNRCC may be able to afford less permit protection to playas than EPA. As pointed out by the comment, TWC § 26.048 prohibits TNRCC from regulating animal feeding operation discharges to playas which commenced before the State asserted jurisdiction over them, an apparent legislative attempt to minimize potential disruption arising from changes in the State's jurisdictional views. EPA considers such State laws in its own case-specific decisions on whether or not a given playa is a waste treatment system, but they are not necessarily a controlling factor. *See* 58 FR 7621. Hence, TNRCC may be statutorily prohibited from regulating some animal feeding operation discharges to playas which EPA would find subject to regulation under CWA. Section III.B.8 of the EPA/TNRCC MOA addresses this potential problem, essentially providing that EPA will continue to regulate

discharges from concentrated animal feeding operations to playa lakes which are waters of the United States when TNRCC lacks jurisdiction to apply the TPDES program to them. Regulation of such discharges is not a part of the TNRCC program EPA has approved in accordance with CWA § 402(n)(3). The comment provided examples of specific situations in which TNRCC has apparently applied a waste system treatment exclusion. In this response, EPA Region 6 is not determining whether or not those specific applications were consistent with CWA or TWC. They may warrant further consideration in future TPDES actions, however.

55. Issue: Statutory Limitations on TPDES General Permits

Both the regulated community and public interest groups expressed concerns over the impact of TNRCC's current lack of authority to issue general permit authorizing more than 500,000 gallons per day. Those in the regulated community were primarily concerned with the impact this would have in effective and timely permitting of storm water and CAFO discharges, which, depending on rainfall and size of a facility, could easily require authorization for more than 500,000 gallons of runoff in a single day. The lack of resources to write individual permits for storm water discharges and larger CAFOs and the resulting impact on TNRCC's other permitting activities was a major concern for public interest groups. Other limitations on TNRCC's current general permit authority, especially the requirement for 30 days advance notice of intent to be covered by a TPDES general permit was a particular concern for developers and the construction industry.

Response: EPA agrees that the current limitations on TNRCC's general permit authority placed on it by statute could hamper effective implementation of especially the storm water program. This is one of the primary reasons that EPA agreed to retain administration of storm water permits that it had already issued at least until they expire. This will give Texas the time to choose how to best administer the storm water permitting program. For example, Texas could choose to provide TNRCC with the resources that would be required to issue individual permits to the large number of storm water discharges in a timely manner. Alternatively, Texas could choose to change the statutes limiting TNRCC's general permit authority; creating the option to reduce the resources that TNRCC would need for the large number of storm water discharges by allowing the use of the typically more efficient and faster general permit mechanisms.

While EPA prefers to handle storm water discharges with general permits, Texas is not required to do so, provided all discharges are regulated one way or the other. Once Texas has assumed administration of the NPDES program, it is required to fully implement and adequately fund the approved program. Texas has made this commitment in Section III.B.1. of the MOA which states: ''It is recognized that it is the TNRCC's responsibility after program approval to run and manage the TPDES, Pretreatment, and Sewage Sludge Programs with or without the assistance of federal funding.'' So long as these objectives are fully met, EPA has no authority to tell Texas that it cannot choose to use individual permits in lieu of general permits. Likewise, EPA cannot preclude TNRCC from requiring a shorter (i.e., more restrictive) Notice of Intent period for its general permits (see 40 CFR 123.1(i)(1)).

56. Issue: Failure to Require Texas To Acknowledge EPA Interpretations of the Audit Privilege Act in its Application for NPDES Authorization

One comment asserted that EPA should have required TNRCC to explicitly agree to EPA's interpretation of the Texas Audit privilege act in its application for NPDES authorization.

Response: This comment does not make clear what EPA interpretations of the Texas audit privilege act [Tex. Civ. Statute art. 4447cc (1988)] the State must acknowledge in its NPDES authorization application. Texas has submitted a Statement of Legal Authority for the Texas National Pollutant Discharge Elimination System Program (including the March 13, 1998, supplement) (Texas Legal Statement) and related program implementation documents. These documents describe the content of the Texas audit privilege act as well as the process by which EPA and the State discussed needed changes to the 1995 Texas audit privilege act, which were ultimately enacted by the Texas Legislature in 1997. The Texas Legal Statement certifies that Texas law (including the audit privilege act) provides the State with adequate authority to operate the NPDES program, and EPA agrees that the state law can reasonably be read as providing the State with such authority. Further, EPA can correct any problems which may arise in the implementation of needed authorities through its oversight role once an NPDES program is authorized. Under federal law, as explained above, EPA can take independent action to address any violations that are dealt with inadequately by the State, and can reconsider its approval of any program should the state prove unable to enforce federal requirements.

57. Issue: Improper Barrier to Criminal Enforcement/Investigations

One comment asserted that Texas law placed an improper barrier on criminal enforcement and investigation.

Response: 40 CFR 123.27(a) and (b) require the State to have specified authority to seek criminal remedies, including criminal fines. The amended Texas law does not impose barriers to criminal enforcement or impair the State's ability to use audit information in a criminal investigation or proceeding. The 1995 Texas audit privilege act was specifically amended in 1997 to limit application of the privilege to ''civil or administrative proceedings,'' which cannot reasonably be read as encompassing criminal investigations. Furthermore, new section 9(b) of the law removes any limit on the state's ability to review any information that is required to be made available under federal or state law prior. Those requirements encompass virtually all information that is relevant to program operation, leaving the state with ample authority to conduct both civil and criminal investigations without the encumbrance of a prior hearing to determine whether or not the material can be viewed.

58. Issue: Improper Barrier to Emergency Orders/Injunctive Relief

One comment asserted that Texas law established an improper barrier to emergency orders and injunctive relief.

Response: 40 CFR 123.27(a) requires the State to have the authority to restrain immediately unauthorized activities which are endangering or causing damage to public health or the environment and to seek in court to enjoin any threatened or continuing violation of any program requirement. Neither the original 1995 Texas law nor the 1997 amendments have any impact on the State's ability to issue emergency orders or obtain injunctive relief. Section 10 of the law provides immunity from administrative and civil penalties, and the definition of ''penalty'' in section 3(a) excludes the concept of injunctive authority. Furthermore, section 10(b) does not extend immunity to situations which pose an imminent and substantial risk of serious injury or harm to human health or the environment, as provided. As noted above, Texas can obtain access to all information required to be made available.

59. Issue: Limits on TNRCC's Ability to Review of Certain Audit Documents (No Authority to Copy or Use Information)

One comment asserted that the Texas Audit privilege act improperly limited the ability of TNRCC to copy or use information in audit documents.

Response: Section 402(b) of the Clean Water Act, 33 U.S.C. 1342(b), requires the State to have the authority to inspect, monitor, enter, and require reports to the same extent as EPA under section 308 of the Clean Water Act, 33 U.S.C. 1318. See also 40 CFR 123.26. Section 8(a)(1) of Texas's law provides that privilege does not apply to ''information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental * * * law.'' This exclusion applies to information, including data, required to be collected, developed, maintained, or reported to the State or the public. Section 9(b) of the Texas statute also gives the State the opportunity ''to review information that is required to be available under a specific state or federal law * * *'' The review does not waive the existing privilege for this information. The Texas law, however, also contains relevant constraints on this narrow privilege. Section 7(a)(3) makes the privilege unavailable where ''appropriate efforts to achieve compliance with the law were not promptly initiated and pursued with reasonable diligence after discovery of noncompliance'' so that access is provided to information needed to verify such compliance. Section 5(d) also allows persons who participate in the audit and observe physical events of noncompliance to testify about those events.

Thus, in general under the Texas law, the State may review, obtain, and use required information. In limited circumstances, however, where the information is not required to be collected, developed, maintained, or reported, but is otherwise required to be made available, the State may still obtain access to that information.

60. Issue: Improper Barrier To Access Evidence To Determine Whether Violations Have Been Corrected

One comment asserted that the Texas Audit privilege act placed improper barriers to accessing evidence to determine whether violations discovered during a self-audit had been corrected.

Response: Section 402(b) of the Clean Water Act, 33 U.S.C. 1342(b), requires the State to have the same authority to inspect, monitor, enter, and require reports to the same extent as EPA under section 308 of the Clean Water Act, 33 U.S.C. 1318. In particular, section 308 provides EPA with broad authority to inspect, monitor, enter, and require reports to verify compliance with Clean Water Act effluent limitations and standards. In addition, 40 CFR 123.25(a) requires the State to have the authority to issue and to administer the program consistent with specific permitting requirements, including requirements of 40 CFR 122.41 to allow the permitting authority access to determine compliance. See also 40 CFR 123.26. Section 8(a)(1) of Texas's audit privilege act provides that privilege does not apply to ''information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental * * * law.'' Section 9(b) of the statute gives the State the opportunity ''to review information that is required to be available under a specific state or federal law * * *.'' The Texas Legal Statement also certifies that the State has the authority to apply recording, reporting, monitoring, entry, inspection, and sampling requirements. (See page 15 and following.) These aspects of Texas law provide the State with adequate authority to access evidence to determine whether or not violations have been corrected.

61. Issue: Improper Barrier to Public Participation in State Enforcement Due to Privilege Afforded to Information Required To Be Made Public

One comment asserted that the Texas audit privilege act's limitations on what information regarding the audit was required to be made public placed improper barriers to public participation in State enforcement actions.

Response: As discussed above, section 8(a)(1) of Texas's law provides that privilege does not apply to ''information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental * * * law.'' This exclusion applies to information, including data, required to be collected, developed, maintained, or reported to the State or the public. Section 9(b) of the Texas statute also gives the State the opportunity ''to review information that is required to be available under a specific state or federal law * * *.'' The review, however, does not expressly waive the existing privilege for this information. The Texas law, however, also contains relevant constraints on this narrow privilege. Section 7(a)(3) makes the privilege unavailable where ''appropriate efforts to achieve compliance with the law were not promptly initiated and pursued with reasonable diligence after discovery of noncompliance.'' Section 5(d) also allows persons who participate in the audit and observe physical events of noncompliance to testify about those events. Section 9(c) of the Texas law gives the public the right to obtain any information in the State's possession required to be made available under federal or Texas law, irrespective of whether or not it is privileged under Texas law.

62. Issue: TNRCC Has Not Determined Who Has Used the Law or How it Has Affected TNRCC Enforcement

One comment asserted that TNRCC had not determined who had used the Texas Audit privilege act or assessed its effect on TNRCC enforcement.

Response: A condition precedent to obtaining immunity from civil penalty, is to provide notice to the TNRCC of the intent to conduct an audit. This notice must precede the audit. TNRCC then makes a record of this notice and makes this information available to the public upon request. Furthermore, when a company intends to disclose violations discovered in an audit, this is provided to TNRCC in the form of a second notice. TNRCC also records this information and makes this available to the public if requested. TNRCC maintains an inventory of these two notices in the form of an ''Environmental Audit Log'' which is updated monthly and, upon request, is mailed to individuals who ask to be added to the mailing list for this log.

EPA does not receive information specific to how TNRCC is or is not tracking the impact of this law on enforcement. The State is, however, conducting an audit of general enforcement and has included steps to review impacts of the audit privilege act. Caroline Maclay Beyer of the TNRCC is the contact for this audit in the Office of Internal Audit. This audit should be complete and a report should be available for public review in early September 1998. This is an issue which EPA may address, as appropriate, in oversight of the Texas NPDES program.

63. Issue: TNRCC Direction to Employees to Not Seek Audits Due to Risk of Criminal Sanctions

One comment alleged that TNRCC had instructed its employees not to seek access to audits because of fears that such request would result in criminal liability under the Texas Audit privilege act.

Response: The TNRCC guidance document on audits states that no employee should request, review, accept, or use an audit report during an

inspection without first consulting the Legal-Litigation Division.

64. Issue: Limitations on Whistleblower Protections

One comment asserted that the Texas Audit privilege act restricted whistleblower protection afforded employees under Federal Law.

Response: Section 6(e) of the Texas audit privilege act, as added in 1997, provides as follows: ''Nothing in this section shall be construed to circumvent the protections provided by Federal or state law for individuals that disclose information to law enforcement authorities.'' Thus, it preserves all employee disclosure protections currently afforded under state or federal law. Federal law protects individuals who report violations or illegal activity, or who commence, testify or assist in legal proceedings from liability, criminal prosecution, or adverse employment actions. See 33 U.S.C. § 1367 (CWA). In addition, federal disclosure protection provisions have been interpreted so broadly as to include employee disclosures to local authorities, the media, citizens' organizations, and internal employee disclosures to the employer. *See e.g., Dodd* v. *Polysar Latex,* 88–SWD–4 (Sec'y Sept. 22, 1994); *Helmstetter* v. *Pacific Gas & Electric Co.*, 91–TSC–1 (Sec'y Jan.13, 1993); *Nunn* v. *Duke Power Co.,* 84–ERA–27 (Sec'y July 30, 1987); *Poulos* v. *Ambassador Fuel Oil,* 86–CAA–1 (Sec'y Apr. 27, 1987); *Wedderspoon* v. *City of Cedar Rapids, Ia.*, 80–WPC–1 (Sec'y July 28, 1980). Thus, under section 6(e), all of these federal protections remain.

65. Issue: Improper Procedures for Review of the Texas Application

Some comments contend that EPA violated the procedures set forth in the CWA and EPA regulations by engaging in predecisional negotiations with the TNRCC over certain aspects of the State Program. The comments argue that these predecisional negotiations created an unreasonable barrier to public participation in the authorization process.

Response: Section 402(b) of the CWA requires EPA to approve a State's request for NPDES authorization provided the State has appropriate legal authority, procedures, and resources to meet the requirements of the Act. The regulatory requirements for State Program approval, including the procedures EPA must follow in approving or denying a State's request, are set out at 40 CFR Part 123. 40 CFR 123.21 requires a State to submit to EPA a program submission containing certain specified elements. Within 30 days of receiving such a submission, EPA is required to notify the State as to whether or not the State's submission is complete (any material change in the States' submission restarts the clock). If EPA declares the submission complete, EPA has 90 days from the date of receipt of the State's submission to make a decision as to whether to approve or disapprove the program. Once a submission is declared complete, 40 CFR 123.61 requires EPA to publish notice of the State's request for program approval in the **Federal Register**, provide a comment period of not less than 45 days, and provide for a public hearing to be held within the State not less than 30 days after notice is published in the **Federal Register**. EPA must approve or disapprove the State's program based on the requirements of the CWA and Part 123, and taking into consideration all comments received.

EPA has followed all of the procedures set forth by the CWA and EPA regulations in making a decision on the State of Texas' application for approval of the TPDES program. EPA finished its completeness review within 30 days of receipt of the last material change in the State's application, published the proposed program for a 45-day public comment period in the **Federal Register**, and held a public hearing in Austin, Texas, on July 27, 1998, more than 30 days after publication of notice of the hearing in the **Federal Register**. It is true that, following the State's submittal of the program approval application, EPA continued to ask questions of the State (e.g., citations to State law) and seek clarifying information (e.g., further details on the management of dedicated resource), and as a result, clarifications have been provided by the State to EPA. However, there is nothing in either the CWA or 40 CFR Part 123 which prohibits such an ongoing exchange of information between EPA and a State seeking NPDES authorization. Open communication between EPA and the State regarding questions of State law or policy is critical to EPA's ability to make an informed and accurate decision on authorization. Such communication also plays an essential role in helping States meet the requirements of the CWA and 40 CFR Part 123, thereby enabling EPA to authorize states in accordance with Congress' intent that states be primarily responsible for administering the NPDES program. The procedures followed by EPA Region 6 in reviewing the State of Texas' application were consistent with the procedures used by the Region in reviewing applications submitted by the States of Arkansas, Louisiana and Oklahoma, and did not preclude the public from participating in the process. The State's final application, including any changes or supplements submitted as a result of discussions with EPA, was noticed in the **Federal Register**, and the public was given ample opportunity to comment, both in writing and at the public hearing held on July 27, 1998. Moreover, as discussed earlier, interested parties were given an additional opportunity of up to four weeks to comment on the State's July 27th clarifications regarding information on programmatic resources.

66. Issue: Improper Conditional Approval

Some comments note that States are required to have the statutory and regulatory authority necessary to implement the NPDES program in place and lawfully adopted at the time of authorization, and argue that EPA should disapprove the TPDES program because the TNRCC does not currently have the regulatory authority to administer the program for which it seeks authorization. The comments contend that EPA does not have the authority to ''conditionally approve'' the program, contingent on promises of future legislation.

The comments base this argument on a contention that although Texas indicates that it intends to regulate some discharges by general permit or rule, it does not currently have in place any general permits or adequate permits by rule. In addition, these comments argue that because TNRCC has the authority to issue general permits only for discharges less than 500,000 gallons in any 24-hour period, TNRCC cannot assume administration of EPA-issued general permits. Further, the comments contend that even if TNRCC did have the authority to assume administration of EPA-issued permits, it would not have authority to enforce those permits.

Response: EPA does not propose to ''conditionally approve'' the TPDES program, contingent on promises of future legislation. Section 402(b) of the CWA requires that all of the authorities listed under that section must be in full force and effect before EPA may approve a State Program. The authorities listed under Section 402(b) include, among other things, the authority to issue permits which apply, and insure compliance with, applicable requirements of the CWA. As noted on page 4 of the Texas Attorney General's Statement, State law gives the TNRCC the authority to issue permits for the discharge of pollutants by existing and

new point sources to the same extent as the permit program administered by EPA, with the exception of those discharges not within the TNRCC's regulatory jurisdiction. See TWC § 26.027 (Text of section effective upon authorization of NPDES permit authority), which provides that the TNRCC may issue permits for the discharge of waste or pollutants into or adjacent to water in the state, and TWC § 26.121(d) (Text of section effective upon authorization of NPDES permit authority, which provides that any such discharge not authorized by the Commission is a violation of the Code).

In addition, as discussed on pages 6 and 7 of the Attorney General's Statement, TWC § 26.040 gives TNRCC authority to issue general permits. Section 26.040 also allows the TNRCC to continue to authorize some discharges by permits by rule. The fact that TNRCC states in the MOA that it may exercise this general permitting authority at some point in the future is not, in EPA's view, a violation of CWA § 402(b). If for some reason, the permitting of these discharges by general permit turns out to be inappropriate, TNRCC still has the authority, as required by § 402(b), to issue individual permits for these discharges (See Attorney General's Statement at page 7). Nothing in the CWA requires a State to permit by general permit.

With regard to the contention that TNRCC cannot assume administration of EPA-issued general permits because TNRCC has the authority to issue general permits only for discharges less than 500,000 gallons in any 24-hour period, EPA disagrees. 30 TAC 305.533 specifically provides that TNRCC adopts all EPA permits. While it is true that Texas Water Code 26.040 precludes TNRCC from issuing general permits for discharges of more than 500,000 gallons in any 24-hour period, this does not preclude TNRCC from assuming EPA's general permits covering discharges over 500,000 gallons as part of the assumption of the NPDES program. After the EPA-issued permits expire, TNRCC will be required to issue individual permits to those facilities that are not eligible for TNRCC-issued general permits.

Finally, as to the comments' argument that, even if TNRCC did have the authority to assume administration of EPA-issued permits, it would not have authority to enforce those permits, the TNRCC's authority to enforce EPA-issued permits is discussed in detail later in EPA's response to comments.

67. Issue: Authority to Regulate Discharges Such as Storm Water by Individual Permit

Some comments contend that TNRCC does not have the regulations necessary to regulate discharges such as storm water by individual permit.

Response: In 30 TAC 281.25(4), TNRCC adopted by reference EPA's storm water regulations found at 40 CFR 122.26.

68. Issue: Authority To Enforce EPA-Issued Permits

Some comments argue that EPA should disapprove the TPDES program because the TNRCC lacks the authority to enforce EPA-issued NPDES permits. The comments argue that the Texas Water Code gives the TNRCC the authority only to enforce permits ''issued by the commission,'' and that, as a result, TNRCC does not have the authority to assume primary enforcement authority over certain permits already issued by EPA, as provided for in the proposed MOA. These comments also contend that TNRCC cannot enforce the federal general permits for CAFOs and storm water, which EPA assumes to be the same issue.

Response: 30 TAC 305.533 states that on the date of TNRCC's assumption of the NPDES permit program, the State adopts all EPA permits, except those over which EPA retains jurisdiction as specified in the MOA. Section 305.533 was adopted under the authority of TWC § 26.121, under which discharges to surface water are prohibited except by authorization of the TNRCC. Such ''authorization of the TNRCC'' is not limited to permits issued by the TNRCC. Sections 5.102 and 5.103 of the Texas Water Code authorize the TNRCC to adopt rules necessary to carry out its powers and duties and to perform any act necessary and convenient to exercise its powers under the Water Code and other laws. This includes permits issued by EPA, including federal general permits for CAFOs and storm water. The TNRCC has authority under Chapters 7 and 26 of the Texas Water Code, specifically sections 7.001 (Definitions), 7.002 (Enforcement Authority), 7.032 (Injunctive Relief), 7.051 (Administrative Penalty), 7.101 (Violation), 7.105 (Civil Suit), 7.145 (Intentional or Knowing Unauthorized Discharge), 7.146 (Discharge from a Point Source), 7.147 (Unauthorized Discharge), 7.152 (Intentional or Knowing Unauthorized Discharge and Knowing Endangerment), 7.153 (Intentional or Knowing Unauthorized Discharge and Endangerment), 7.154 (Reckless Unauthorized Discharge and Endangerment), and 26.121 to enforce any license, certificate, registration, approval or other form of authorization issued under any statute within the TNRCC's jurisdiction or a rule, order or permit issued under such a statute. Therefore, the TNRCC has authority to enforce EPA-issued permits adopted by the TNRCC.

69. Issue: Added Burden of Proving Harm to Receiving Waters

Some comments argue that EPA should disapprove the TPDES program because Texas law limits the ability of the TNRCC to enforce against certain unpermitted discharges, because of the added burden of proving harm to the receiving waters.

Response: EPA assumes the comments are concerned with the text of TWC § 26.121(a) (Text of section effective until authorization of NPDES permit authority), which prohibits certain discharges that by themselves or in conjunction with other discharges or activities, cause, continue to cause or will cause pollution of any water in the state. This section would be problematic if it were to remain in effect after NPDES authorization. However, the Texas legislature amended TWC § 26.121 in 1977 to include subsections (d) and (e) effective upon authorization of the NPDES program. Subsection (d) of Texas Water Code 26.121 (Text of section effective upon authorization of NPDES permit authority) provides that no person may discharge any pollutant, sewage, municipal waste, recreational waste, or industrial waste from any point source into any water of the state, except as authorized by the TNRCC. As discussed in the Attorney General's Statement, pp. 4–5, the definitions of ''pollutant'' and ''point source'' are found at TWC § 26.001(13) and (21), and those definitions track the definitions found in CWA § 502 and 40 CFR 122.2. Therefore, given the amendments to TWC § 26.121 that became effective upon authorization of the NPDES program, EPA does not believe that Texas law provides for an added burden of showing harm to the receiving waters.

70. Issue: Reporting and Enforcement for Spills more Limited under State law

Some comments argue that EPA should disapprove the TPDES program because reporting and enforcement for spills in Section 26.039 is linked to a determination of harm (i.e., cause pollution) and is therefore more limited than EPA's minimum federal requirements for State NPDES programs.

Response: TWC § 26.039 does speak to and provide reporting requirements

for accidental discharges or spills that cause or may cause pollution. However, this provision does not limit the TNRCC's authority to enforce against those who violate the Texas Water Code, a TNRCC rule, permit, order or other authorization. Section 26.039(d) states, ''nothing in this section exempts any person from complying with or being subject to any other provision of this chapter.'' The TNRCC can still enforce against a person who violates Texas Water Code 26.121. TWC § 26.121(d) provides that no person may discharge any pollutant, sewage, municipal waste, recreational waste, or industrial waste from any point source into any water of the state, except as authorized by the TNRCC. All point sources regulated under the NPDES program and within the regulatory jurisdiction of the TNRCC are subject to this provision, and thus may discharge only in compliance with authorization from the TNRCC. 30 TAC 305.125 sets out standard permit conditions for permits issued by the TNRCC, which include requirements, including reporting requirements, consistent with the minimum federal requirements found at 40 CFR 122.41. All TPDES permittees would be subject to these reporting requirements, which are not linked to a determination of harm and are therefore not more limited than EPA's minimum federal requirements for State NPDES programs.

71. Issue: Legal Authority or Procedures To Assess and Collect Adequate Penalties

Some comments argue that Texas has not shown that it has the legal authority or procedures to assess and collect adequate penalties because TNRCC's authority to seek civil and criminal penalties for violations by federal facilities and cities does not appear to be resolved.

Response: EPA is not aware of any outstanding concerns over TNRCC's authority to seek civil and criminal penalties for violations by federal facilities or cities. Due to the vagueness of the comment, EPA can only surmise that the comments may be concerned about TWC § 26.121(a)(2)(B), which provides that except as authorized by the TNRCC, no person may discharge certain wastes meeting certain conditions, unless the discharge complies with a person's ''water pollution and abatement plan approved by the Commission.'' A question has been raised in the past as to whether or not this provision acts to shield persons discharging in compliance with an approved water pollution and abatement plan from enforcement under the TPDES program. The short answer is no. TWC § 26.121(d) (see text effective upon authorization of NPDES permit authority) provides that no person may discharge, among other things, any pollutant from any point source into any water of the state, except as authorized by the TNRCC. This subsection was added by the Texas legislature to address discharges under the NPDES program, and is controlling over all point sources regulated under that program and within the regulatory jurisdiction of the TNRCC. Point source dischargers discharging in violation of Section 26.121(d) would be subject to civil and criminal penalties under the TPDES program regardless of whether or not they were acting in compliance with an approved water pollution and abatement plan.

72. Issue: State Law Controlling Over Federal Law

Some comments contend that the MOA impermissibly states that, in case of inconsistency, State law controls over federal law. The comments base this argument on Section III.A.7 of the MOA, which provides that ''TNRCC will utilize EPA national and regional policies and guidance to the extent there is no conflict with Texas statutes, a specific State policy, or guidance adopted by TNRCC.''

Response: Section 402(b) of the CWA requires a State seeking NPDES authorization to have statutory and regulatory authority at least as stringent as the federal requirements set out under that section and 40 CFR 123.25. The State of Texas has demonstrated the required statutory and regulatory authority. Also, in cases where both State and federal permits are effective for the same discharge or where generally State and federal law apply, the State assures that TNRCC will fulfill the requirements of the CWA and federal regulations and any other State provisions that are more stringent. See, e.g., MOA, Chapter 1, p. 13 (Section III.C.2. b). Although for the sake of national consistency EPA strongly encourages States implementing an NPDES program to do so in accordance with EPA policies and guidance, there is nothing in either the CWA or 40 CFR Part 123 that requires them to do so. Therefore, TNRCC's statement in the MOA that it will utilize EPA's policies and guidance only to the extent they do not conflict with Texas law or policy or TNRCC guidance is not in conflict with the requirements for NPDES authorization.

73. Issue: TNRCC Has Promulgated Invalid Rules

One comment argues that TNRCC has promulgated invalid rules regulating water and air pollution under the requirements of Texas law. The comment contends that TNRCC failed to index its rules to the statutes upon which they are based as required by Texas Government Code, Section 2001.004, and as a result, that most of the regulations referenced in the TPDES program are invalid under State law and thus do not satisfy the requirements for State permit programs.

Response: Since the TNRCC rules that are referenced in the TPDES application have not been ruled to be invalid in a court of law, they may be relied on to meet the statutory requirements of a State permit program. According to TNRCC, all rules adopted by the TNRCC cite the statutory authority under which they are adopted in the preamble to the rule (published in the Texas Register) and this citation serves as an index to the statutory basis.

74. Issue: Unconstitutional Delegation of Texas Legislative Power

One comment contends that the legislative authority TNRCC cites under the Texas Water Code and the Texas Health and Safety Code is so broad and ill-defined as to constitute an unconstitutional delegation of legislative power. The comment references Attorney General Opinion DM474 (1998) as providing that the Texas Legislature may delegate its powers to State agencies, but only if it establishes ''reasonable standards to guide the entity to which the powers are delegated.'' The comment argues that the delegated authority cited by the TNRCC (e.g., § 5.103 of the Texas Water Code, which states that ''[t]he Commission shall adopt any rules necessary to carry out its powers and duties under this code and other laws of this state'') does not establish such reasonable standards. As a result, the comment contends that the TNRCC has limited standing to promulgate the regulations necessary to satisfy the requirements for approval.

Response: The Texas Attorney General has opined in his Statement of Legal Authority for the TPDES application that Texas laws provide the required legal authority to administer the program. Neither TNRCC nor EPA have the authority to determine the Constitutionality of laws passed by the Texas Legislature. These laws are in effect until either ruled unconstitutional in a court of law or repealed by the Texas Legislature.

Program Element—Specific Issues

Storm Water

75. Issue: Storm Water Program Not Specifically Mentioned in Scope of Authorization

One comment expressed concern that the TPDES application did not specifically identify the NPDES storm water program in the Scope of Authorization section of the MOA.

Response: The NPDES storm water program under CWA § 402(p) (40 CFR 122.26) is simply a subset of the basic NPDES permitting program established by CWA § 402 (40 CFR 122). By requesting authorization to administer the NPDES permitting program, TNRCC by definition included a request for authorization for the storm water component of NPDES. The MOA (e.g., Section II.A.2.d), permit program description (e.g., Section I.A.), and the statement of legal authority (e.g., page 3) of the TPDES application all contain numerous references to TNRCC's authority and procedures to regulate storm water discharges and how NPDES storm water permits will be transferred to TNRCC for administration. TNRCC adopted EPA's 40 CFR 122.26 storm water regulations by reference at 30 TAC 281.25(4).

76. Issue: TNRCC's Authority Over MS4s

One comment noted that Texas has authority to regulate municipal separate storm sewers from municipalities with as few as 10,000 population and requested an explanation of the reason of this apparent inconsistency with the NPDES storm water program. Another comment noted that while TNRCC has the authority to regulate municipal storm water discharges under State law, the regulatory process under TWC § 26.177 was not consistent with NPDES requirements. An explanation of how the two programs would integrate was requested. The comment also questioned whether or not TNRCC's authority extended to municipalities under 10,000 population.

Response: First, EPA would like to eliminate any misunderstandings regarding NPDES authority over municipal separate storm sewer systems. In 1987, Congress added section 402(p) to the CWA, specifically requiring EPA to move forward, in phases, with permitting of point source discharges of storm water under the NPDES program. Section 402(p)(1) outlined the discharges that would be required to be permitted in Phase I, but section 402(p)(2)(E) specifically provides the authority to require permits at any time for any storm water discharge determined to be contributing to violation of a water quality standard or to be a significant contributor of pollutants to waters of the United States CWA § 402(p)(6) required EPA to promulgate regulations identifying which of the remaining storm water discharges would be regulated in order to protect water quality. Regulations for this ''Phase II'' of the storm water program were proposed January 9, 1998, (63 FR 1536) and are expected to be finalized in March 1999.

Nowhere does the CWA totally exempt smaller municipal separate storm sewer systems from NPDES permit requirements; it only delays when applications are due and requires EPA to issue regulation defining the universe of dischargers that will be regulated under Phase II. Municipal Separate Storm Sewer Systems, as defined at 40 CFR 122.26(b), may be owned or operated by one or more municipal entities, including some that are under the 100,000 population cutoff, provided the population served by the entire system is 100,000 or more. Therefore, EPA and NPDES-authorized states have always had full authority to regulate any size of municipal separate storm sewer systems and any storm water point source discharges on a case-by-case basis.

As specifically provided in 40 CFR 123.1(i), a State is not precluded from adopting or enforcing requirements that are more stringent than those required under the NPDES program. The State is also not precluded from operating a program with a greater scope of coverage than the NPDES program. EPA's decision on program approval can only be based on whether or not minimum criteria for a State Program have been met, and the fact that a State may have the authority to regulate discharges not regulated by the NPDES program is immaterial. TNRCC has committed to implement the TPDES program in a manner consistent with Federal requirements and has adopted the NPDES storm water regulations at 40 CFR 122.26 by reference via 30 TAC 281.25(4).

TWC § 26.177(a) provides that the TNRCC may require a city of more than 10,000 population to establish a water pollution control and abatement program for ''water pollution that is attributable to *non-permitted* sources * * *.'' (emphasis added). Thus, any source of water pollution that is required to be permitted is outside the scope of the municipal water pollution control and abatement program implemented by TNRCC under TWC § 26.177.

77. Issue: TPDES Permit Application Requirements for Storm Water Discharges

One municipality asked whether TPDES application requirements for individual permits for storm water discharges and TNRCC's processing program for these permits would be reviewed and approved by EPA and whether or not there would be opportunity for public comment.

Response: As stated in the TPDES permitting program description (Chapter 3, Section A.1), TNRCC will utilize EPA's existing application format for Municipal Separate Storm Sewer System (MS4) applications from medium or large municipal systems. Any permit application forms used by TNRCC, while not necessarily identical to the forms used by EPA, will require the same information required by 40 CFR 122.26. TNRCC will update its regulations (required by 40 123.62) and application forms (as needed) after promulgation of new NPDES regulations, including those for Phase II of the storm water program. Failure of the State to update regulations to conform to new Federal statutes or regulations is one of the grounds for withdrawal of program authorization under 40 CFR 123.63(a)(1)(i).

TNRCC has adopted 40 CFR 122.26 by reference at 30 TAC 281.25(4). Therefore, application requirements for TPDES individual storm water permits are the same as those for NPDES permits. TNRCC's application forms are found in Appendices 3–A and 3–B of the TPDES application. Both sets of documents were provided for EPA review and for public comment as part of the TPDES application. Revisions of an approved State Program, including those necessary to respond to future changes in controlling statutes or regulations are subject to the EPA approval, public notice, and public comment requirements of 40 CFR 123.62.

There is no special processing program for storm water permits. All TPDES permits follow the processing, EPA review, and public comment procedures described in the MOA and the permitting program description (Chapter 3 of the TPDES Application).

78. Issue: TPDES Regulation of State and Federal Storm Water Discharges

A municipality asked whether federal and State facilities engaged in industrial activities normally regulated under the federal NPDES storm water program would also be required to obtain permits under the TPDES program.

Response: All facilities subject to regulation under the NPDES program

that are under the jurisdiction of TNRCC will require TPDES permits. There is no special exemption for federal or State facilities under the TPDES program. (See 30 TAC 281.25(4) and 40 CFR 122.26)

79. Issue: TPDES Public Education and Outreach

One comment asked whether TNRCC would provide some type of education and outreach program focused on the TPDES regulated community?

Response: While EPA certainly supports outreach and public education, such programs are not a required element of a State Program. However, TNRCC does have a Compliance Support Division which is responsible for hosting technical assistance related workshops and conferences to those regulated by the TNRCC and for manning a technical assistance hotline to assist local government. TNRCC's Enforcement Division also provides technical assistance. (TPDES Chapter 2, page 2–13). EPA recommends contacting TNRCC directly with requests for public education and outreach programs to meet specific needs of the regulated community.

80. Issue: Access to Storm Water Notice of Intent Databases

One comment asked whether TNRCC would maintain a TPDES database [on facilities authorized under a storm water general permit] accessible to the public, such as the Region 6 storm water Notice of Intent database.

Response: EPA will continue to administer the multi-sector general permit for storm water associated with industrial activity and the construction general permit for runoff from construction projects until they expire in September 2000 and July 2003, respectively (or earlier if replaced by a TPDES permit). EPA will continue to maintain and make available its NOI database during this period and will provide TNRCC with updates of the database periodically. All information on TPDES permits will generally be available from TNRCC under the Texas Public Information Act (Local Government Code Chapter 552) and 30 TAC 305.45–305.46. EPA recommends contacting TNRCC directly with requests for setting up procedures for accessing any TNRCC NOI databases that may be created in the future. TNRCC currently has a mechanism for permit databases to be provided to the public, through its Information Resources Division.

CAFOs

81. Issue: Concentrated Animal Feeding Operations (CAFOs) Not Within TNRCC's Jurisdiction

Some citizens and TNRCC question EPA's assertion that it (EPA), will retain jurisdiction over CAFOs for which TNRCC may not have authority. Citizens have expressed concern that the MOA is unclear on this point. They also express concern over parts of the MOA (Section III.C.4.) in which the State commits to making only those changes to Subchapter B and K rules consistent with NPDES requirements. The comment expresses the opinion that EPA and the State have proposed a scheme which will allow the State to adopt equivalent regulations after program assumption.

Response: EPA agrees that the portions of the MOA which describe TNRCC's jurisdiction over CAFOs may not be clear to persons who are unfamiliar with Texas statutes which ''grandfather'' older CAFOs discharging into playa lakes under certain conditions. Pursuant to State statute (see TWC Section 26.048), CAFOs that before July 10, 1991 (the effective date of TNRCC's adoption of related revisions to the Texas Surface Water Quality Standards, 30 TAC Chapter 307) were authorized by TNRCC to use, and actually used, a playa lake, that does not feed into any other surface water in the State, as a wastewater retention facility are not subject to water quality standards or other requirements for discharges to waters in the state. This statute effectively restricts TNRCC's authority over these discharges. On the other hand, regardless of the historical use as a treatment system, some playa lakes are considered to be waters of the United States Therefore, under the CWA, CAFOs may not have unpermitted discharges to such playas. EPA and Texas were aware that, if one of these ''grandfathered'' CAFOs is found to be discharging to a playa lake that is also considered to be a water of the U.S., TNRCC may not have the authority to take permitting or enforcement action with respect to those discharges to the playa. While neither EPA nor TNRCC are aware of any grandfathered CAFOs which fit this exemption, and both agencies hope that no CAFO is discharging to a water of the U.S. in violation of the CWA, both agencies determined to err on the side of caution and clearly outline that EPA would have jurisdiction over any CAFO discharges that were not legally within the jurisdiction of TNRCC.

With regard to MOA provisions in Section III.C.4., the State district court has invalidated the State's Subchapter K rules, a potential outcome of the litigation cited by the State in this portion of the MOA. Although EPA is concerned that the State has lost one of its regulatory mechanisms to provide facilities with coverage under their State Program, it is not an impediment to TNRCC adopting EPA's CAFO permit for these point sources. If any facility believes it would have discharges totaling 500,000 gallons in a 24-hour period it would still be eligible for the EPA CAFO permit administered by TNRCC. When the EPA-issued general permit expires, these facilities should notify TNRCC and obtain individual TPDES permit coverage.

State programs are dynamic and are always changing in accordance with changes to NPDES regulations and needs of the State. Changes in State programs must be reviewed and approved by EPA. This provision in the MOA describes a mechanism to ensure that any changes would be appropriate under the CWA. EPA believes it is clear from this provision that any changes to the Subchapter B and K rules would have to be approved by EPA as consistent with NPDES requirements before it would be implemented in the TPDES program.

82. Issue: Invalidated Subchapter K Rules

Several comments express concern that Texas requirements under Subchapter K were invalidated by the court, and therefore, the program cannot be fully effective at the time of authorization.

Response: Subchapter K is a TNRCC authorization by rule which allows animal feeding operations to meet their State requirements, but it is not a TPDES permitting action. In the MOA, TNRCC agreed to assume and administer the Region 6 CAFO general permit, when finalized, and may modify this permit to include State provisions that are more stringent than EPA general permit provisions. Individual facilities will be required to seek either an individual permit or authorization by rule if the facility is not included as part of the category of discharges allowed under the general permit. As to authorizations by rule, Subchapter K was the subject of litigation pending in State district court, and has been invalidated by judicial order.

EPA has proposed an NPDES CAFO general permit for the State of Texas and TNRCC will take over administration of the permit when it becomes effective in accordance with sections III.C.3.c and III.C.7. of the EPA/TNRCC MOA. This will provide an appropriate NPDES

mechanism for facilities in Texas. The state may also issue individual site-specific permits for facilities it determines are not appropriately addressed by a general permit. In the event TNRCC amends Subchapter B and K with the intent to authorize facilities under the approved TPDES program, those rules will be subject to EPA review to insure they are consistent with CWA requirements (see MOA Section III.C.4).

83. Issue: Exceptions for CAFOs

A comment from several public interest groups expressed concern that statutes adopted and proposed TNRCC regulations provide an exemption for CAFOs which would have an established water quality management plan developed by the Texas State Soil and Water Conservation Board (TSSWCB). They express the opinion that these facilities would not be considered point sources. This same comment expressed concern that CAFO facilities with less that 1000 animal units would be exempted from applying for a permit with the TNRCC if they obtain an ''independent audit.''

Response: Although the comment did not supply specific references to the regulations or statutes of concern, EPA believes it refers to a statute, which was adopted in 1993 as Senate Bill 503 (Texas Agricultural Code 201.026), that describes regulation of agricultural and silvicultural nonpoint source discharges of pollution. The statute notes that facilities which may contribute nonpoint source pollution, and which have an established water quality management plan developed by the Texas State Soil and Water Conservation Board are exempted from regulation by TNRCC unless the TSSWCB or TNRCC determines they are a point source. Since this applies only to those facilities classified by the State as NPS, it is not inconsistent with EPA regulations found at 40 CFR 122.23 (regulations applying to point sources of pollution). (i.e., applies to TWC 26.121(b) and not to 26.121(d) or (e)). The exemption is not available for facilities defined in CWA § 502 (14).

Although the comment again did not specify the statute or regulation to which it is referring, EPA can find only one provision in the State's regulations that correlates to the comment about an ''independent audit'; which refers to CAFOs under 1000 animal units (30 TAC 321, Subchapter B). This is ''authorization by rule'' for coverage under State requirements and will not (cannot) be used by TNRCC after approval of the TPDES program. Coverage under this rule is not an NPDES authorization. TNRCC will adopt the EPA CAFO general permit when it is finalized. This rule was not submitted by TNRCC as part of the TPDES program. This provision, as it applies to the state permitting program prior to TPDES approval, is not considered in the approval decision.

84. Issue: Senate Bill #1910 (Chicken Litter Bill) and Subchapter O Rules

One comment stated that Senate Bill #1910 was ''torn to pieces'' prior to being passed by the Texas legislature and that TNRCC did nothing to keep the bill intact. The comment appeared to be expressing concern that TNRCC would not actively regulate animal waste such as chicken litter. Comments received by EPA early in the process (prior to the comment period) expressed concern about exemptions in TNRCC rules for aquaculture (30 TAC 321, Subchapter O).

Response: As mentioned above, when TNRCC assumes authorization of the NPDES program, the Agency retains oversight authority. Part of EPA's oversight role includes review of TPDES permits for industrial (i.e., poultry processing plants) and municipal operations proposed by the TNRCC, to ensure compliance with applicable regulations and guidelines as established in the Clean Water Act. EPA has reviewed Subchapter O and finds it is consistent with EPA's regulations at 40 CFR 122.24 and 122.25.

Sludge

85. Issue: Statutory Requirements for Sludge Permitting Are More Stringent Than the TNRCC Rules

One comment expressed concern that the TPDES program plan provides for permitting and registration for sewage sludge disposal. The comment stated that the statutory basis for sludge regulation is found in the Texas Water Code, which allegedly provides for sludge permitting only, not sludge registration. The comment asserted that, since the statutory requirements for sludge permitting are more stringent than the TNRCC rules promulgated for a sludge site registration and the TNRCC has no authority to adopt less stringent program requirements, there is no valid statutory basis under Texas law for rules regulating registration of sludge sites. Consequently, the comment contended that the TPDES program plan on this point does not provide for adequate authority as required by 33 USC 1342(b).

Response: 30 TAC 312.4(a) states permits are required for *all* sewage sludge processing, storage, disposal, and incineration activities. Further clarification is provided by 40 CFR 503.3(a)(1) which Texas adopted and is referenced in the Continuing Planning Process. This regulation requires all ''treatment works treating domestic sewage'' be permitted. Treatment works are defined as all TPDES facilities discharging to waters of the United States and those facilities generating sewage sludge but without a discharge to waters of the United States. In addition, it covers facilities changing the quality of sewage sludge. These operations include blending, stabilization, heat treatment, and digestion. The definition of ''treatment works'' also includes surface disposal site owners/operators, and sewage sludge incinerator owners/operators.

The TNRCC's authority over solid waste disposal, including beneficial use of sewage sludge, is found in Chapter 361 of the Texas Health and Safety Code (THSC). 30 TAC 312.4(c) and 312.12 provide requirements to be followed in the registration of land application sites. The Texas program is more stringent than the minimum program required by the Federal regulations. Texas requires registrations be obtained by persons responsible for the land application operations and the sites onto which the sewage sludge or domestic septage is land applied for beneficial reuse. The Part 503 regulations do not automatically require land appliers of sewage sludge to obtain any type of official authorization for land application operations unless specifically requested to do so by the permitting authority to protect human health and the environment.

Continuing Planning Process-Implementation Procedures-Water Quality Standards

86. Issue: Lowering Stream Standards of East Texas

One comment alleges that the three appointed commissioners of the TNRCC, and others, conceived the policy of lowering the stream standards of East Texas in order to accommodate polluting wastewater facilities. The comment asserts that due to citizens' outcry and ''EPA's logic,'' the policy was overruled by the EPA. The implication of the comment was that TPDES authorization would allow TNRCC to take such actions in the future.

Response: After state program authorization, EPA maintains program oversight authority to ensure compliance with requirements and regulations of the Clean Water Act. The Agency also maintains the authority for

review and approval of any revisions to water quality standards and/or criteria to listed and unlisted waterbodies of Texas (CWA §§ 303(c)(2)(A) and 303(c)(3)).

87. Issue: No Approvable Continuing Planning Process

One comment states that the (NPDES Program) application may not be approved because TNRCC does not have an approved, or approvable Continuing Planning Process (CPP).

Response: EPA approved the Texas CPP on September 10, 1998. The CPP and Water Quality Standards Implementation documents do contain certain procedures which EPA has determined are not consistent with, or do not fulfill the requirements of the Clean Water Act, as interpreted by EPA Region 6. However, these issues have been resolved to EPA's satisfaction via the MOA, which was signed by both TNRCC and EPA concurrently with TPDES program authorization.

88. Issue: No Prior Approval of the Continuing Planning Process (CPP)

A comment raised concerns that Texas did not have a CPP that was approved prior to consideration of the application for permit program approval. Specific issues raised in the comment included the length of time for public review of the three documents and ''conditional approval'' of the CPP by EPA.

Response: EPA regulations do not require approval of the CPP prior to the date a State submits an application for program authorization. Regulations at 40 CFR 130.5(c) state that ''[t]he Regional Administrator shall not approve any permit program under Title IV of the [Clean Water] Act for any state which does not have an approved continuing planning process.'' The Texas CPP was approved on September 10, 1998—before the decision on program authorization was made.

The primary elements of the CPP addressed in this section of comments, the Water Quality Standards and the IP, were adopted by TNRCC and submitted to EPA for approval on March 19, 1997 and August 23, 1995, respectively. Thus, both of these documents have been in use and available for public review for over a year. The MOA was made available for public review and comment on June 19, 1998. The official comment period for the package was 45 days, and was subsequently extended by one week. The MOA does contain nine changes to the IP, all identified and listed at Section IV.B., Permit Development, pages 24–27 of the MOA. These changes supersede certain requirements in the IP and were required by EPA to make the IP approvable. The changes were:

a. Procedures to suspend the use of biological surveys in the IP.

b. Procedures for cessation of lethality during a Toxicity Reduction Evaluation.

c. Conditions for use of alternate test species.

d. Calculation of Dioxin/Furan permit limits.

e. Development of water quality-based effluent limitations for discharges into the Rio Grande.

f. Final Limitations in TPDES permits—consistency with the EPA-approved Water Quality Management Plan (including any applicable Total Maximum Daily Loads).

g. No variance from water quality standards will be used to establish an effluent limitation for a TPDES permit until the standards variance has been reviewed and approved by EPA.

h. TNRCC evaluation of TPDES general permits for compliance with water quality requirements, including whole effluent toxicity.

i. Water Quality Standards Implementation Procedures subject to EPA review and approval after program assumption and while TNRCC is authorized to administer the NPDES program.

EPA does not believe it has circumvented or frustrated the public review and comment process by its approval process. The changes to the implementation procedures listed above are mechanisms that will result in permits more protective than what the state program previously required. Prior to program authorization, all aspects of the CPP, IP and MOA reflected a program that contains all the elements necessary to fulfill all of the requirements of the Clean Water Act for NPDES permitting.

89. Issue: Changes to CPP Not Validly Adopted by TNRCC

One comment stated that the proposed changes to the CPP set out in the proposed MOA, even if they were otherwise adequate, were not validly adopted by TNRCC.

Response: As stated above, the MOA and the changes to the IP therein were available for public review and comment for a period of 52 days beginning June 19, 1998.

90. Issue: CPP Is Not Approvable Because of Inadequate Process for Effluent Limitations

One comment states that the CPP does not provide an adequate process for developing effluent limitations, citing the CWA requirements for the CPP to address the process for developing technology-based effluent limits, effluent limits at least as stringent as those required by CWA Section 301 (b)(1) and (b)(2), and 33 U.S.C. 1311 (e)(3)(A). The comment further states that the MOA does not describe a process for developing effluent limitations and schedules of compliance.

Response: Series 21 of the CPP states: ''[t]echnology-based permit limits will be at least as stringent as Best Practical Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT) limits in accordance with Effluent Limitations and Standards as promulgated for categorical industries and found in federal regulations (40 CFR Parts 400 to 471), as referenced in 30 TAC 305.541. Production-based limitations will be based on a reasonable measure of actual production levels at a facility. Mass limitations for concentration-based guideline limits will be developed using the appropriate wastewater flows as required by regulations. Municipal permit limits will be consistent with Wasteload Evaluation/Allocations, the Water Quality Management Plan, Watershed Protection Rules (30 TAC Chapter 311), and at least as stringent as requirements found in 30 TAC 309.1–4 (secondary treatment).'' Additional requirements for secondary treatment are specified by 30 TAC 305.535(d). This outlines what technology based effluent limitations must be considered and what variables must be used to calculate effluent limitations.

In addition, Series 18 provides an outline of the Texas Water Quality Standards. This includes describing the General Criteria found in 30 TAC 307.4 which defines the general goals to be attained by all waters in the State. It also lists the procedure to address and permit facilities discharging to those waterbodies that are unclassified and therefore do not have site-specific criteria established at the time the permit is developed.

Regarding schedules of compliance, Series 21 of the CPP states that permits will be developed to be consistent with State statutes including Title 30 TAC 307.2(f). This statute allows the TNRCC to establish interim discharge limits to allow a permittee time to modify effluent quality in order to attain final effluent limits. The duration of any interim limit may not be longer than three years from the effective date of the permit issuance.

91. Issue: Inadequate TMDL Program

One comment asserts that the CPP does not include an adequate process for developing Total Maximum Daily Loads (TMDLs) and individual water quality based effluent limitations in accordance with Section 303(d) of the CWA. Indeed, TMDL development is only addressed in the CPP in the context of toxic parameters. See Series 20. Even for toxic pollutants, that discussion is grossly inadequate because it fails to establish a process for developing a list of waters for which technology-based limitations are not adequate, fails to establish a process for ranking those waters by priority, fails to establish a process for submission of such lists to EPA, and fails to establish a process for developing a schedule for preparation and implementation of TMDLs. See 33 U.S.C. 1313(d) (setting out requirements for the TMDL process); 40 CFR 130.7. The CPP fails even to address the TMDL issue with respect to other pollutants.

Response: In a letter from TNRCC Executive Director Jeffrey Saitas to EPA Region 6 Administrator Gregg Cooke dated September 4, 1998, TNRCC has recently modified its TMDL program, and assures that the approved process applies to all pollutants, not just toxics (attached to CPP). The modified program meets all EPA requirements and addresses the concerns stated in the comment. The information has been submitted as an attachment to the CPP, and will be incorporated into the next revision of the CPP. TNRCC developed guidance for screening and assessing state waters (attached to CPP). This information was presented at three Texas Clean Rivers Program (CRP) Basin Steering Committee meetings during December 1997. Subsequently, criteria and guidance for listing and prioritizing waterbodies was developed (attached to CPP) and distributed January 23, 1998, for review via the TNRCC Internet website, the Texas CRP and various meetings across the state. After comments and revisions, the second draft list was similarly advertised. After further comment, the final draft list was approved by the Commissioners and sent out for a 30-day formal public comment period (March 13—April 13, 1998). Written responses to public and EPA comments were prepared and distributed (attached to CPP). The 1998 303(d) list and methodology (attached to CPP) were finalized and approved by the Commissioners, and the final list was submitted to EPA for approval on April 23, 1998 (attached to CPP). The final list was available on the TNRCC website on June 26, 1998 and approved by EPA on July 27, 1998. Thus, the revised TMDL development has been through an extensive public participation process to generate the 1998 303(d) list.

92. Issue: Inadequate Process for Establishing Implementation of New or Revised Water Quality Standards

Comments raised three sub-issues regarding implementation of new or revised quality standards.

Response: Responses to each of the three sub-issues raised in comments are provided below.

93. Sub-Issue on Water Quality Standards: The IP Purports To Apply Tier Two protection * * * Only to Waters Classified as High or Exceptional Aquatic Life, Based Almost Exclusively on Dissolved Oxygen Levels

Response: The TX WQS presume a high quality aquatic life use for all perennial water bodies. An intermediate or limited aquatic life use may only be adopted for a specific water body only when justified with a Use Attainability Analysis (UAA). The focus of a UAA is to determine what is the attainable use based on the physical, chemical and biological characteristics of the water body. As part of a UAA, data collected for a specific water body is compared with a reference (un-impacted) segment. This ensures that the designated use is based on the attainable use rather than based on the conditions with existing sources of pollution. The intermediate and limited aquatic life uses are considered to be existing uses and are also subject to antidegradation review.

EPA has not mandated whether States/Tribes apply ''Tier 2'' on a parameter-by-parameter basis or on a waterbody-by-waterbody approach as Texas does. This issue is open for discussion in the Advanced Notice of Proposed Rule-Making (ANPRM) for the Water Quality Standards Regulation (see 63 FR 36742). EPA will accept comment on the ANPRM through January 4, 1999. The ANPRM is a separate action from Texas's assumption of the NPDES program.

The antidegradation review may initially focus on dissolved oxygen; however, all pollutants are subject to review.

94. Sub-Issue on Water Quality Standards: With Regards to Antidegradation, the IP Fails To Set Out a Process for Assuring the Application of 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

Response: Antidegradation is discussed at 30 TAC 307.5 of the 1995/1997 Texas Water Quality Standards, which have been fully approved by EPA, in accordance with the federal regulation. In particular, items (b)(2), (b)(4) and (b)(5) of Section 307.5 directly address the comment's issues:

(b)(2)—No activities subject to regulatory action which would cause degradation of waters which exceed fishable/swimmable quality will be allowed unless it can be shown to the commissioner's satisfaction that the lowering of water quality is necessary for important economic or social development. Degradation is defined as a lowering of water quality to more than a de minimis extent, but not to the extent that an existing use is impaired.

Water quality sufficient to protect existing uses will be maintained. Fishable/swimmable waters are defined as waters which have quality sufficient to support propagation of indigenous fish, shellfish, and wildlife and recreation in and on the water.

(b)(4)—Authorized wastewater discharges or other activities will not result in the quality of any water being lowered below water quality standards without complying with federal and state laws applicable to water quality standards amendment.

(b)(5)—Anyone discharging wastewater which would constitute a new source of pollution or an increased source of pollution from any industrial, public, or private project or development will be required to provide a level of wastewater treatment consistent with the provisions of the Texas Water Code and the Clean Water Act (33 United States Code 1251 *et seq.*). As necessary, cost-effective and reasonable best management practices established through the Texas water quality management program shall be achieved for nonpoint sources of pollution.

Therefore, under the TPDES program, implementing the approved water quality standards includes implementing the prohibitions on degradation of water quality contained therein.

95. Sub-Issue on Water Quality Standards: The IP Fails To Address Implementation of Narrative Standards * * * and Storm Water Discharges

Response: Narrative criteria (both conventional and toxics) are addressed in permit actions. Page 6 of the IP states:

> New permit applications, permit renewals, and permit amendments will be reviewed to ensure that permitted effluent limits will maintain in stream criteria for dissolved oxygen and other parameters such as fecal coliform bacteria, phosphorus, nitrogen, turbidity, dissolved solids, temperature, and toxic materials. Assessment of appropriate uses and criteria for unclassified waters will be conducted in accordance with the previous sections.
>
> This evaluation will also include a determination of any anticipated impacts from ambient or baseline conditions, in order to implement antidegradation procedures (see following section). Conditions for the evaluation of impacts will be commensurate with ambient or baseline conditions * * *

Extensive requirements for total toxicity testing are found on pages 40–56 of the IP and pages 24–26 of the MOA. These requirements address protection of narrative water quality standards for toxics and other pollutants through the Whole Effluent Toxicity program. Storm water is not differentiated from other wastewater discharges in the permit limitation derivation procedures.

96. Issue: No Process for Assuring Controls Over All Residual Waste From Water Treatment Processing

One comment expressed the opinion that EPA rules and the Clean Water Act require that a CPP include a process for assuring adequate controls over the disposition of all residual waste from any water treatment processing. The TNRCC CPP fails even to acknowledge this issue.

Response: Series 21 of the CPP states the TNRCC will require all industrial wastewater permits (including water treatment plant permits) to contain conditions for the safe disposal of all industrial sludges, including hazardous waste, and that it be managed and disposed of in accordance with 30 TAC Chapter 335 and any applicable requirements of the Resource Conservation and Recovery Act. This includes the adopted regulations 40 CFR Part 257 and 258 referenced below which regulates non-hazardous water treatment plant residual wastes. Series 21 of the CPP further outlines that permits will be developed to be consistent with state and federal statutes, regulations and rules and also incorporate state and federal policies regulating the safe disposal and reuse of municipal sewage sludge. The regulations listed in the CPP which Texas will follow regarding the permitting of all residuals follows: (1) 30 TAC Chapter 312—Sludge Use, Disposal, and Transportation; Texas Health and Safety Code Chapter 361; 30 TAC Chapters 330, 332—Disposal in a Municipal Solid Waste Landfill; and (2) 40 CFR Parts 122, 257, 258, 501, and 503.

30 TAC 312.4(a) states permits are required for *all* sewage sludge processing, storage, disposal, and incineration activities. Further clarification is provided by federal regulations 40 CFR 503.3(a)(1) which Texas adopted and is referenced in the Continuing Planning Process. This regulation requires all ''treatment works treating domestic sewage'' be permitted. Treatment works are defined as all TPDES facilities discharging to waters of the United States and those facilities generating sewage sludge but without a discharge to waters of the United States In addition, it covers facilities changing the quality of sewage sludge. These operations include blending, stabilization, heat treatment, and digestion. The definition of ''treatment works'' also includes surface disposal site owners/operators, and sewage sludge incinerator owners/operators. 30 TAC 312.4(c) and 312.12 provide requirements to be followed in the registration of land application sites. The Texas program is more stringent than the minimum program required by the Federal regulations. Texas requires registrations be obtained by persons responsible for the land application operations and the sites onto which the sewage sludge or domestic septage is land applied for beneficial reuse. The Part 503 regulations do not automatically require land appliers of sewage sludge to obtain any type of official authorization for land application operations unless specifically requested to do so by the permitting authority to protect human health and the environment.

97. Issue: No Process for Determining Priority Issuance of Permits

One comment indicated that EPA rules require that a CPP include a process for determining the priority of issuance of permits, but the TNRCC CPP fails to even acknowledge this issue.

Response: EPA believes TNRCC has addressed the priority of permit issuance via its watershed approach to permitting. This approach identified and prioritized the Texas drainage basins, and requires all permits in a particular basin be issued during the same year. Permitting activities for all dischargers in a basin then rotate on a five-year basis. The Basin Permitting Rule is found at 30 TAC 305.71. The process is also referenced in the CPP, under Series 21—Point Source Permitting.

98. Issue: Use of EPA Test Methods for TPDES Program

The comment requested clarification concerning Item IV.B.3 in the proposed memorandum of agreement between TNRCC and EPA Region 6 concerning the use of alternate test methods and alternate test species for measurement of Whole Effluent Toxicity (WET). The comment expressed concern about terminology in the memorandum of agreement, specifically, the term ''EPA-approved'' tests and species, which permittees could use if TNRCC approved such use during the permit application process. The comment provided a specific example of allowance for an ionic adjustment of an effluent sample under certain circumstances.

Response: NPDES State program regulations applicable to permitting cross reference to certain, specific NPDES regulations that apply to EPA-issued permits, including the regulations that require the use of analytic test procedures approved at 40 CFR Part 136 (40 CFR 123.25(a)(4), (12) & (15); 40 CFR 122.21, 122.41 & 122.44). Recently, EPA approved testing methods to measure WET and published those methods at 40 CFR Part 136.

EPA acknowledges the existence of WET testing protocols that use other test species, or that differ from the procedures in the WET tests that EPA published at Part 136. Those regulations, at 40 CFR 136.4 (b), provide that:

> ''When the discharge for which an alternative test procedure is proposed occurs within a State having a permit program approved pursuant to Section 402 of the Act, the applicant shall submit his application to the Regional Administrator through the Director of the State agency having responsibility for issuance of NPDES permits within such State.

These procedures are designed to optimize coordination in the approval process between the applicant, the State, and EPA. Item IV.B.3. of the proposed memorandum of agreement, therefore, merely formalizes the State of Texas' role in the process for approval of alternative test procedures (and alternative test species). Through this process, the Commission will determine the acceptability of any alternative test procedures prior to forwarding the proposal to EPA Region 6 for review and approval.

In response to the comment's specific example regarding ionic adjustment of effluent samples, EPA refers the public to: Short-Term Methods For Estimating The Chronic Toxicity Of Effluents And Receiving Water To Marine And Estuarine Organisms (EPA–600–4–91–003) in Section 8.8 and Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (EPA/600/4–90/027F) in Section 9.5. These provisions describe the appropriate use of salinity adjustments for whole effluent toxicity testing for WET testing for discharges into marine waters.

Consistent with the requirements and recommendations in the Part 136 WET testing methods, EPA Region 6 has provided technical support to TNRCC regarding ionic manipulation of effluent samples. The approved manipulations apply only to samples used for the 24-Hour LC_{50} WET test. Under Texas Water Quality Standards (30 TAC 307.6(e)(2)(B)), TNRCC requires a 24-Hour LC_{50} WET test under certain circumstances. The WET tests that EPA published in Part 136 do not include a 24-Hour LC_{50} test. Under CWA section 510, however, States may impose water quality requirements that are more stringent and/or more prescriptive than those required by EPA.

EPA notes that Texas law does not allow for ionic manipulations of effluent samples when pollutants listed in Table 1 of 30 TAC 307.6(c) are present in the effluent or source waters. Finally, EPA notes that 30 TAC 307.4 (g)(3) provides that ''Concentrations and their relative ratios of dissolved minerals such as chlorides, sulfates and total dissolved solids will be maintained such that attainable uses will not be impaired.'' Therefore, while Texas law does allow for adjustments to the 24-hour LC_{50} test conditions under some circumstances, if the discharge causes the relative ratios of dissolved solids to be changed sufficient to impair the attainable uses, the discharge would also have to be evaluated for whether or not changing the relative ratios of dissolved solids in fact would impair the attainable uses.

Other Specific Issues

99. Issue: Overlapping EPA/TNRCC Requirements

One comment raised the question of how TNRCC and EPA will address duplicate efforts regarding permit reporting/inspection requirements.

Response: When EPA retains enforcement authority, the facilities will continue to report to EPA and TNRCC. Where EPA retains enforcement authority over a municipality, all NPDES permits associated with that municipality will be retained by EPA. Where a municipality also owns an industrial facility (public utility) those facilities will not be considered as part of the municipality, but will be considered as an individual facility. Facility inspections will continue to be coordinated between the two agencies to ensure minimum duplication of effort.

100. Issue: Definition of Enforcement Action

One comment states the ''NPDES application must clearly describe when the commission will use different types of orders.'' The comment asserts this information is essential to EPA's ability to determine if TNRCC will take timely and appropriate enforcement action.

Response: Due to the many variables of assessing violations, EPA cannot require the state to provide this level of detail. Through our oversight of the TPDES program and review of the quarterly noncompliance reports EPA will be able to determine whether or not enforcement actions are timely and appropriate.

101. Issue: Noncompliance Follow-up

One comment states that TNRCC prefers informal resolution to formal documented enforcement and also states that EPA needs to be able to track resolution of violations where no formal action was taken.

Response: TNRCC will be required to enter all enforcement actions into the Permit Compliance System (PCS). This will include both informal and formal enforcement actions. Informal actions can include telephone calls, site visits, warning letters, corrective action plans, etc. During EPA's semi-annual audits of the TPDES program, EPA will further evaluate TNRCC's response to noncompliance.

102. Issue: Failure To Comply With the International Treaties and Agreements

A public interest group commented that EPA had failed to carry out its legal responsibilities under international treaties and executive orders to consult with the government of Mexico and to seek input from Mexico on changes that would occur as a result of approval of the TPDES program. The comment contended that: (1) EPA failed to consult with Mexico on the impacts of NPDES authorization to Texas on the Rio Grande as required by the environmental agreements between the U.S. and Mexico; (2) EPA failed to consider what impacts the authorization will have on the ability of Mexico to comment on activities with potential cross-border issues; (3) TNRCC has not committed to provide notice to the government of Mexico for the purpose of soliciting comments on permits and other decisions that may affect Mexico; and (4) TNRCC lacks adequate procedures to comply with Section 402 (b)(5) of the Clean Water Act as it relates to Mexico.

Response: It is difficult to address this overly broad and vague comment because the comment failed to identify any applicable provision within any international agreements or executive orders. Hence, we can only assume which international agreements and executive orders they are referencing.

(1) International environmental agreements, such as the La Paz Agreement, between the U.S. and Mexico require the U.S. to consult with Mexico on certain specified environmental issues. However, the environmental agreements between the U.S. and Mexico and executive orders, do not specifically require the U.S. to consult with Mexico about authorization of a program, like the NPDES program, to a state, such as Texas. Moreover, EPA retains significant oversight authority over Texas NPDES permitting activities pursuant to the Clean Water Act. Consequently, Mexico's ability to consult with the U.S. as required under current environmental agreements is not reduced concerning any NPDES environmental issues after authorization of the NPDES program to the State of Texas.

(2) There are many fora and mechanisms for the Mexican Government to raise environmental issues, involving the State of Texas, with the U.S. EPA, the U.S. Department of State and the U.S. Department of Justice. These include the Commission for Environmental Cooperation, Border Environment Cooperation Commission, meetings mandated pursuant to the La Paz Agreement, and through other bilateral, and multilateral meetings and organizations.

(3) We are unaware of any mandatory obligations on the part of the State of Texas to provide notice of an NPDES permitting activity to the Government of Mexico.

(4) Section 402(b)(5) of the Clean Water Act does not apply to foreign countries and specifically not to Mexico. The word ''State'' in the following provision applies to a State of the United States and does not confer upon Mexico the same right to submit recommendations, as the statute provides to a State. The following is the text of the statute.

CWA 402 (b)(5) provides that: To ensure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations is not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

103. Issue: Additional Documents That Should Be Added to the Administrative Record

In the **Federal Register** notice, EPA requested that the public provide input on any document relevant to EPA's decision on the TPDES program that they felt should have, but had not, been included in the official record. One comment suggested that all previous applications for NPDES authorization by Texas; all written correspondence between EPA and Texas regarding those previous applications; all documents prepared since January 1, 1990, involving grants from EPA to Texas for water pollution control including, but not limited to grant documents, contracts for grants, and evaluations of Texas actions under such grants.

Response: EPA's decision on approval of a State's request for NPDES authorization must be based on the State's application that has been determined to be complete, and after considering any information provided during or as a result of the public comment period. It would not be appropriate to base this decision on what was, or was not, in previous applications. Therefore, information on past applications is not a required part of the administrative record. However, information on past applications by Texas is available to the public via the Freedom of Information Act.

Information on previous grants to the State of Texas is likewise not germane to EPA's decision. Correspondence regarding the FY–1999 grants process has been added to the administrative record.

104. Issue: Availability of NPDES Files Transferred to TNRCC

A public interest group questioned how TNRCC would make the permits and enforcement files for the TPDES program (including the existing NPDES files EPA transfers to the State) available for use by TNRCC inspectors and other employees in the fifteen District offices across the State and to the public. The comments were especially concerned that maintaining a single copy of the file in Austin would not allow timely access by TNRCC field personnel investigating complaints and doing inspections.

Response: TNRCC staffs have confirmed that all files transferred to TNRCC by EPA will be electronically imaged and then made available to both the public and to field personnel. EPA supports this decision by TNRCC to take advantage of opportunities current imaging and information distribution technology offer to actually improve public access to permit and enforcement information over that currently available through EPA paper-based file system. The actual paper files will be archived. According to TNRCC staff, the whole process of imaging the files and setting up the TNRCC procedures for accessing the file information is expected to be completed within two months after program authorization.

Endangered Species

105. Issue: ESA Requirement for EPA To Insure Protection of Threatened and Endangered Species

Some comments assert that Section 7(a)(2) of the Endangered Species Act (ESA) requires that EPA insure, in consultation with the U.S. Fish & Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively, the Services), that its approval of the TPDES program is not likely to jeopardize the continued existence of threatened and endangered species. The contention is that ESA § 7(a)(2) compels EPA to disapprove a state program request if FWS finds approval might result in jeopardy. These comments also assert that, if EPA approves this program, EPA would fail to carry out its obligation under section 7(a)(1) to conserve listed species.

Response: EPA has engaged in consultation under section 7(a)(2) of the ESA regarding its approval action. FWS has issued a biological opinion finding that the program is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat, and NMFS has concurred in EPA's finding that its action is not likely to adversely affect listed species. Regarding section 7(a)(1), to the extent it could even be argued that this provision imposes a specific obligation on EPA to take actions in the context of this approval action, EPA has met this obligation. The very premise of the coordination procedures developed by EPA and the Services is to ensure that effects of State permitting decisions on listed species are adequately considered, and that appropriate measures, including conservation measures, may be considered as appropriate. Facilitating communication between EPA, the Services and the State is one of the most fundamental steps that can be taken to promote the conservation of listed species. Moreover, EPA has stated that it may object to State permits that fail to ensure compliance with water quality standards which, among other things, preclude adverse toxic effects to listed species. Thus, EPA may use its objection authority, in appropriate circumstances, to address such adverse effects, even if the State permits are not likely to jeopardize the continued existence of a listed species.

106. Issue: Limitations on TNRCC's Ability To Agree to Measures for Insuring Protection of Threatened and Endangered Species

Some comments assert that EPA cannot approve the TPDES program because EPA and TNRCC cannot, consistent with *American Forest & Paper Assoc.* v. *U.S. EPA* , 137 F.3d 291 (5th Cir. 1998) (*AFPA*) and TWC § 26.017, ''agree to regulatory procedures necessary to insure that jeopardy and adverse modification to critical habitat are avoided...or to implement reasonable and prudent measures and alternatives.'' The comments identify no specific threat to listed species from program approval and recommend no specific procedures to avoid or minimize threats.

Response: No extraordinary procedural agreements between EPA and TNRCC are required to insure jeopardy is unlikely to arise from TPDES program approval or to minimize incidental takes anticipated in FWS' biological opinion. Texas' water quality standards require that permits be written in such a manner that would avoid jeopardy to aquatic and aquatic dependent wildlife (including listed species) and EPA will use its standard CWA procedures for review of state permit actions (including actions brought to its attention by the Services) to assure the standards are applied. EPA and the Services will use procedures that, in all the agencies' views, are adequate to ensure that listed species are not likely to be jeopardized and minimize incidental take. The State has an independent obligation to ensure that standards are applied in TPDES permits and EPA has committed, when authorized by CWA, to object to any State permit that is likely to jeopardize any listed species if the State fails to comply with that obligation and to considering carefully sub-jeopardy

issues. For these reasons, EPA and the Services have concluded that approval of the TPDES program is unlikely to jeopardize listed species or result in the destruction or adverse modification of critical habitat.

107. Issue: Adequacy of Texas Water Quality Standards To Protect Threatened and Endangered Species

Some comments assert that the water quality standards that EPA would rely upon in its oversight of TNRCC permitting actions are not adequate to ensure the protection of listed species. These comments assert that ''there has never been a full consultation process on the adequacy of the water quality standards.'' They also contend EPA's reliance is misplaced because TNRCC does not implement the antidegradation policy of its standards for pollutants assigned numerical criteria and has no implementation procedures for other narrative standards, including 30 TAC § 307.6(b)(4). They also contend that EPA cannot rely on application of technology based standards in TPDES permit actions because EPA's effluent limitations guidelines are not premised on protecting listed species in Texas. In support of their assertion on nonimplementation of the antidegradation policy, the comments provided a copy of TNRCC answers to written interrogatories in a State permit adjudication (''contested case hearing'').

Response: This comment appears to argue that, since some of Texas' water quality standards have not been subject to section 7 consultation, then EPA is precluded from approving the State's application to administer the NPDES program. While EPA does not necessarily agree that it must, or even may, consult on the State's water quality standards, EPA believes there's simply no basis for the assertion that the state standards are inadequate to ensure that listed species will be protected. This issue has been fully evaluated by EPA and the Services. EPA provided a complete copy of TNRCC's program approval request, including copies of the State's water quality standards and continuing planning process, to the Services in the consultations on its program approval. It has moreover discussed the standards and their effect at some length with FWS and provided it with TNRCC interpretation on State standards of particular interest. EPA and the FWS both believe that EPA's action approving the State's submission is consistent with the requirements of section 7 of the ESA.

EPA will continue, however, to consult on changes to Texas' standards and to work with Services on improving the protection afforded listed species by CWA. While the comment expresses some concerns with how TNRCC would implement some of its water quality standards, EPA is satisfied that it has the authority to ensure, through its oversight role, that water quality standards are applied in permits issued by the State, including those standards that protect listed species.

EPA agrees that TNRCC has not adopted detailed implementation procedures for all of its standards, but disagrees that such procedures are always necessary or even desirable. Although detailed implementation measures generally assure that standards are objectively applied in a manner that addresses common water quality problems, uncommon or unforseen situations may arise that require additional measures to assure protection of aquatic uses. States are thus free to supplement the criteria in their standards and the procedures of their implementation plans to accommodate the needs of specific situations. *See generally PUD No. 1 of Jefferson County* v. *Washington Dept. of Ecology*, 511 U.S. 700 (1994). Adoption of broadly narrative supplemental standards without detailed implementation procedures is one way states may provide such flexibility.

30 TAC § 307.6(b)(4) is an example of such a supplemental standard. It is one of four narrative criteria in § 307.6 (b) prohibiting toxicity in Texas waters. The three other criteria address acute and chronic toxicity from the standpoint of aquatic life and human health and their implementation relies on using standardized test methods to assure compliance with objectively calculated effluent limitations controlling specific toxic pollutants and/or whole effluent toxicity. Those test methods and limitations are in turn based on scientific knowledge on how toxicity generally affects aquatic life and humans, but do not address each and every potential effect imaginable. Potential gaps are filled by § 307.6(b)(4), which provides:

As interpreted by TNRCC, this standard requires it to impose case-specific conditions in TPDES permits to protect aquatic and aquatic-dependent species (including listed species) from the toxic effects of discharges when Texas' other toxic criteria and implementation procedures provide insufficient protection. The lack of specified implementation measures for this supplemental standard leaves TNRCC free to develop and apply *ad hoc* permit conditions specifically tailored to a specific problem. Whether or not specific *ad hoc* conditions are themselves sufficient may be assessed only in the context of an individual permit action.

EPA is not relying on application of technology-based effluent limitations in TPDES permits to protect listed species. Section 301(b)(1)(C) of the CWA and EPA regulations require that limitations more stringent than technology-based requirements shall be imposed whenever necessary to meet water quality standards. Where such more stringent limitations are not needed, however, TNRCC's application of technology-based effluent limitations would necessarily provide some degree of additional protection to aquatic life, if any, in a receiving stream.

108. Issue: ESA § 7 Consultation Requirement for the CPP

Some comments claim that ESA obliges EPA to engage in a separate consultation with the Services on its approval of Texas' Continuing Planning Process (CPP) and that the Agency cannot approve the TPDES program until those separate consultations occur.

Response: Review and approval of a CPP is a necessary prerequisite to EPA's approval of a state NPDES program. *See* CWA § 303(e); 40 CFR § 130.5(c). Reviewing some elements of a CPP, e.g., an implementation plan showing how a state intends to apply its water quality standards in permit actions, may moreover be necessary to judge whether a proffered state program complies with other statutory requirements for program approval, e.g., CWA § 402(b)(1)(A). CPPs are not collections of dusty documents adopted, approved, and archived some time in the distant past, however; the states update them frequently as they adopt new ways to meet changing water quality needs. Water quality management plans, for instance, may change each time a state develops and applies a new effluent limitation in an individual permitting action. Maintaining the currency of CPPs thus requires significant administrative efforts by multiple agencies in each state and by EPA as well. EPA Region 6 reviewed and approved the most up-to-date CPP in connection with its program approval decision, thus ensuring its decision was based on the most current information.

While EPA does not concede that consultation on the CPP is required, EPA did provide to FWS and NMFS—as part of the consultation on NPDES program approval—copies of the State's program approval submission, which included CPP provisions affecting application of Texas' water quality standards.

109. Issue: Objection To Adoption of Procedures To Insure Protection of Threatened and Endangered Species

The American Forest and Paper Association states that it objects to EPA's adoption of procedures to protect endangered and threatened species. AFPA states initially that it supports the procedures contained in the draft Memorandum of Agreement between EPA and the State, which would provide that the Fish and Wildlife Service and National Marine Fisheries Service (the Services) may comment on draft State permits and coordinate with the Service to attempt to resolve the issue. If the issue is not resolved, EPA may object to the permit under any one of the grounds for EPA objections under section 402(d)(2) of the CWA. While AFPA supports these procedures as being within EPA's authority under the CWA and consistent with the *AFPA* decision, AFPA objects to procedures being developed based upon a draft MOA developed by headquarters' offices of EPA and the Services. AFPA contends that these procedures require the State to ''consult'' with the Services, and that they would impermissibly condition EPA's approval on the State's following procedures to protect endangered species. AFPA also asserts that the procedures are impermissible because EPA is only authorized to object to State permits based upon the specific authorities specified in the CWA. Finally, AFPA argues that EPA was not required to undergo section 7 consultation with regard to approval of Texas' program.

Response: The procedures ultimately adopted by EPA and the Services are reflected in [cite relevant documents]. EPA believes that these procedures are consistent with its authorities and the *AFPA* decision. Each of AFPA's assertions is addressed below.

1. EPA Has Conditioned Its Approval on State's Agreement To ''Consult'' With the Services

AFPA is incorrect in asserting that EPA has impermissibly conditioned its approval action on the State's agreement to ''consult'' with the Services. ''Consultation'' under section 7 of the Endangered Species Act is a process that imposes certain procedural obligations on the agency consulting with the Services. *See* 50 CFR Part 402. While EPA and the Services have developed procedures for ensuring the protection of endangered and threatened species, those procedures do not impose obligations, procedural or otherwise, on the State. Indeed, the agreement for coordination is between EPA and the Services and is designed to facilitate coordination among the *federal* agencies and timely communication of information and recommendations *to* the State. The State is not, however, required to follow any particular procedures in evaluating comments from the Services, or to defer to their judgment. The State's only obligation is to issue permits that comply with the procedural and substantive requirements of the CWA and the State program approved by EPA. Indeed, The EPA/TNRCC MOA AFPA supports has not changed as a result of consultation.

Thus, it appears that AFPA may have misunderstood the coordination procedures in the draft national EPA/FWS MOA, which are the same in all material respects to the EPA/TNRCC MOA AFPA supports, and consist of the following basic elements: (1) An opportunity for the Services to comment on State permits; (2) an opportunity for the Services to contact EPA if their comments are not adequately addressed by the State; and (3) an opportunity for EPA to object to the permit if it fails to meet the requirements of the CWA. Specifically, the procedures first note that TNRCC is required under 40 CFR 124.10(c)(1)(iv) to provide copies of draft permits to the Services. This obligation is not altered or augmented under the procedures; EPA has simply made the commitment to ensure that the State carries out its CWA obligation in this regard. The procedures also state that EPA will ''encourage'' the State to highlight those permits most in need of Service review based on potential impacts to federally listed species; the State, however, is not obligated to provide this information. Where the Service has concerns that the draft permit is likely to adversely affect a federally listed species or critical habitat, the Service or EPA will contact the State, preferably within 10 days of receipt of the notice of the draft permit, and include relevant information to the State. If the Service is unable to resolve its comments, the Service will contact EPA within 5 days, and EPA will coordinate with the State to ensure that the permit meets applicable CWA requirements. Where EPA believes that the permit is likely to adversely affect a federally listed species or critical habitat, EPA may make a formal objection, where consistent with its CWA authority, or take other appropriate action. Where a State permit is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat, EPA will use the full extent of its CWA authority to object to the permit. In either case, the MOA makes clear that EPA would only object where authorized by the CWA to do so.

Thus, while the procedures developed by EPA and the Services articulate how EPA and the Services will work together, and with the State, to resolve issues that arise, the State has not agreed to ''consult'' with the Services, or take any other actions not required by the CWA, as a ''condition'' for obtaining EPA's approval of its program. EPA is hopeful that the procedures will facilitate sharing of information among the Agencies with the State, so that the State will have the benefit of timely federal agency input when it makes its permitting decisions.

2. Section 7 Consultation is Not Required for EPA's Approval Action

AFPA argues that section 7 does not apply to EPA's action approving the State's application to administer the NPDES program. AFPA has taken this position in several cases challenging EPA's decision to consult when it approved the programs submitted by Louisiana and Oklahoma. The Fifth Circuit in *AFPA* did not address the applicability of the procedures under section 7 to EPA's approval action for Louisiana. *See* 137 F.3d 298, n.5. EPA believes that section 7 does apply to its action, for the reasons explained in its briefs in that case and in a similar case (*American Forest Paper Assoc.* v. *U.S. EPA*, No. 97–9506 (10th Cir. 1998)), which are incorporated in this response by reference. Moreover, even if EPA was not required by law to consult with the Services, EPA believes it was within its discretion to do so.

AFPA also argues that formal consultation was not required because EPA's action was not likely to adversely affect listed species, a contention with which EPA Region 6 initially agreed. Under the Service's section 7 regulations, however, formal consultation is required unless the Service concurs in writing that the action is not likely to adversely affect listed species. NMFS agreed with EPA's ''unlikely to adversely affect'' determination, based in part on study of sea turtle mortality in Texas waters, indicates current marine water quality in Texas is unlikely to adversely affect sea turtles in NMFS trusteeship. FWS, faced with a materially different situation for listed species it protects, declined to concur with EPA's determination. EPA thus consulted formally with FWS, which has rendered a ''no jeopardy'' biological opinion.

3. EPA Does Not Have Authority To Object to a Permit for Failure to Comply With the ESA

The MOA between EPA and TNRCC, as well as the procedures developed by EPA and the Services, make clear that EPA will only object to a State permit where doing so would be within its authority under the CWA. Section 301(b)(1)(C) of the CWA and 40 CFR 122.44(d)(1) require that any permit ensure compliance with State water quality standards. Under 40 CFR 123.44(c)(8), EPA is authorized to object to a State permit that fails to satisfy the requirements of section 122.44(d). Texas water quality standards are designed to ensure the protection of aquatic and aquatic-dependent species, including any such species that are listed as endangered or threatened. *See* Letter from Margaret Hoffman, TNRCC, to Lawrence Starfield, EPA (June 29, 1998). The State's standards include a requirement that ''Water in the state shall be maintained to preclude adverse toxic effects on aquatic and terrestrial wildlife * * * resulting from contact, consumption of aquatic organisms, consumption of water or any combination of above.'' 30 Texas Administrative Code 307.6(b)(4). Thus, if EPA were to find that a proposed state permit would allow pollutant discharges that would adversely affect aquatic life in the receiving water that happened to be listed as endangered or threatened, the Agency would have the authority to object to the permit for failure to ensure compliance with State water quality standards. If the adverse effects were so severe as to likely jeopardize the continued existence of the species, EPA intends to utilize the full extent of its CWA objection authority to avoid likely jeopardy. However, in these cases, EPA would not use its objection authority to enforce requirements of the Endangered Species Act. Instead, EPA intends to consider the needs of listed species in deciding whether to object to a State permit that fails to ensure compliance with State water quality standards and which is, consequently, outside the guidelines and requirements of the CWA. EPA will also inform FWS if it believes, based on its review of a permit action, that there may be an adverse impact on listed species.

4. The Procedures Are Inconsistent With the Fifth Circuit Decision in AFPA

EPA believes that the endangered species coordination procedures are fully consistent with the *AFPA* decision. The court found in that case that EPA lacked statutory authority to condition its approval of a State application to administer the NPDES program on factors not enumerated in section 402(b) of the CWA. EPA has, in fact, approved the State's program based solely on the criteria contained in section 402(b) of the CWA and implementing regulations. Moreover, as explained previously, EPA has not ''conditioned'' its approval of Texas'' application on any factors related to endangered species protection. The procedures developed in consultation consist of commitments between EPA and FWS to provide information and recommendations to each other and the State in a timely fashion, and statements by EPA regarding how it intends to exercise its oversight authority in the future. The State of Texas' obligations in administering the TPDES program consist solely of complying with the procedural and substantive obligations under section 402(b) of the CWA and relevant CWA regulations. These include the obligations to provide copies of draft permits to the Services (40 CFR 124.10(c)(1)(iv)), consider the Services' views in its permitting decisions (40 CFR 124.59(c)) and issue permits that ensure compliance with water quality standards (40 CFR 122.44(d)(1)). Nothing in the coordination procedures to which the various agencies have agreed, or in any aspect of EPA's approval action, has augmented the obligations the CWA imposes on the State. Moreover, these procedures are consistent with *AFPA* because, as explained previously, EPA would only object to State permits that EPA determines are outside the guidelines and requirements of the CWA.

Conclusion

The written agreements of this authorization process will formalize the partnership which has existed between EPA and TNRCC for many years, and will provide the structure for the side-by-side relationship between the two agencies. Region 6 will continue to be ready and available in its new oversight role to work with TNRCC and the citizens of Texas to ensure the environment is protected.

The TPDES program, the 44th state program to be authorized under CWA § 402, includes point source discharges, pretreatment, federal facilities and sewage sludge.

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STATE NPDES PROGRAM STATUS 09/14/98

	Approved State NPDES Permit Program	Approved to Regulate Federal Facilities	Approved State Pretreatment Program	General Permits
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	--	--	03/04/82
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74	--	--	10/23/92
Florida	05/01/95	--	05/01/95	05/01/95*
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79	--	01/04/84
Indiana	01/01/75	12/09/78	--	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85	--	11/24/93
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Louisiana	08/27/96	08/27/96	08/27/96	08/27/96
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	04/16/85	11/29/93
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	--	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	--	07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	--	10/15/92
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	--	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oklahoma**	11/19/96	11/19/96	09/11/96	11/19/96
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	--	08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92
South Dakota	12/30/93	12/30/93	12/30/93	12/30/93
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Texas**	09/14/98	09/14/98	09/14/98	09/14/98
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	--	03/16/82	08/26/93
Virgin Islands	06/30/76	--	--	--
Virginia	03/31/75	02/09/82	04/14/89	04/20/91
Washington	11/14/73	--	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	--	09/24/91
TOTALS	44	38	32	43

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 29
Number of Fully Authorized Programs, Including Sludge = 3 (OK - 11/19/97, TX - 09/14/98, UT - 06/14/96)
* Phased Federal facility & storm water programs by 2000
** Partial Programs OK - ODEQ, TX - TNRCC

BILLING CODE 6560–50–C

Other Federal Statutes

A. National Historic Preservation Act

Pursuant to Section 106 of the National Historic Preservation Act, 16 USC § 470(f), federal agencies must provide the Advisory Council of Historic Preservation opportunity for comment on the effects their undertakings may have on the Nation's historic properties. EPA has provided such an opportunity in its review of the TPDES program approval request by consulting with the Advisory Council's delegate, the Texas Historical Commission. No feasible measures for further reducing potential adverse effects on historic properties were developed. Region 6 understands, however, that the Texas Historical Commission is independently discussing means of improving its coordination with TNRCC under State law.

B. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 33 USC 1536(a)(2), requires that federal agencies insure, in consultation with the United States Fish & Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS), that actions they undertake, authorize, or fund are unlikely to jeopardize the continued existence of listed threatened and endangered species or result in destruction or adverse modification of critical habitat. EPA consulted with both FWS and NMFS in reviewing the TPDES program approval request. Difficult issues arose and were resolved in its consultation with FWS.

After careful consideration in formal consultation, FWS concluded in a biological opinion that approving the TPDES program is unlikely to jeopardize listed species if applicable water quality standards are fully applied in TPDES permits, despite some loss of federal authority in some situations. With FWS assistance, EPA will use its oversight procedures to assure the standards are in fact applied, particularly in waters on which listed species depend. This effort will result in more attention, particularly of minor state permit actions, than EPA devotes to oversight of any other state NPDES program in Region 6. Both EPA and FWS are additionally committed to seeking even more protection for listed species by continuing to consider their needs in EPA's review of revisions to Texas' water quality standards. Region 6 believes these actions will increase the overall protection CWA affords listed species in Texas.

C. Coastal Zone Management Act

Pursuant to Section 307(c)(1)(C) of the Coastal Zone Management Act, Federal agencies carrying out an activity which affects any land or water use or natural resource within the Coastal Zone of a state with an approved Coastal Zone Management Plan must determine whether that activity is, to the maximum extent practicable, consistent with the enforceable requirements of the Plan and provide its determination to the state agency responsible for implementation of the Plan for review. Texas' approved Coastal Zone Management Plan is administered by the General Land Office and, more particularly, by its Coastal Coordination Council. TNRCC permit actions are themselves subject to consistency review under 31 TAC 505(11)(a)(6); thus approval of TNRCC's TPDES program does not affect Texas' coastal zone and is consistent with the enforceable requirements of Texas' Coastal Zone Management Plan.

D. Regulatory Flexibility Act

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an ''approval,'' within the meaning of the APA, constitutes a ''license,'' which, in turn, is the product of an ''adjudication.'' For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq. Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the Administrative Procedure Act (APA), after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed TPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

Notice of Decision

I hereby provide public notice of the Agency's approval of the application by the State of Texas for approval to administer, in accordance with 40 CFR 123, the TPDES program.

Dated: September 14, 1998.

Gregg A. Cooke,

Regional Administrator Region 6.

[FR Doc. 98–25314 Filed 9–23–98; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday
September 24, 1998

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 107 and 108

Employment History, Verification and Criminal History Records Check; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 28859; Amendment No. 107–12, 108–17]

RIN 2120–AG32

Employment History, Verification and Criminal History Records Check

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA amends the regulations that require an access investigation, including a fingerprint-based criminal record check in certain cases, for unescorted access privileges to security areas at airports. This final rule extends the requirement for an access investigation (which is renamed ''employment history investigation'') to persons who perform checkpoint screening functions at airports and their supervisors. The final rule also requires airport operators and air carriers to audit employment history investigations. This final rule is in response to the Federal Aviation Reauthorization Act of 1996 and seeks to improve the security of the airport environment.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division, ACP–100, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3413.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

This document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board (telephone: 703–321–3339), the **Federal Register**'s electronic bulletin board (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board (telephone: 800–322–2722 or 202–267–5948).

Internet users may access the FAA's web page at http://www.faa.gov or the **Federal Register**'s web page at http://www/access.gpo.gov/su__docs to download recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must reference the amendment number of this final rule.

Persons interested in being placed on the mailing list for future rules should request a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page http://www.faa.gov/avr/arm/sbrefa.htm, by contacting a local FAA official, or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

History

Title 14 of the Code of Federal Regulations (CFR) part 107 prescribes security requirements of airport operators concerning access control, law enforcement support, and the submission of airport security programs for FAA approval. Title 14 CFR part 108 prescribes security rules for U.S. carriers who must adopt and carry out an FAA approved security program. As used in this document, the term ''air carrier'' refers to U.S. air carriers conducting passenger-carrying operations.

On October 3, 1995, the FAA issued a final rule on Unescorted Access Privilege (60 FR 51854). The FAA issued the rule primarily in response to the Aviation Security Improvement Act of 1990. The rule requires a 10-year employment history investigation for certain employees, including, if needed, a Federal Bureau of Investigation (FBI) fingerprint-based criminal records check. These employment checks must be performed for individuals who are granted unescorted access to a security identification display area (SIDA) and individuals who authorize others to have unescorted access. (See 14 CFR 107.25.) In the preamble to the Unescorted Access Privilege final rule the FAA stated that it would continue to evaluate the civil aviation security system to determine if further changes were warranted.

The bombings of the Federal Building in Oklahoma City and the World Trade Center Building in New York, along with information provided by the U.S. intelligence community after those incidents, has indicated the terrorist activities are no longer limited to areas outside of the United States. Intelligence information indicates that terrorists are in the United States, working alone, working in ad-hoc groups, or serving as members of established terrorist groups. In light of the increase in terrorism in this country, the White House Commission on Aviation Safety and Security (the Commission) identified a further need to enhance security at our nation's airports. In its final report, (''Final Report to President Clinton—White House Commission on Aviation Safety and Security,'' February 12, 1997), the Commission recommended that ''Given the risks associated with the potential introduction of explosives into these [airport] areas, * * * screeners and employees with access to secure areas [should] be subject to criminal background checks and FBI fingerprint checks.''

In section 304 of the Federal Aviation Reauthorization Act of 1996, Pub. L. 104–264 (the Act), the Congress directed the FAA to expand the use of both employment history investigations and fingerprint-based criminal records checks. Section 304 of the Act directs the Administrator to issue regulations requiring employment history investigations and, as needed, criminal record checks for individuals who screen passengers and property that will be carried in an aircraft cabin in air transportation or intrastate air transportation. The regulations would also apply to supervisors of screeners. The Act also provides that Administrator with the discretionary authority to apply these investigations to individuals who exercise security functions associated with cargo and baggage. In addition, section 306 of the Act directs the Administrator to provide for the periodic audit of the effectiveness of the criminal record checks. The FAA believes that the

measures mandated by Congress will help ensure the integrity of the airport environment.

In related security measures the FAA, on August 1, 1997, issued two NPRMs: Airport Security (62 FR 41760) and Aircraft Operator Security (62 FR 41730). These notices proposed to amend the existing Airport Security and Aircraft Operator Security rules in 14 CFR parts 107 and 108. In addition these amendments would revise certain applicability provisions, definitions and terms; reorganize these rules into subparts containing related requirements; and incorporate some requirements already implemented in airport and air carrier approved security programs. The comment period on both proposals was extended to June 26, 1998 (63 FR 19691, April 21, 1998). Neither of these proposals addresses employment history, verification, and criminal records checks. If these NPRMs become final rules then § 107.31 would be renumbered as § 107.207 and § 108.33 would be renumbered as § 108.221.

General Discussion of the Rule

On March 19, 1997, the FAA issued an NPRM proposing to revise the requirements for an Employment History, Verification and Criminal Records Check in §§ 107.31 and 108.33 (62 FR 13262). In the notice the FAA proposed to extend the requirement for employment history investigations to persons who perform checkpoint screening functions at airports and their supervisors. The addition of screeners only affects part 108. The FAA also proposed to require airport operators and air carriers to audit the employment history investigations that they perform under §§ 107.31 and 108.33, respectively.

A new term appears in this final rule. The NPRM used the term ''tenant.'' The FAA determined that the term ''tenant'' was not accurate for the purposes of proposed § 107.31. The FAA has defined the new term ''airport user'' for the purposes of § 107.31 only. ''Airport user'' means those employers, not subject to § 108.33, whose employees seek unescorted access privileges to the SIDA. An airport user may include those companies that do not have business offices at the airport, but require access to the airport's SIDA. Screeners are the responsibility of air carriers.

The FAA received 27 comments on the NPRM. A summary of those comments and an explanation of changes made in the final rule in response to those comments appear below under ''Discussion of Comments.'' Significant changes between the NPRM and the final rule include the following:

1. Section 107.31(p), Airport user responsibility, was added to the final rule to accommodate other changes related to comments received. Several comments to the NPRM stress the difficulty the airport operators would have in maintaining the investigative files for all individuals with unescorted access. In the final rule, § 107.31(p) allows airport users to maintain the employment history files after the airport operator has performed a preliminary review.

2. Section 108.33(m), Air carrier responsibility, was added to clarify for air carriers the designations of responsibility necessary for compliance with this rule. This section recognizes the extent of the air carriers' responsibilities with respect to their employees and security screeners.

3. The FAA has reorganized the employment history investigation by dividing the investigative process into Part 1 and Part 2. This clarification, which does not substantively change the requirements, was added to both §§ 107.31 and 108.33. Part 1 of the employment history investigation entails a review of the employment record of the individual for the past 10 years, and verification of the most recent 5 years of employment. This portion of the employment history investigation may be performed by an airport user, or in the case of air carriers by a screening company. Part 2 of the investigation is a fingerprint based criminal record check. If Part 1 reveals certain questionable items (triggers), such as an unexplained 12 month gap in employment, Part 2 must be performed. It is important to understand that Part 2 of the investigation only occurs if there is a triggering event discovered during Part 1 of the investigation and the employer and the individual agree to go forward with the fingerprint check. If the airport user chooses not to continue, or if the individual when requested chooses not to submit fingerprints, then the employment history investigation will stop and the individual will not be eligible for unescorted SIDA access or to perform or supervise screening functions.

Discussion of Comments

A total of 27 comments were received in response to the NPRM. Commenters include airport operators, air carriers and their respective associations, pilot associations, cargo companies, screening companies, and food service companies. While most commenters support the intent of the proposed rule to improve airport security, many commenters disagree with specific aspects of the proposal. Comments are discussed in detail below.

1. Scope (§§ 107.31(a) and 108.33(a))

The FAA proposed a clarifying amendment (§ 108.33(a)(2)) to ensure that an employment history investigation be completed for each individual issued an air carrier identification badge that is recognized as ''airport accepted'' media. By recognizing the air carrier badge the airport operator authorizes unescorted access privileges for that individual. Additionally, the FAA proposed (§ 108.33(a)(3)) expanding the applicability of the employment history investigation requirement to include (a) individuals performing screening functions associated with persons and property entering the aircraft cabin, and (b) individuals holding the two immediate supervisory positions above the screeners. This section continues to apply to those individuals who currently have unescorted access privilege.

Some comments address the issue of airline issued media. Two commenters state that if an individual has airline issued access media, that media should allow access to SIDAs regardless of whether it was issued at the individual's home airport. One commenter states that flight crewmembers should be able to use their company identification for access to the SIDA. Another commenter states that all air crews should be required to carry airline issued media and that the background checks and audit provisions should apply to such media.

One commenter suggests that the 10-year background check apply to issuing officers of airport tenants and contractors, including screening companies.

One commenter suggests that airport tenant service providers should be allowed to voluntarily obtain a certified standard security plan from the FAA in the same manner currently available to freight forwarders and cooperative shipper's associations. Such an approach would allow the security programs of tenants to be certified by the FAA in the same manner as an air carrier's, thereby streamlining the administrative process for airport contractors and their tenants.

FAA Response: It is the FAA's intent that the current practice of recognizing air carrier media by various airport operators as ''airport approved'' media be continued. The purpose of § 108.33(a)(2) is to maintain the current

practice and to ensure those air carrier employees who are extended such privileges have also undergone the same employment history investigation as others who have SIDA access.

The FAA does not require the creation of an ''issuing officer'' nor is there a clear understanding of what exactly the job duties are for a person holding such a position. Since the airport operator is the only approval authority for granting unescorted access the regulation covers those that might be granting such access on behalf of the airport. Several airport operators are requesting that airport users limit the number of persons who may sign a certification on behalf of that company. This makes sense from operational standpoint; however; it is FAA's view that this representation is only indicating the investigation has been conducted. The representative is not granting unescorted access on behalf of the airport operator. If in fact the airport user's representative is granting of authorizing unescorted access, the rule requires an employment history investigation for this person under § 107.31(a).

The NPRM was published to address employment history investigations and not for addressing the creation of tenant security programs; therefore the final rule does not address such programs. This issue was addressed in the Airport Security (62 FR 41760) and Aircraft Operator Security (62 FR 41730) NPRMs and will be further addressed in subsequent documents resulting from the NPRMs for Airport and Aircraft Operator Security.

The FAA will continue to evaluate all elements of the civil aviation security system to determine if further changes are warranted.

2. Grandfathering of Current Employees (§§ 108.33(a) (3) and (4))

The FAA proposed that all screeners hired after the effective date of the new regulations would be required to have an employment history investigation (§ 108.33(a)(3)). Retroactive background checks were proposed in § 108.33(a)(4) for individuals who were hired before the effective date of the rule and who remain employed for a year after the effective date.

A number of commenters, including National Air Transportation Association (NATA), Regional Airline Association (RAA), Air Transport Association of America (ATA), and Air Line Pilots Association (ALPA), say that requiring employment background checks on current screening personnel and supervisors is not justified because these employees have already undergone a 5-year verification check and on-the-job observation. According to these commenters, the proposed requirement would add unnecessary costs and paperwork without increasing aviation security. The commenters believe these individuals should be grandfathered into the final rule at its effective date.

Two commenters, Airports Council International and American Association of Airport Executives (ACI–NA and AAAE), state that airports which have proactively applied § 107.31 to security screeners should not have to reissue/revalidate access media nor do a second background investigation for these screeners.

ALPA states that the current rule applies only to those individuals seeking authorization for unescorted access privileges, and not to those who were employed before January 31, 1996.

One commenter requests clarification that § 108.33(a)(2) is not a retroactive requirement.

One commenter states that it should be made clear that § 108.33(a)(2), extending background investigation to each individual who is issued an air carrier identification badge that is accepted by an airport for unescorted access, applies only to flight crewmembers and other employees hired after the effective date. A retroactive application would impose very significant administrative burdens and costs on carriers.

Another commenter states that employees with access to the SIDA were grandfathered when the Access Investigation rule went into effect, therefore, the time frame for compliance with the proposed rule should be shortened.

FAA Response: The FAA has reconsidered its proposal to require currently employed screeners to undergo the employment history investigation. The FAA agrees with the commenters who state that requiring employment history investigations of current screening personnel and supervisors who have already undergone a 5-year verification check and on-the-job observation would add more costs and paperwork without providing a comparable increase in airport security. Further, because of the typically high turnover rates, much of the screener population will have been subjected to the expanded employment history investigation within a relatively short period. Therefore, the FAA concludes that air transportation security does not require the retroactive application of this rule to current screeners and their supervisors.

In response to the commenter requesting clarification about § 108.33(a)(2), the FAA confirms that it is not retroactive. This change was proposed in the NPRM and will become effective upon the effective date of this final rule.

In response to the commenter questioning whether the grandfathering provisions of the access investigation still apply, this rule does not change that grandfather provision. Those individuals having unescorted access prior to January 31, 1996, were grandfathered and this status will continue.

3. Employment History Investigation (§§ 107.31(b)(1) and 108.33(b)(1))

The FAA proposed replacing the term ''access investigation'' with ''employment history investigation,'' The 10-year employment history review and the 5-year verification requirements would remain unchanged, although the scope of application would be expanded to include screeners and supervisors regulated under § 108.33(a)(3).

While one commenter supports the terminology change, another recommends that the existing terminology, ''access investigation'' be retained because it is understood that the rule applies to those who may not have access to the SIDA. Also, this change would increase paperwork costs, as well as training costs.

This commenter further states that the workforce will experience stress and fatigue due to the delays from expanded background checks. This, in turn, will result in more safety problems, as well as the movement of potential workers away from this industry and towards comparable paying jobs with no such delays.

One commenter recommends that checkpoint screeners undergo the same employment background investigations as regular law enforcement officers including performance of a criminal record check both on National Crime Information Center (NCIC) and local records.

NATA says that the FAA must clarify which carrier would be responsible for conducting the required checks in cases where several carriers share a security checkpoint. The commenter also seeks clarification in cases where control of the checkpoint changes from one carrier to another.

FAA Response: In response to comments that the term ''access investigation'' not be changed due to the costs of changing application forms and retraining personnel on the terminology, the FAA did not and is not currently requiring a title be placed on any regulated parties application. The FAA purposely did not require the

development of any new forms with the Access Investigation, but indicated the required information could be added to the employers' current applications. This final rule adopts the language as proposed.

In response to the commenter who believes that the workforce would experience stress and fatigue due to delays from the expanded background checks, the FAA does not agree that these requirements will result in delays that might cause stress on the industry. The employment history investigations have not been expanded and the process remains the same as it was before. The new population being added to the 10-year investigation will soon find the process routine and will view it as another step to take prior to performing screener functions.

In response to the comment requesting that screeners undergo the same background check as law enforcement officers, the FAA does not equate screeners with law enforcement officers. Additionally, the FAA notes that regulated parties are free to determine, within the law, any standard pre-employment qualifications deemed necessary for their needs. After an individual has successfully met those requirements, then the individual would be subject to the FAA regulations that apply to the position.

In response to NATA's concern about several carriers having responsibility at one checkpoint, the FAA assures the commenter that these situations will be handled in the same manner they are currently being addressed for other regulatory issues. The FAA will rely on the air carriers, their principal security inspectors, and local FAA agents to continue to determine the best methods to address compliance with these regulations.

The FAA has clarified in the final rule the requirements in §§ 107.31(b)(1) and 108.33(b)(1) by explaining that this portion of the employment history investigations be referred to as Part 1. Part 1, which is the 10-year employment history and 5-year verification, must always be conducted. For reasons discussed in section 6 of the Discussion of comments, the National Crime Information Center (NCIC) is not available for implementing this rule.

Part 2 of the 10-year employment investigation is addressed in §§ 107.31(c)(5) and 108.33(c)(5). Part 2 consists of the criminal records check and is required only when a trigger has been met, but will not be conducted unless both the employer and the affected individual agree to proceed with the process.

4. Disqualifying Crimes (§§ 107.31(b)(2) and 108.33(b)(2)

The FAA did not propose any changes to the list of disqualifying crimes; however, some commenters requested changes to the list of disqualifying crimes.

Commenters recommend that the list of disqualifying crimes be expanded to include the manufacture, possession and use of controlled substances and crimes such as strong arm robbery, theft, auto theft, and burglary in order to more closely mirror the crimes listed in Part 1 of the Uniform Crime Reporting Act.

One commenter suggests that any felony conviction or arrest should preclude employment in security checkpoint positions.

FAA Response: The FAA did not propose and is not expanding the list of disqualifying crimes in this final rule. If regulated parties want to add anything to their pre-employment standards they may do so. The FAA is aware that several airport operators and air carriers regularly conduct local criminal record checks and it is under the authority of state or local law that such checks are conducted. The FAA encourages the recognition by all employing parties of the distinction between their pre-employment standards and qualifications, which are separate from FAA regulations.

5. Investigative Steps (§§ 107.31(c) and 108.33(c)

The FAA proposed no substantive changes to these sections, however, one commenter requests that the FAA clarify the language of proposed § 107.31(c)(4), which requires the airport operator to verify the information on the most recent 5 years of employment history. The commenter believes that the airport operator is required to have final responsibility for this function but is not required to verify every single background investigation done by employers.

Another commenter states that the current employment verification process is not effective because of the high turnover rate in the industry. It is difficult and time consuming to verify if an applicant's supervisor has left the company.

For these reasons and because the rule in intended to prevent individuals convicted of disqualifying crimes from obtaining access to the SIDA or from performing security functions, NATA recommends that verifications be used to ascertain that an individual was not incarcerated in each one-year period. This will allow affected companies to meet the intent of the regulations by determining if a disqualifying crime has been committed.

NATA adds that former employers will limit the employee information they provide out of fear of lawsuits from employees originating from the transfer of records, and that would be counterproductive to enhanced security.

Several commenters, including ACI–NA and AAAE, request that the FAA clarify the employment verification process and state what it considers to be acceptable verification. These commenters recommend that the employment verification process be standardized to ensure consistency among FAA regional security offices.

FAA Response: The proposed rule language has been modified in the final rule to refer to the first stage of the employment history investigation, paragraph (C)(1)–(4) as Part 1. Paragraph (c)(1) lists the information that the individual must provide on the application.

The final rule does require the airport operator to verify the information on the most recent 5 years of employment history. The airport operator is responsible for ensuring that the verification has been completed. The verification is a portion of the investigative process. The verification may be completed by the airport user, which the airport operator may accept through the certification.

There are many avenues that may be used in the verification process. The fact that the applicant's former supervisor is not available does not mean that the owner or other supervisors of the company could not vouch for the applicant. Persons other than the immediate supervisor presumably have access to company employment records.

It is unclear to the FAA why former employers are hesitant to provide past employment dates. It is not known to be a basis for a lawsuit to confirm employment dates. The FAA suspects that liability issues arise when there are more than just past employment dates that are being requested. To be in compliance with this regulation only the confirmation of employment dates is required. The employment history information required by this final rule from former employers is the same as required by the current rule.

This final rule was not intended to address the specifics of the verification process. Future FAA guidance may be provided in another forum in order to respond to the questions pertaining to the verification process and acceptable documentation.

6. Triggers/FBI Fingerprint Check (§§ 107.31(c)(5) and 108.33(c)(5))

The FAA proposed only an editorial change to the list of ''triggers.'' No additions to the current criteria were proposed.

NATA states that if the airport tenant who is hiring an individual, covered by the background check rule, does not receive any of the FBI information, how can that airport tenant employer be ''protected * * * from future liability?'' For example, if a potential employee has no disqualifying crimes, but has several convictions for theft, the business wanting to hire this person as a baggage handler would be unaware of this record.

One commenter advises the FAA that a criminal records check does not provide information on individuals who have resided outside the U.S.

Several commenters state that the 54-day estimate for the FBI fingerprint check is excessive and costly. One commenter says that the FAA should ensure that the fingerprint check is completed within 30 days. Another commenter adds that after 30 days it is no longer viable to keep a new hire on its payroll doing work that does not require unescorted SIDA access.

FAA Response: As stated, the proposal did not change the requirements other than extend them to screeners and screener supervisors.

In response to the commenter requesting access to FBI criminal records information for airport tenants, the FBI does not allow such access. The FBI criminal record information may be used only for the purposes of this rule as stated in § 107.31(i). The FAA does not have the statutory authority to provide access to FBI criminal records to anyone other than air carriers and airport operator.

In response to the commenter stating that a criminal records check does not provide information on individuals who have resided outside the U.S., the FAA agrees with respect to convictions in foreign countries. The criminal records check will provide information on individuals convicted in the U.S. of crimes regardless of where they currently reside. If an individual has been convicted of a crime outside the U.S., obtaining that criminal record is beyond the FAA's current statutory authority.

The FAA has received many telephone calls regarding the current §§ 107.31(c)(5) and 108.33(c)(5). Many believe the employer is directed or authorized to conduct a criminal records check of all employees/potential employees. The FAA cannot stress enough that the regulated parties are not to submit fingerprints for a criminal record unless such action has been triggered by one of the conditions listed in §§ 107.31(c)(5) and 108.33(c)(5). However, even with a triggering event the criminal record check may not occur if either the employer or the employee/potential employee chooses not to go forward with the process.

In order to assist those seeking to understand this regulation the final rule has been amended to reference the fingerprinting process of the employment history investigation as Part 2. If Part 2 of the employment history investigation occurs, only part 107 airport operators or part 108 air carriers are statutorily permitted to request a comparison of fingerprints against criminal files maintained by the FBI. Airport users or screening companies who wish to proceed with a criminal record check for employees or potential employees will make such a request of the FAA through the appropriate airport operator or the air carrier.

The FAA has changed the wording in these sections to acknowledge that not everyone has a criminal record. The final rule effects that the submission of fingerprints are once collected will be compared with the FBI's criminal files to see if a match exists and a criminal record is available.

The FAA agrees with commenters who indicate the turnaround time for receiving record information is too long. The FAA will continue in its attempts to ensure a speedy return for all fingerprint cards submitted. The FAA is confident that once an automated fingerprint processing system is fully implemented, the turnaround time will greatly improve. The FBI has indicated to the White House Commission on Aviation Safety and Security that the turnaround time will be at most seven days.

The FAA will keep the regulated parties abreast of any developments regarding the automated processing. Clearinghouse services may be sought by the FAA to assist those regulated parties who will be transitioning to automated fingerprint processing. The FBI determines the cost of processing fingerprints and will notify the FAA of any cost increases. The FAA will in turn notify the regulated parties of those costs. For further discussion of this issue, see the Regulatory Evaluation.

Regardless of the fingerprint processing utilized, either through electronic transmission or not, the requirements of §§ 107.31(c)(5) and 108.33(c)(5) remain the same.

Several commenters brought up the use of the NCIC. Title 49 U.S.C. § 44936 states that ''if the Administrator requires an identification and criminal record check, to be conducted by the Attorney General, as part of an investigation under this section, the Administrator shall designate an individual to obtain fingerprints and submit those fingerprints to the Attorney General.'' There was not and there still is not any intention of confirming criminal records by name alone. As previously noted by the FAA and the FBI, the use of NCIC is not a definitive means of identification and is not authorized to satisfy the requirements of this rule.

7. Individual Notification (§§ 107.31(d) and 108.33(d))

The FAA proposed requiring the regulated party to identify a point of contact when it notifies an individual that a criminal records check will need to be conducted.

One commenter recommends that this section specify how the affected individual should be notified prior to commencing the criminal records check, i.e., should notification be in writing and be acknowledged by the affected individual in writing and by signature.

FAA Response: The FAA believes that oral notification should be adequate, but understands that some regulated parties may choose to handle such a matter with written notification and acknowledgement by the affected individual. This business decision is not appropriate for and will not be addressed in this final rule.

8. Fingerprint Processing (§§ 107.31(e) and 108.33(e))

The FAA proposed changing paragraph (e)(1) (formerly paragraph (i)(1)) to clarify that only fingerprint cards approved by the FBI and issued by the FAA may be submitted. A change to paragraph (e)(5) was proposed to reflect the increase in the processing cost. The proposed paragraph did not state an actual dollar amount. The FAA also proposed that the applicable fee would be provided through the local FAA security offices.

ACI–NA and AAAE state that the first sentence of § 107.31(e) should read ''If finger-print based criminal history check is required pursuant to paragraph (c)(5), the airport operator * * * *'', to ensure that it is understood that fingerprints do not need to be taken until indicated by one of the triggers.

The same commenter states that obtaining fingerprints under the direct observation of the airport operator or law enforcement officer is inconvenient for those airports without on-site

facilities. It should be acceptable to utilize local police department personnel whose activities and expertise are acceptable by local, state and federal courts.

Two commenters, including ACI–NA and AAAE, express concern that FAA local offices might add charges to the rate of processing fingerprints. One of the commenters proposes that a flat rate be retained or that changes in the future be implemented only after a public hearing or formal consultation with air carriers.

One commenter states that the FAA and FBI should work together to expedite development of and direct access to the FBI's Integrated Automated Fingerprint Identification System (IAFIS) by law enforcement agencies supporting airports.

FAA Response: The lead-in sentence of §§ 107.31(e) and 108.33(e) has been changed in the final rule to clarify that the fingerprint processing requirements must be complied with ''if a fingerprint comparison is necessary'' under §§ 107.31(c)(5) and 108.33(c)(5). A fingerprint comparison, Part 2 of the employment history investigation, is required only if one of the triggering conditions occurs in Part 1 of the employment history investigation.

Local police departments are considered law enforcement officers and by current regulation may assist in the collection of fingerprints. This option has not been changed in the final rule.

As stated earlier the designated rate for processing each fingerprint card is determined by the FBI, conveyed to the FAA and will be passed on to the regulated parties. The FAA does not add any of its own administrative costs or user fees. When the FBI determines an increase is necessary it will formally notify the FAA. The FAA national headquarters will receive information on fees and forward it to the regulated parties via the local security field offices. The cost is determined by the FBI and is not negotiable.

The purpose of having the local FAA security offices advise the regulated parties of the fee is to prevent the need to go through the prolonged process of rulemaking to make such an announcement. Fees are periodically changed by the entities providing the services.

Regarding the comment on providing expedited access to law enforcement agencies supporting airports to the FBI's IAFIS, the FAA is aware such work is in progress. However, the law enforcement officer's access to IAFIS exists for law enforcement purposes only and is not accessible for employment history investigations.

9. Determination of Arrest Status (§§ 107.31(f) and 108.33(f))

The proposed rule made no changes to the current requirements in §§ 107.31(f) (formerly paragraph (j)) and 108.33(f). No comments were received on these requirements.

10. Corrective Action by Individuals (§§ 107.31(h) and 108.33(h))

The FAA proposed no substantive changes to §§ 107.31(h) (formerly § 107.31(k)) and 108.33(h) (formerly § 108.33(g)). No comments were received on these requirements.

11. Employment Status While Awaiting Criminal record Checks (§§ 107.31(j) and 108.33(j))

The FAA proposed for § 108.33(j) that those individuals applying for screening functions and screening supervisory positions would not make independent judgments until their employment history investigations are completed which includes a criminal record check if needed. Sections 107.31(j) and 108.33(j) simply restate the current requirement to escort those who are seeking, but have not yet been cleared for unescorted SIDA access.

Several commenters express concern that escorting newly hired workers who are awaiting clearance will put a burden on current employees, especially if staffing shortages occur.

One commenter says that the meaning of § 108.33(j)(2), ''* * * applicants * * * must not exercise any independent judgments regarding those functions'' is unclear and that it should be rewritten.

FAA Response: The FAA believes that some commenters have misunderstood the requirements for initiating a criminal record check. Only those persons who meet at least one of the triggers are required to submit fingerprints for a criminal record check (Part 2) in order to further pursue their considerations for performing screening functions. The FAA assumes this will not be the typical case. If the individual has no need for criminal record check, then the only waiting period is for the completion of the employment history verification portion (Part 1).

In response to the request for clarifying the language that screeners ''shall not exercise any independent judgments. * * *'', the FAA refers the commenter to that portion of the security program dealing with initial training of screeners for further clarification.

12. Recordkeeping (§§ 1.07.31(k) and 108.33(k))

The FAA proposed that only direct employees of airport operators and air carriers may carry out responsibilities related to requesting, processing, maintaining and destroying criminal records.

Several commenters, including ACI–NA and AAAE, disagree with the proposal requiring criminal record responsibilities to be carried out by direct airport operator employees, excluding contract personnel. One commenter states that this proposal will prevent airports from continuing to use law enforcement officers, which clearly does not compromise security.

The same commenters state that precluding the use of contractors will impinge upon the airport operator's authority to carry out a federal mandate in a confidential, efficient and economic manner.

One commenter petitions the FAA to request reconsideration by the FBI and to strike this limitation.

ACI–NA and AAAE request that the regulation contain an acceptable method of destruction of criminal and employment background investigation files.

NATA recommends that the FAA ''seek the same legislative solutions as found in the Pilot Records Act'' to protect past and prospective employers subject to liability that is associated with the sharing of sensitive information.

One commenter asks if the airport operator must obtain records for only those employees of tenants who have had the criminal record checks performed or for all employees of tenants with SIDA access.

Another commenter states that the NPRM should be more specific in defining ''where the air carrier's responsibility for file maintenance begins and the airport operator's ends.'' Also clarification is needed about whether the air carrier or airport operator will be responsible for maintaining the files of an air carriers' sub-contractors and sub-tenants.

FAA Response: In response to commenters' desire to use contractors the FAA has not changed the final rule concerning the handling of criminal records by direct employees only. The information contained in the criminal records is under the custody of the FBI and they determine how the information will be handled. The FAA has been in contact with the FBI to confirm this limitation regarding the handling by direct employees. The FBI restrictions are contained in FBI regulations and modifications to FBI interpretations are not currently being considered.

Furthermore, with respect to using contractors since the regulation requires a criminal record be processed through the FAA it remains unclear what

services a contractor is providing to the regulated parties that are necessary for compliance with this regulation.

In response to the comment about destruction of criminal records the FBI does not currently have a standard regarding the destruction of those records. With respect to destruction of employment history investigation files the FAA does not generally prescribe means of destroying records no longer necessary for regulatory compliance. Discussion with the local FAA offices might be beneficial to determine a means of appropriately destroying both types of records.

With respect to NATA's recommendation the FAA does not consider the information needed for this regulation to be sensitive. This rule only addresses the collection and confirmation of employment dates, which are generally not considered confidential information. The FAA does not agree that information required for this regulation necessitates legislation.

Additionally, the contents of the investigative files should contain only the information required for compliance with this regulation. No personnel related materials, such as insurance papers or training records need be included in the investigative file or other information which might be construed as sensitive. The airport user is strongly encouraged to redact information in the investigative files that is not related to the requirements of this regulation. The FAA believes that if only the information required for compliance with this regulation is contained in the investigative file, then any concerns about liability issues would be resolved. There is no requirement that the airport user provide original paperwork to the airport operator, however, the paperwork provided must be a truthful rendition of the record.

The comment requesting clarification on the maintenance of files for those contracted by the air carriers has been addressed in this final rule. The FAA specifically holds the air carrier responsible for the screening companies it hires to perform its screening functions. The air carrier may delegate the performance and maintenance of Part 1 of the employment history investigation files to screening companies but the air carriers remain responsible for compliance with this final rule. Only the air carrier's direct employees are to maintain Part 2 investigative files.

For clarification on the maintenance of files the FAA would like to point out for those airport operators who accept clarification from air carriers, for screeners requiring unescorted access, that Part 1 of the employment history investigation will be maintained by the air carriers. Additionally, air carriers are required to conduct self-audits and they are subject to regulatory audits performed by the FAA. These audits are intended to assist air carriers with compliance regarding this rule. Only air carriers, and not airport operators, have the regulatory responsibility to conduct employment history investigations on individuals seeking to perform screening functions under this rule.

In this final rule the airport operator must, at the time it accepts a certification, collect the completed investigative file and either maintain or delegate through the certification, the maintenance responsibility to the airport user. If the airport user maintains the investigative file the rule requires the airport operator to conduct a preliminary review of the file to ascertain that it is complete. The preliminary review would lead to the rejection and return of those files that appear to be incomplete. Any rejections due to incompleteness should in no way inhibit re-submissions by the airport user after the application has been completed. The preliminary review is different from the auditing process where the investigative file is assessed for accuracy and confirmation that the information was verified.

The airport operator may accept a certification from the air carrier, but need not receive the investigative file. The air carrier is separately responsible under § 108.33 for maintaining appropriate employment investigative files.

13. Continuing Responsibilities (§§ 107.31(l) and 108.33(l))

The FAA proposed that individuals who have been cleared for screening or supervisory functions or unescorted SIDA access will be obligated to report themselves to their employer if they are subsequently convicted of any disqualifying crime. The FAA also proposed that the tenant or contractor employer must report to the airport operator or the air carrier that an individual may have a possible conviction of a disqualifying crime. Additionally the FAA proposed that once the airport operator or air carrier receives this information it must determine the status of the conviction and take appropriate action if the conviction is confirmed.

One commenter states that this proposal is meaningless because it imposes no penalty on the individual for noncompliance. The employee has more incentive not to report since a loss of SIDA access would probably result in the loss of the employee's job.

The commenter also questions if the FAA is requiring that a fingerprint check be done on individuals to investigate felony convictions that may have occurred after the initial employment check.

FAA Response: The commenter is incorrect as there is potential for a civil penalty under 14 CFR part 13 on this section as well as on all sections of the security regulations.

The FAA understands that individuals who report themselves will lose their unescorted access privileges. The FAA also is aware of the potential for obtaining other positions at the airport that do not require unescorted access privileges, many times with the same employer. The same may not be true with those individuals seeking positions as screeners.

There is no regulatory authority to request nor is there a regulatory responsibility to obtain a fingerprint based criminal record check after the initial employment check has been completed. However, the airport operator and air carrier are obligated to comply with §§ 107.31(e)(2) and 108.33(e)(2) to determine if there is a conviction. The FAA would also point out that a conviction of a felony is not automatically disqualifying. Only a conviction of one of the crimes listed in §§ 107.31(b)(2) and 108.33(b)(2) is disqualifying.

In this final rule the FAA added § 107.31(p)(1) which also requires airport users to notify the airport operator if information becomes available to them regarding a possible conviction of a disqualifying crime of one of their employees.

14. Exceptions (§ 107.31(m))

The FAA proposed that the exception to the employment background investigation requirement for individuals who have undergone a U.S. Customs Service background investigation would no longer be recognized.

One commenter suggests that the proposal to remove the Customs exception should result in a coordinated effort between the Customs Service and the FAA to create one investigation process that would meet the requirements of both agencies.

NATA states that the removal of the exception will result in a redundant check for many employees requiring SIDA access that also operate in Customs areas. NATA adds that the FAA needs to provide further explanation why the Customs

background check no longer meets the requirements of the FAA regulations.

ACI–NA and AAAE agree with the removal of the Customs exception and states that the FAA should clarify that a new background check is not necessary for those individuals who were authorized through acceptance of the Customs Service background check before this rule takes effect.

FAA Response: Since publication of the unescorted access privilege rule the FAA has determined that the Customs Service background checks are not performed in a standard manner nationally. Customs regulations do allow for variation. The FAA has made the determination that due to the variation within the Customs Service the FAA will no longer recognize the background checks performed by the Customs Service.

Since the Customs Service and the FAA serve different functions having different missions and obligations it is unlikely that the two agencies could mesh their requirements for one background investigation.

Those individuals who were granted unescorted access based on the Customs background check prior to the effective date of this rule will be grandfathered as noted in § 107.31(m)(4).

15. Investigations by Air Carriers and Tenants (§ 107.31(n))

The FAA proposed that when the airport operator chooses to accept a tenant's certification the airport operator must collect and maintain the entire employment history investigation file.

Several commenters oppose the proposal that airport operators collect and maintain the entire history background investigation files because it would impose substantial administrative, filing, storage, and cost burdens on the airport operator, while offering minimal security justification.

ACI–NA and AAAE state that this requirement will make the airport operator liable for these records and their accuracy, which should be the responsibility of the air carriers and tenants.

A commenter states that the proposal would require the dissemination of confidential and personal information to more than one hundred airports, increasing the possibility of unauthorized disclosure.

RAA recommends that the employer maintain a copy of the background employment investigation files at a central location while making them available for FAA audit. This would meet the needs of the FAA and protect the privacy of individual employees. Other commenters suggest that airport tenants should maintain their employee background check records at a location in the airport where they will be available for random inspections by the airport operator or FAA.

Two commenters state that requiring the airport operator to maintain and control written records for air carriers and their contractors is redundant since air carriers are required under § 108.33(m)(1) to have such files available on-airport.

A commenter states that airport operators should not be responsible for foreign air carrier compliance and that the FAA should audit part 129 operators. In addition, the FAA should audit and hold accountable tenants with approved Tenant Agreements.

One commenter raises the issue of discrimination against foreign flags since under § 107.31(n) only foreign air carriers and tenants would be required to provide an entire employment background investigation file. The commenter asks whether this will be an automatic audit of all foreign air carrier submissions.

One commenter asks if the airport operator must obtain records for only those employees of tenants who have had the criminal records check performed or for all employees of tenants with SIDA access.

Another commenter states that the NPRM is confusing because § 107.31(k) appears to require airport operators to retain air carrier employment application and background investigation verification records, while § 107.31(n)(2) seems to require only completed tenant

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Another commenter states that the NPRM is confusing because § 107.31(k) appears to require airport operators to retain air carrier employment application and background investigation verification records, while § 107.31(n)(2) seems to require only completed tenant employment background investigation files to be obtained by the airport operator.

A commenter requests that the FAA clarify that if the file is incomplete and rejected, there is no liability for loss of employment caused by the airport operator's action.

A commenter asks whether the original background investigation file or merely a copy should be submitted to the airport operator and asks ''[i]f the original is submitted, will this then relieve the carrier of the audit by the FAA?''

Another commenter states that the rule should be modified to require airport operators to accept the air carrier's certification that a background check has been performed. This commenter adds that with the adoption of § 108.14 carriers are fully liable for falsification. Carriers should only have to conform to a single set of regulations rather than different requirements of different requirements at different airports.

FAA Response: In response to commenters who say they will suffer economic hardship if they are required to maintain the employment history files for all person granted unescorted access, the FAA has modified these requirements in the final rule. When an airport operator has accepted an airport user's certification, the airport operator then conducts a preliminary review of the investigative files of those individuals who are named in the certification. After the preliminary review of each employment history file the airport operator may return the file to the airport user to maintain as agreed to in the certification. Consistent with common business practices, airport users have the space, equipment, and the personnel to handle their normal

employment application paperwork. This rule requires certain information be collected for compliance with Part 1 of the investigative process. The FAA has viewed examples where the needed information is provided in 4 pages or less. Therefore the FAA is confident that the airport user will not experience any additional burden in maintaining the paperwork required. Providing the airport user with the opportunity to maintain Part 1 of the investigative file should alleviate anyone's concern about liability. Given the requirements of this regulation the required investigative file will lack confidential and personal information normally associated with employment applications.

It is true, however, that Part 2 of the employment history investigation, when required, will be conducted for the airport users entirely by the airport operator. So there may in fact be limited filing for the airport operator; however it would be far less than the NPRM had proposed.

Two commenters misunderstood the NPRM to state that the airport operators would maintain the files of part 108 air carriers. This is not the FAA's intent. The airport operator is not expected to handle any air carrier investigative files kept in compliance with this rule. The airport operator is only expected to keep the certification offered to them by the part 108 air carriers regarding unescorted access privileges. There is no expectation that the airport operator will conduct a preliminary review of the air carrier investigative files. The part 108 air carriers as regulated parties will be responsible for all investigative files pertaining to those individuals granted unescorted access.

The final rule also responds to comments concerning foreign air carriers. The FAA's policy does not discriminate against foreign air carriers. At the present time the FAA has no other means to reach the part 129 air carriers other than to view them as airport users and it is imperative that the security regulations apply to everyone who has access to an airport. Accordingly, the final rule allows more flexibility regarding the investigative files and offers relief to the part 129 air carriers. The final rule will allow the part 129 air carriers to maintain their own employees' files but keeps in place the airport's authority to ensure only those individuals who have been properly vetted will have access to the airport's SIDA. The final rule will eliminate the need for making copies of the individual's employment investigative file. The decision is up to the part 129 air carrier to offer a certification regarding the completion of an employment history investigation on an individual seeking unescorted access and at the discretion of the airport operator to accept it. The airport operator will conduct the procedures associated with Part 2 requirements for the part 129 air carriers, as it will do for other airport users.

In response to the comment that there is discrimination against foreign air carriers the FAA emphasizes that all investigative files are subject to audits by the FAA to ascertain compliance with the regulation.

Another commenter expressed concern about incomplete or rejected files. In such instances the airport operator should advise the airport user that the paperwork is incomplete so that the airport user and the affected individual would then have an opportunity to complete the paperwork. The air carriers are reminded that there is not obligation for the airport operators to accept certifications. The final rule states in § 107.31(n) that the operators are in compliance when they accept the certification.

Practical reasons dictate the employment history investigative files for screeners be located at the airport and not the air carriers' corporate offices. The main reason centers on logistics. The files need to be available to local FAA agents with regulatory responsibility to inspect records for compliance. Each location should therefore have an air carrier representative named to handle the sensitive issues that may arise relative to Part 2 of the employment history investigations.

16. Airport Operator/Air Carrier Responsibilities (§§ 107.31(o)(1) and (2) and 108.33(m)(1) and (2))

The FAA proposed no changes to the requirement that the airport operator designate the airport security coordinator (ASC) responsible for reviewing and controlling the results of the employment background investigations and for serving as the contact to receive notification from individuals of their intent to correct their criminal record. The FAA proposed changing §§ 107.31(g)(1) and (2) to §§ 107.31(o)(1) and (2).

The FAA proposed a new § 108.33(m). Proposed paragraph (m)(1) would require the air carrier to designate an individual at each airport to control and maintain the employment background investigation files for individuals for whom the air carrier has made a certification to the airport operator. Proposed paragraph (m)(2) would require the air carrier to designate an individual in its security program to control the employment background investigation files of individuals for whom the air carrier conducts investigations, including screeners and their supervisors.

Comments received on proposed §§ 107.31(o)(1) and (2) and 108.33(m) are as follows:

ACI–NA and AAAE states that the ASC should be permitted to designate other airport security staff or security contractor staff to fulfill the ASC role. The commenter states that it is not feasible at many airports for one or two individuals to accomplish these tasks and, therefore recommends that the words ''or designee'' be inserted after ''Airport Security Coordinator'' in § 107.31(o)(1) and (2).

The same commenter states that airport tenants should be regulated directly by the FAA rather than laying the entire security enforcement responsibility for them upon the airport operators.

The same commenter adds that the ''legal implications and liabilities associated with airport operating municipalities, states or other entities becoming involved in the employment practices of private companies should be fully explored.''

Another commenter recommends that part 107 require airlines to declare a sponsor for the contractor who would be responsible for the background investigations, audits and maintenance of its files.

Two commenters state that the proposed regulation does not clarify who is responsible for ensuring that the background investigations and audits are completed for contractors and screening companies who service several different airlines at the same airport. According to these comments, at many airports the responsibility of contracting with a contractor falls on an informal ''consortium'' of multiple carriers, or on individual airlines on a rotating basis. The comments suggest that the FAA treat screening companies in the same manner as other airport tenants by requiring each screening company to provide a certification directly to the airport operator.

A commenter suggests that the regulations include a provision permitting the air carriers to review, audit and exercise other oversight functions regarding the airport operator's handling of the screener background investigations. This would allow the air carriers to discharge their responsibility to maintain ultimate control of the screening function.

A commenter recommends that the FAA establish procedures for air carriers to notify the FAA of central locations

where records are maintained; designate the corporate offices which maintain the records; the required to make the records available for FAA inspection; and be required to audit the employment background investigations.

A commenter raised the issue of the threat of litigation against air carriers resulting from disclosure and states that the files must be kept in a secure location in the air carrier's human resources office.

A commenter states that storing the background investigation files should be the responsibility of the firm conducting the background check. Another commenter proposes that the employment background investigative records be kept on file by a FAA Central Records Office to alleviate complications when a security cleared person changes jobs.

Another commenter states that, if the FAA decides to establish a certification program for screening companies, those companies would be permitted to receive criminal history information from the FBI and could maintain their own background information files. The commenter states that requiring the air carrier to receive personal and confidential criminal history information dealing with the employee of another company is both unreasonable and unethical.

One commenter supports the proposal in § 108.33(m) that air carriers designate an individual at each airport to maintain and control employment background investigation files. Currently employment background audit attempts by Air Authority police indicate that records are usually maintained at each airline general office and are inaccessible or not available for a timely review.

One commenter states that the rule should be modified to require airport operators to accept the air carrier's certification that a background check has been performed. Furthermore, with the adoption of 14 CFR § 108.14 (sic), carriers are fully liable for falsification. Carriers should only have to conform to a single set of regulations rather than different requirements at different airports.

FAA Response: In response to the comment about permitting designees to fulfill the role of ASC the FAA has already developed a policy for the use of designees by ASCs. This policy remains in effect for this final rule.

The FAA is unsure why ACI–NAA and AAAE believe the airport would be liable for ''employment practices'' of private companies. The private company may, within certain limits, employ anyone it wishes. The federal regulations apply to those seeking to perform specific job functions. If the individual cannot fulfill a specific job's requirements, in compliance with the federal regulation, the company may still employ the individual in another capacity. Therefore the employability of the individual rests with the private company and not the airport operator.

In addressing the comment about sponsorship the FAA understands that some contractors may only seek unescorted access for one carrier and for a short duration of time. The FAA's only concern is that one of the regulated parties must be responsible for those individuals.

In response to the two comments regarding the issue of who is responsible for airport users the FAA reiterates that the airport operators are responsible for the security of the airport. The air carriers are responsible for their direct employees and those screening companies they hire to perform screening functions. Furthermore, it is the airport operators' responsibility to conduct the employment history investigations to perform the audits of any contractors other than screeners. This regulation allows the airport operator to consider contractors as airport users. This regulation likewise allows the airport operator to maintain the employment history files of those seeking unescorted access if the airport operator so chooses. The FAA leaves to the discretion of the airport operator whether or not the air carrier should take responsibility for certain contractors, other than screeners. The FAA encourages discussion between the airport operators and the air carriers regarding other air carrier contractors.

In response to which air carrier would be responsible for screening companies servicing multiple air carriers at one airport the FAA suggests that the air carriers use the same local procedures which are currently used for other security compliance issues. If there is reason to believe the same procedures cannot be used then it is recommended that all pertinent parties meet to develop a new procedure which is satisfactory to all, just as was done to create the current procedures.

It is the responsibility of the air carriers that hire screening companies to conduct, audit and exercise requisite oversight functions of the screening companies. The final rule states these responsibilities in § 108.33. Since the part 108 air carriers are charged with maintaining employment history investigation files the FAA will work closely with them regarding the exact location of the files. The FAA wishes to clarify that nothing in this final rule requires or authorizes the Airport Authority Police to audit screener employment history investigative files.

One commenter indicated the investigative files should be the responsibility of the firm that conducts the background check. The FAA will assume this comment concerns those private companies that perform pre-employment background checks for airport users. If those companies are also performing Part 1 of the employment history investigations for this rule they are doing so at the request of the airport users. If the airport operator has delegated the conduct of Part 1 of the employment history investigation to the airport user, then the user, under certification, will maintain the files on behalf of the airport operator. This rule does not address any further delegation for the maintenance of Part 1 files. If certifications are accepted by the airport operator certification requirements must be met. The responsibility to delegate or not delegate maintenance of the investigative files rests with the airport operator.

One commenter questioned why the FAA did not provide screening companies with the authority to receive criminal records. Screening companies are not authorized to have such access by 49 U.S.C. 44936. This commenter also believed it was ''unreasonable and unethical'' for a carrier to receive confidential criminal record information on another company's employee. The FAA does not agree with this comment. For a discussion of these issues see sections 6 and 12 of the Discussion of Comments.

It was not the intent of the FAA in the unescorted access rule, nor is it the intent of this rule, to require the airport operators to review the employment history investigative files of air carrier employees seeking unescorted access. The certification process was intended to handle the request and granting of unescorted access between air carriers and airport operators. However, the FAA will not remove the airport operators' prerogative to protect its property. The FAA audits and the air carrier's self-audits should supply sufficient assurances that compliance with this regulation is being met. The FAA encourages airport operators to rely on the air carriers' certification.

The FAA has expanded the air carrier's responsibilities listed in § 108.33(m). This paragraph lists the points of contact required for notifications and maintenance of Parts 1 and 2 of the employment history investigative files for both direct

employees and screening company employees.

17. Audits of Background Investigations (§§ 107.31(o)(4) and 108.33(m)(5))

Proposed § 107.31(o)(4) would require the airport operator to audit the employment background investigations performed in accordance with this section, except those employment background investigations of air carriers certifying to the airport operator compliance with § 108.33(b). Proposed § 108.33(m)(5) would require the air carrier to audit the employment background investigations. The audit process would be set forth in the air carrier approved security program.

Many comments were received on the audit requirements. Most of the comments expressed a concern that entities should be required to audit only those investigations concerning their own personnel.

ATA and ACI–NA and AAAE believe that the FAA should audit airport operators, air carriers, and screening companies, once they are FAA certificated, independently for compliance with the regulations. According to commenters, a FAA audit would ensure that audit procedures do not vary among regions and agents.

Some commenters state that requiring regular audits of all background investigations would be time consuming and costly with no corresponding increase in security.

FAA Response: The FAA's intent is to ensure a means of evaluating employment history investigations records and to confirm the validity and accuracy of the information they contain.

In addition to the self-audits, required by 49 U.S.C. § 44936(a)(3), the FAA will also be conducting audits of airport operators, and air carriers. Screening companies will be audited by the responsible air carriers. FAA audits when conducted on screening companies will be considered as part of an audit on the responsible air carrier.

The FAA has carefully considered all comments on the audit requirements. Most of these comments are specific and apply to the self-audit procedures that will be set forth in the air carrier and airport approved security programs. The FAA will provide an opportunity to comment on the specifics of the audit process in accordance with §§ 107.11 and 108.25.

Section 306 of the Act also directs the FAA to provide for the periodic audit of the effectiveness of the criminal records checks. The FAA in its oversight capacity has previously conducted audits and will continue to conduct audits on employment history investigations. The FAA views self-auditing as a valuable tool which can assist the regulated party in effective rule implementation. The final rule requires air carriers and airport operators to audit their employment history investigations. The self-audit requirements apply to both Part 1 and Part 2 of the employment history investigation.

This final rule provides, in general terms, information on audits to be conducted by regulated parties on employment history investigations. The audit functions pertaining to the employment history investigations have important security benefits; however, for security reasons, the exact auditing procedures cannot be described in a public document. Therefore the specific requirements regarding the audits will be proposed as amendments to the security programs.

18. General—Cargo and Baggage Operations

The FAA requested comments on whether to expand the employment history investigation requirement to include persons who perform security functions related to cargo and baggage outside of the SIDA. In general, commenters who responded to the FAA's question opposed such an expansion, and several stated that to include such a requirement in a final rule would violate the Administrative Procedures Act.

FAA Response: While Section 304 of the Act provides the Administrator with discretionary authority to require employment history investigations for other individuals who exercise security functions associated with baggage or cargo, the FAA did not propose to expand the requirement for such investigations beyond checkpoint screeners and their supervisors. As explained in the preamble to the proposed rule most air carrier baggage and cargo personnel currently have unescorted access to the SIDA and thus are currently subject to access investigations.

If the FAA had received comments supporting the inclusion of those who perform security functions outside the SIDA, related to cargo and baggage, the FAA would have addressed that concern in a separate NPRM. However, comments were insufficient to support the need for an additional proposal. Therefore, the FAA has decided not to expand the requirement.

19. Summary of Economic Comments

This section summaries the economic comments and the FAA's responses. A detailed discussion of these comments and responses is contained in the full regulatory evaluation in the docket for this final rule.

a. *Comments related to extending criminal background checks for screeners.* Two commenters state that the FAA's use of 54 days for the length of time to perform fingerprint checks was underestimated. These commenters believe that the actual length of time is longer, and should be reflected in the costs.

Two commenters also state that the assumption, based on the historical record, that only 0.4% of the applicants would need to be fingerprinted and a negligible amount would have a prior criminal conviction was inaccurate. These commenters believe, based on personal experience, that both estimates should be higher.

One commenter believes that the estimate of $55 for total staff time and supplies is too low, given all that is required.

Two commenters request that the FAA make clear who is paying the cost of fingerprint processing and that the local FAA offices are charging the correct rate.

One commenter, a catering company, does not believe that escorting a new hire for more than 30 days is viable. Another commenter, representing an airport, says that if the verbiage on criminal history background check document forms is changed, there would be increased costs due to paperwork changes.

FAA Response: The FAA cannot consider each airport's turnaround time individually, and will continue to use the national average for purposes of costing the rule. The FAA agrees that a 54 day processing time is too long, but has no means at its disposal to shorten it.

The rates used, of 0.4% and 0.0%, were based on a review of the data on the results of the first eight months of the current §§ 107.31 and 108.33, from February through September 1996. Neither commenter submitted any data or documentation showing rates different than these, so the FAA will continue to use these rates.

Much of what the commenter believes should be considered are not required; the economic analysis costed out those parts of the proposed rule that would add cost.

Regarding who pays what section of the cost of fingerprinting, the FAA is required by Executive Order to look at all costs to society and made clear, in its analysis, who would pay what. With regards to the cost of the criminal record checks, the FAA does not have control

over the cost of this process, so everyone needing fingerprinting would pay the same standard rate.

With regards to escorting employees, the FAA believes that conditions and requirements would be different for screeners than for caterer employees and that the ability for a screener to work supervised would be viable past 30 days. There are no document title requirements in the Regulations; hence, there would be no requirement to change any verbiage on the forms.

b. *Comments related to removing the exemption that substitutes a U.S. Customs Service (USCS) background check for a check based on the requirements.* A trade organization states that some airports report that up to 60% of air carrier employee SIDA access media, plus a much smaller percent of airport employees, were authorized through acceptance of the USCS background check. Accordingly, this change could be costly.

FAA Response: The FAA called for comments on the number of airport employees who currently were granted unescorted access due to a background check from the USCS. This was the only response, and is too vague to help project cost data. There will be no additional costs due to removing this exception.

c. *Comments related to the requirement that the airport operators and air carriers review the employee background documentation of their own employees as well as any appropriate contractors or, in the case of airports, airport users.* Four commenters state that the requirement for specific airport personnel to review the employment history check documentation would increase their paperwork requirements, and would require hiring of more employees and finding additional storage space.

There were several comments on the assumption (in the economic analyses) that 5% of all employment history investigations would be checked. These commenters believe that the FAA underestimated total costs, in part due to a belief that the actual amount checked would be greater than 5% as airports would want to check employees and avoid potential liability problems.

One commenter contends that the costs associated with collecting and filing records should be in the cost analysis, but are not.

FAA Response: The final rule will allow for the option that the airport user could hold the required paperwork for their employees; this would relieve the airport operator from having to maintain, collect, and process the entire employment background investigation file for each employee. Hence, airports will not need to hire additional personnel or find additional storage space to handle these files.

It is possible that the audit rate could be higher than 5% for some airports; the FAA used an estimated 5% as an average for all airports and calculated costs accordingly. This 5% applies to all persons with unescorted access who had been subject to an employment background check, and not all persons with unescorted access on file. There would be no potential liability responsibility should an incident occur since airport operators are not fully responsible for the compliance of the airport user.

The airport user or the airport would be filing these papers in their file cabinets anyway, so there would be no additional cost.

d. *Comments related to the FAA's NPRM economic analysis.* A trade organization claims that it is difficult to know for certain what variables were included in the economic analysis, particularly as they refer to the costs of the employment verification process for screeners. This same organization states that the assumed annual growth rate and salaries for screeners are far too low given the intent to add new explosive detection technologies at airports.

An airport commenter is concerned that the FAA's costs did not include the additional costs airports must incur to fulfill § 107.31 costs.

FAA Response: FAA's economic analysis makes it very clear what administrative costs are included, taking into account two hours of a paperwork/clerk specialist and one third of an hour of airport or air carrier supervisor designee. The FAA agrees that the advanced skills required for explosives detection technology will mean higher salaries and an increase in the overall demand for and career development growth rate of these screeners vis-a-vis other screeners. This information is included in the data used to calculate the costs of this rule.

All costs connected with § 107.31 were captured in the analysis of the final rule for Unescorted Access Privilege (60 FR 51854) that went into effect on January 31, 1996. This rule seeks to cover individuals not covered by § 107.31, and so the costs for this rule are separate.

Economic Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the final rule would generate benefits that justify its costs and is not ''a significant regulatory action'' as defined in the Executive Order or Department of Transportation Regulatory Policies and Procedures. The rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Cost of Compliance

The FAA has performed an analysis of the expected costs and benefits of this regulation. In this analysis, the FAA estimated costs for a 10-year period, from 1999 through 2008. As required by the Office of Management and Budget (OMB), the present value of this stream was calculated using a discount factor of 7 percent. All costs in this analysis are in 1997 dollars.

The FAA estimates that in 1999, there will be 15,600 screeners and screener supervisors affected by this rule, comprised of 1,400 checkpoint security supervisors (CSS), 100 shift supervisors, and 14,100 screeners. The analysis assumes loaded hourly wages (i.e., with fringe benefits) of $6.25 for screeners, $7.31 for CSS's, and $11.00 for shift supervisors. Industry sources report, on average, annual turnovers of 110% for all screeners, 85% for CSS's, and 20% for shift supervisors. This turnover rate, of course, will vary by airport and location. Given the difficulty of discerning the actual turnover rates at individual airports, the FAA has opted to use these turnover rates for the entire industry. In addition, the FAA assumes that the number of screeners will grow at an annual rate of 1.5%.

There are three cost components that need to be considered. These involve the fee for processing fingerprints; the time for a paperwork/clerk specialist to take the fingerprints, do the requisite paperwork, and mail the forms; and the need for this employee to be supervised.

Currently, a fingerprint check takes, on average, 54 days to be processed. During this time period, this particular employee, if hired, will need to be supervised. This employee's productivity will be low for he or she will not be able to exercise any independent judgment; all screened baggage will also need to be checked by this employee's supervisor, and this employee will not be able to do tasks such as using the metal detector or hand wand, or perform a physical search. On the other hand, at times, this employee might be doing tasks that do not need 100% attention from a supervisor. Accordingly, the FAA will use a 15% productivity rate in this analysis.

The alternative will be to delay hiring the employee until the results of the fingerprint check come back. Given the high turnover rate of screeners, there is a good likelihood at many locations that this person can then be hired based on another job opening.

The FAA examined the cost of both of these alternatives. The lower cost alternative will be to delay hiring this person until the fingerprint check results return; in such a situation, the only costs will be the costs of fingerprinting the employee. The higher cost alternative will be to hire this person, have this person supervised, and pay them even though their productivity will be low. Screeners will be supervised by another screener, at a total cost of about $1,925 per hire for the 54 day period. CSS's will be supervised by another CSS, at a total cost of about $2,250 per hire for the 54 day period.

The current processing fee for a fingerprint investigation is $28; the FAA has been paying the difference between that and the current published fee of $24. Under this final rule, employers and/or employees will pay the entire cost (with employees proscribed from handling the fingerprint cards), while the FAA will no longer pay the $4 difference. Hence these incremental changes cancel each other out.

Since January 31, 1996, all applicants for specific jobs requiring unescorted access have been subject to a criminal background history check; the FAA collected data on the results of the first eight months of these applicants. Of the applications that were processed, 0.4% of applicants needed to be fingerprinted. In addition, almost none had a prior criminal conviction which disqualified them. In the absence of other information, the FAA will use these percentages (0.4% and 0.0%, respectively) in estimating the costs of this final rule. Due to both the growth rate in screeners and the annual turnover rates, the FAA estimates that the ten-year costs for the criminal history background check portion of this final rule will range from $38,800 (net present value, $33,300) to $1.16 million (net present value, $804,100), again, the latter cost including the cost of supervision.

The FAA, in removing the USCS exemption in § 107.31(m), has made it clear that those individuals who were granted unescorted access based on the Customs background check prior to the effective date of this rule will be grandfathered. Hence, no employee who received unescorted access based on a background check from USCS will have to undergo a new check, and there will be no costs associated with the removal of this exception.

This amendment will add a new requirement that will require the airport operators and air carriers to review the employment background documentation of their own employees as well as any appropriate contractors or, in the case of airports, airport users. They will need to develop and carry out processes by which they will examine the accuracy and completeness of the employment background investigations being accomplished on all of all listed parties.

The actual percentage to be audited may vary by airport and air carrier and will be included in each's security program. The FAA assumes that, on average, 5 percent of all employment background investigations will be checked. The average check will involve a paperwork/clerk specialist going through the employee's application and checking to make sure that all items were accurate. The FAA estimates that the average investigation will cost approximately $58.

Based on the number of employees at airports with unescorted access privileges, specific employee growth rates, and annual attrition rates, the FAA calculates ten year costs for the airports to be $3.96 million (net present value, $2.72 million). Meanwhile, the air carriers will need to run checks on the screeners and screener supervisors that are hired during this time period. The ten-year costs for the air carriers sum to $524,700 (net present value, $365,500).

The ten-year cost of this rule will range from $4.53 million (net present value, $3.12 million) to $5.64 million (net present value, $3.89 million).

Analysis of Benefits

The purpose of this final rule is to enhance aviation security. The primary benefit of the rule will be increased protection to Americans and others traveling on U.S. domestic air carrier flights from acts of terrorism. The changes envisioned in this rule are an integral part of the total program needed by the airports, air carriers, and the FAA to prevent a criminal or terrorist incident in the future.

Since the mid-1980's, the major goals of aviation security have been to prevent bombing and sabotage incidents. Preventing an explosive or incendiary device from getting on board an airplane is one of the major lines of defense against an aviation-related criminal or terrorist act. The individuals covered by this final rule play a major role in preventing such occurrences. It is essential that potential employees that may have criminal records or questionable backgrounds be investigated, and, if certain conditions are met, denied the opportunity to conduct security-related activities. Such individuals could definitely be a threat to aviation security.

In 1996, both Congress and the White House Commission on Aviation Safety and Security recommended further specific actions to increase aviation security. The Commission stated that it believes that the threat against civil aviation is changing and growing, and recommended that the federal government commit greater resources to improving aviation security. President Clinton, in July 1996, declared that the threat of both foreign and domestic terrorism to aviation is a national threat. The U.S. Congress recognized this growing threat in the Federal Aviation Reauthorization Act of 1996 by: (1) authorizing money for the purchase of specific anti-terrorist equipment and the hiring of extra security personnel; and (2) requiring the FAA to promulgate additional security-related regulations including this current rulemaking action.

The cost of a catastrophic terrorist act can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc. The most deadly and expensive example of the type of event that aviation security is trying to prevent is the Pan Am 103 tragedy over Lockerbie, Scotland. Since the benefits of this rule will apply primarily to domestic flights, which are flown primarily by narrow-bodied airplanes, rather than international flights, which are flown primarily by wide-bodied airplanes, the FAA examined the costs associated with this catastrophe as they will apply to a domestic tragedy. A conservative estimate of these costs is $832.4 million. This high cost underscores the consequences of not taking prudent security-related steps.

Some benefits can be quantified—prevention of fatalities and injuries and

the loss of aircraft and other property. Other benefits are no less important, but are probably impossible to quantify—the perception of improved security on the part of the traveling public, and general gains for the U.S. attributable to the commitment to enhance aviation security.

Comparison of Costs and Benefits

The ten-year cost of this rule would range from $4.53 million (net present value, $3.12 million) to $5.64 million (net present value, $3.89 million). This cost needs to be compared to the possible tragedy that could occur if a bomb or some other incendiary device were to get onto an airplane and cause an explosion. Recent history not only points to Pan Am 103's explosion over Lockerbie, Scotland, but also the potential of up to twelve American airplanes being blown up in Asia in early 1995. While the specific points in this regulation may not, by themselves, have been factors in the occurrence of Pan Am 103 or the prevention of the culmination of the conspiracy in Asia, these potential devastating costs emphasize the consequences of not taking sensible security-related steps.

Congress has mandated that the FAA promulgate these regulations. Congress, which reflects the will of the American public, has determined that this regulation is in the best interest of the nation. Because this regulation reflects the will of the American people, and because its cost is low compared to the potential catastrophe of a single bomb explosion on an airplane, the FAA finds this rule cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Security Screening Companies

This rule will affect companies that perform security screening as well as specific airports. There are currently 58 companies that provide security screening services; 32 of these are small entities. To estimate the annual cost impact for each screening company, the FAA calculated what the maximum annual cost of the regulations will be per screener over the time period examined by this analysis, $11.66, and multiplied by the number of screeners that that company has. Based on these calculations, the FAA concludes that the costs are ''de minimus'' on all but four small entities; the highest cost for these four small entities is $5,000.

Airports

The airports covered by this rule are those that are regularly served by scheduled passenger aircraft operations having airplanes with a passenger seating configuration of greater than 60 seats, are subject to screening programs defined in the current § 108.5, and are required to have an Airport Security Program (ASP) under the current § 107.3(b). There are 74 such airports that have over 2 million people screened per year and 185 such airports that have less than 2 million people screened per year.

Part 107 affects airports classified under Standard Industrial Classification (SIC) 4582. The SBA's small entity size standards criterion define a small airport as one owned by a county, city, town or other jurisdiction having a population of 49,999 or less. If two or more towns, cities, or counties operate an airport jointly, the population size of each are totaled to determine whether that airport is small. In addition, all privately owned, public-use airports are considered small.

The most recent population data for cities, counties, and states is taken from the 1990 Census and this was used to determine the population of the appropriate jurisdiction. Thirty-seven of the 259 airports that meet the above definition are owned by jurisdictions with populations less than 50,000. Each of these has less than 2 million person screenings per year. As discussed above, an average of 554 employees have unescorted access privileges at each of these airports at the end of 1996. The average one year cost for any such airport is $215.

Conclusion

The FAA conducted the required review of this amendment and determined that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

In accordance with the Office of Management and Budget memorandum dated March 1983, federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade. Since both domestic and international air carriers use screeners, this final rule change will have an equal effect on both. Unlike domestic air carriers that compete with foreign air carriers, domestic airports are not in competition with foreign airports. For this reason, a trade impact assessment is not be applicable for domestic airports.

Unfunded Mandates Determination

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory

requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental mandates or private sector mandates.

Federalism Implications

These regulations do not have substantial direct effects on the states, or on the relationship, or distribution of power and responsibilities, between the Federal Government and the states. Thus, in accordance with the federalism principles and policymaking criteria of Executive Order 13083, this agency has determined that no federalism implications exist necessitating a Federalism Consultation.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA finds no corresponding International Civil Aviation Organization regulations or Joint Aviation Regulations; therefore, no differences exist.

Paperwork Reduction Act

Under the requirements of the Paperwork Reduction Act of 1995, the Office of Management and Budget has approved the information collection burden for this rule and assigned it OMB Approval Number 2120–0628.

List of Subjects in 14 CFR Parts 107 and 108

Air carriers, Air transportation, Airlines, Airplane operator security, Aviation safety, Reporting and recordkeeping requirements, Security measures, Transportation, Weapons.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends parts 107 and 108 of Title 14, Code of Federal Regulations (14 CFR parts 107 and 108) as follows:

PART 107—AIRPORT SECURITY

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44706, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105, Sec. 306, Pub. L. 104–264, 110 Stat. 3213.

2. Section 107.31 is revised to read as follows:

§ 107.31 Employment history, verification and criminal history records checks.

(a) *Scope.* On or after January 31, 1996, this section applies to all airport operators; airport users; individuals currently having unescorted access to a security identification display area (SIDA) that is identified by § 107.25; all individuals seeking authorization for, or seeking the authority to authorize others to have, unescorted access to the SIDA; and each airport user and air carrier making a certification to an airport operator pursuant to paragraph (n) of this section. An airport user, for the purposes of § 107.31 only, is any person making a certification under this section other than an air carrier subject to § 108.33.

(b) *Employment history investigations required.* Except as provided in paragraph (m) of this section, each airport operator must ensure that no individual is granted authorization for, or is granted authority to authorize others to have, unescorted access to the SIDA unless the following requirements are met:

(1) The individual has satisfactorily undergone Part 1 of an employment history investigation. Part 1 consists of a review of the previous 10 years of employment history and verification of the 5 employment years preceding the date the appropriate investigation is initiated as provided in paragraph (c) of this section; and

(2) If required by paragraph (c)(5) of this section, the individual has satisfied Part 2 of the employment history investigation. Part 2 is the process to determine if the individual has a criminal record. To satisfy Part 2 of the investigation the criminal record check must not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of any of the crimes listed below:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306;

(ii) Interference with air navigation, 49 U.S.C. 46308;

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312;

(iv) Aircraft piracy, 49 U.S.C. 46502;

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504;

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506;

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505;

(viii) Conveying false information and threats, 49 U.S.C. 46507;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b);

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315;

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314;

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(c) *Investigative steps.* Part 1 of the employment history investigation must be competed on all persons listed in paragraph (a) of this section. If required by paragraph (c)(5) of this section, Part 2 of the employment history investigation must also be completed on all persons listed in paragraph (a) of this section.

(1) The individual must provide the following information on an application form:

(i) The individual's full name, including any aliases or nicknames.

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 consecutive months, during the previous 10-year period.

(iii) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The airport operator or the airport user must include on the application form a notification that the individual will be subject to an employment history verification and possibly a criminal records check.

(3) The airport operator or the airport user must verify the identity of the individual through the presentation of two forms of identification, one of which must bear the individual's photograph.

(4) The airport operator or the airport user must verify the information on the most recent 5 years of employment history required under paragraph (c)(1)(ii) of this section. Information must be verified in writing, by documentation, by telephone, or in person.

(5) If one or more of the conditions (triggers) listed in § 107.31(c)(5)(i) through (iv) exist, the employment history investigation must not be considered complete unless Part 2 is accomplished. Only the airport operator may initiate Part 2 for airport users under this section. Part 2 consists of a comparison of the individual's fingerprints against the fingerprint files of known criminals maintained by the Federal Bureau of Investigation (FBI). The comparison of the individual's fingerprints must be processed through the FAA. The airport operator may request a check of the individual's fingerprint-based criminal record only if one or more of the following conditions exist:

(i) The individual does not satisfactorily account for a period of unemployment of 12 consecutive months or more during the previous 10-year period.

(ii) The individual is unable to support statements made on the application form.

(iii) There are significant inconsistencies in the information provided on the application.

(iv) Information becomes available to the airport operator or the airport user during the investigation indicating a possible conviction for one of the crimes listed in paragraph (b)(2) of this section.

(d) *Individual notification.* Prior to commencing the criminal records check, the airport operator must notify the affected individual and identify the Airport Security Coordinator as a contact for follow-up. An individual, who chooses not to submit fingerprints, after having met a requirement for Part 2 of the employment investigation, may not be granted unescorted access privilege.

(e) *Fingerprint processing.* If a fingerprint comparison is necessary under paragraph (c)(5) of this section to complete the employment history investigation the airport operator must collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints must be recorded on fingerprint cards approved by the FBI, and distributed by the FAA for this purpose.

(2) The fingerprints must be obtained from the individual under direct observation by the airport operator or a law enforcement officer. Individuals submitting their fingerprints may not take possession of their fingerprint card after they have been fingerprinted.

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification, one of which must bear the individual's photograph.

(4) The fingerprint card must be forwarded to the FAA at the location specified by the Administrator.

(5) Fees for the processing of the criminal record checks are due upon application. Airport operators must submit payment through corporate check, cashier's check, or money order made payable to ''U.S. FAA,'' at the designated rate for each fingerprint card. Combined payment for multiple applications is acceptable. The designated rate for processing the fingerprint cards is available from the local FAA security office.

(f) *Determinaiton of arrest status.* In conducting the criminal record checks required by this section, the airport operator must not consider the employment history investigation complete unless it investigates arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded and makes a determination that the arrest did not result in a disqualifying conviction.

(g) *Availability and correction of FBI records and notification of disqualification.* (1) At the time Part 2 is initiated and the fingerprints are collected, the airport operator must notify the individual that a copy of the criminal record received from the FBI will be made available to the individual if requested in writing. When requested in writing, the airport operator must make available to the individual a copy of any criminal record received from the FBI.

(2) Prior to making a final decision to deny authorization to an individual described in paragraph (a) of this section, the airport operator must advise the individual that the FBI criminal record discloses information that would disqualify him/her from receiving unescorted access and provide the individual with a copy of the FBI record if it has been requested.

(3) The airport operator must notify an individual that a final decision has been made to grant or deny authority for unescorted access.

(h) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his/her record before any final decision is made, subject to the following conditions:

(1) Within 30 days after being advised that the criminal record received from the FBI discloses disqualifying information, the individual must notify the airport operator, in writing, of his/her intent to correct any information believed to be inaccurate.

(i) Upon notification by an individual that the record has been corrected, the airport operator must obtain a copy of the revised FBI record prior to making a final determination.

(2) If not notification is received within 30 days, the airport operator may make a final determination.

(i) *Limits on dissemination of results.* Criminal record information provided by the FBI must be used solely for the purposes of this section, and no person may disseminate the results of a criminal record check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) Airport officials with a need to know; and

(3) Others designated by the Administrator.

(j) *Employment status while awaiting criminal record checks.* Individuals who have submitted their fingerprints and are awaiting FBI results may perform work within the SIDA when under escort by someone who has unescorted SIDA access privileges.

(k) *Recordkeeping.* (1) Except when the airport operator has received a certification under paragraph (n)(1) of this section, the airport operator must physically maintain and control the Part 1 employment history investigation file until 180 days after the termination of the individual's authority for unescorted access. The Part 1, employment history investigation file, must consist of the following:

(i) The application;

(ii) The employment verification information obtained by the employer;

(iii) The names of those from whom the employment verification information was obtained;

(iv) The date and the method of how the contact was made; and

(v) Any other information as required by the Administrator.

(2) The airport operator must physically maintain, control and when appropriate destroy Part 2, the criminal record, for each individual for whom a fingerprint comparison has been completed. Part 2 must be maintained for 180 days after the termination of the individual's authority for unescorted access. Only direct airport operator

employees may carry out this criminal record file responsibility. The Part 2 criminal record file must consist of the following:

(i) The criminal record received from the FBI as a result of an individual's fingerprint comparison; or

(ii) Information that the check was completed and no record exists.

(3) The files required by this section must be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(l) *Continuing responsibilities.* (1) Any individual authorized to have unescorted access privileges or who may authorize others to have unescorted access, who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section must, within 24 hours, report the conviction to the airport operator and surrender the SIDA access medium to the issuer.

(2) If information becomes available to the airport operator or the airport user indicating that an individual with unescorted access has a possible conviction for one of the disqualifying crimes in paragraph (b)(2) of this section, the airport operator must determine the status of the conviction. If a disqualifying conviction is confirmed the airport operator must withdraw any authority granted under this section.

(m) *Exceptions.* Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access, or to authorize others to have unescorted access to the SIDA:

(1) An employee of the Federal government or a state or local government (including a law enforcement officer) who, as a condition of employment, has been subjected to an employment investigation which includes a criminal record check.

(2) A crewmember of a foreign air carrier covered by an alternate security arrangement in the foreign air carrier's approved security program.

(3) An individual who has been continuously employed in a position requiring unescorted access by another airport operator, airport user or air carrier.

(4) Those persons who have received access to a U.S. Customs secured area prior to November 23, 1998.

(n) *Investigations by air carriers and airport users.* An airport operator is in compliance with its obligation under paragraph (b) of this section, as applicable, when the airport operator accepts for each individual seeking unescorted access one of the following:

(1) Certification from an air carrier subject to § 108.33 of this chapter indicating it has complied with §§ 108.33 of this chapter for the air carrier's employees and contractors seeking unescorted access; or

(2) Certification from an airport user indicating it has complied with and will continue to comply with the provisions listed in paragraph (p) of this section. The certification must include the name of each individual for whom the airport user has conducted an employment history investigation.

(o) *Airport operator responsibility.* The airport operator must:

(1) Prior to the acceptance of a certification from the airport user, the airport operator must conduct a preliminary review of the file for each individual listed on the certification to determine that Part 1 has been completed.

(2) Designate the airport security coordinator (ASC), in the security program, to be responsible for reviewing the results of the airport employees' and airport users' employment history investigations and for destroying the criminal record files when their maintenance is no longer required by paragraph (k)(2) of this section;

(3) Designate the ASC, in the security program, to serve as the contact to receive notification from individuals applying for unescorted access of their intent to seek correction of their FBI criminal record; and

(4) Audit the employment history investigations performed by the airport operator in accordance with this section and those investigations conducted by the airport users made by certification under paragraph (n)(2). The audit program must be set forth in the airport security program.

(p) *Airport user responsibility.*

(1) The airport user is responsible for reporting to the airport operator information, as it becomes available, which indicates an individual with unescorted access may have a conviction for one of the disqualifying crimes in paragraph (b)(2) of this section; and

(2) If the airport user offers certification to the airport operator under paragraph (n)(2) of this section, the airport user must for each individual for whom a certification is made:

(i) Conduct the employment history investigation, Part 1, in compliance with paragraph (c) of this section. The airport user must report to the airport operator if one of the conditions in paragraph (C)(5) of this section exist;

(ii) Maintain and control Part 1 of the employment history investigation file in compliance with paragraph (k) of this section, unless the airport operator decides to maintain and control Part 1 of the employment history investigation file;

(iii) Provide the airport operator and the FAA with access to each completed Part 1 employee history investigative file of those individuals listed on the certification; and

(iv) Provide either the name or title of the individual acting as custodian of the files, and the address of the location and the phone number at the location where the investigative files are maintained.

PART 108—AIRPLANE OPERATOR SECURITY

3. The authority citation for part 108 continues to read as follows:

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

4. Section 108.33 is revised to read as follows:

§ 108.33 Employment history, verification and criminal history records checks.

(a) *Scope.* The following persons are within the scope of this section:

(1) Each employee or contractor employee covered under a certification made to an airport operator, pursuant to § 107.31(n) of this chapter, made on or after November 23, 1998.

(2) Each individual issued air carrier identification media that one or more airports accepts as airport approved media for unescorted access within a security identification display area (SIDA) as described in § 107.25 of this chapter.

(3) Each individual assigned, after November 23, 1998, to perform the following functions:

(i) Screen passengers or property that will be carried in a cabin of an aircraft of an air carrier required to screen passengers under this part.

(ii) Serve as an immediate supervisor (checkpoint security supervisor (CSS)), or the next supervisory level (shift or site supervisor), to those individuals described in paragraph (a)(3)(i) of this section.

(b) *Employment history investigations required.* Each air carrier must ensure that, for each individual described in paragraph (a) of this section, the following requirements are met:

(1) The individual has satisfactorily undergone Part 1 of an employment history investigation. Part 1 consists of a review of the previous 10 years of employment history and verifications of the 5 employment years preceding the date the employment history investigation is initiated as provided in paragraph (c) of this section; and

(2) If required by paragraph (c)(5) of this section, the individual has satisfied Part 2 of the employment history investigation. Part 2 is the process to determine if the individual has a criminal record. To satisfy Part 2 of the investigation the criminal records check must not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of any of the crimes listed below:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306;

(ii) Interference with air navigation, 49 U.S.C. 46308;

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312;

(iv) Aircraft piracy, 49 U.S.C. 46502;

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504;

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506;

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505;

(viii) Conveying false information and threats, 49 U.S.C. 46507;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b);

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315;

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314;

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(c) *Investigative steps.* Part 1 of the employment history investigations must be completed on all persons described in paragraph (a) of this section. If required by paragraph (c)(5) of this section, Part 2 of the employment history investigation must also be completed on all persons listed in paragraph (a) of this section.

(1) The individual must provide the following information on an application:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 consecutive months, during the previous 10-year period;

(iii) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The air carrier must include on the application form a notification that the individual will be subject to an employment history verification and possibly a criminal records check.

(3) The air carrier must verify the identity of the individual through the presentation of two forms of identification, one of which must bear the individual's photograph.

(4) The air carrier must verify the information on the most recent 5 years of employment history required under paragraph (c)(1)(ii) of this section. Information must be verified in writing, by documentation, by telephone, or in person.

(5) If one or more of the conditions (triggers) listed in § 108.33(c)(5) (i) through (iv) exist, the employment history investigation must not be considered complete unless Part 2 is accomplished. Only the air carrier may initiate Part 2. Part 2 consists of a comparison of the individual's fingerprints against the fingerprint files of known criminals maintained by the Federal Bureau of Investigation (FBI). The comparison of the individual's fingerprints must be processed through the FAA. The air carrier may request a check of the individual's fingerprint-based criminal record only if one or more of the following conditions exist:

(i) The individual does not satisfactorily account for a period of unemployment of 12 consecutive months or more during the previous 10-year period.

(ii) The individual is unable to support statements made on the application form.

(iii) There are significant inconsistencies in the information provided on the application.

(iv) Information becomes available to the air carrier during the investigation indicating a possible conviction for one of the crimes listed in paragraph (b)(2) of this section.

(d) *Individual notification.* Prior to commencing the criminal records check, the air carrier must notify the affected individuals and identify a point of contact for follow-up. An individual who chooses not to submit fingerprints may not be granted unescorted access privilege and may not be allowed to hold screener or screener supervisory positions.

(e) *Fingerprint processing.* If a fingerprint comparison is necessary under paragraph (c)(5) of this section to complete the employment history investigation the air carrier must collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints must be recorded on fingerprint cards approved by the FBI and distributed by the FAA for this purpose.

(2) The fingerprints must be obtained from the individual under direct observation by the air carrier or a law enforcement officer. Individuals submitting their fingerprints must not take possession of their fingerprint card after they have been fingerprinted.

(3) The identify of the individual must be verified at the time fingerprints are obtained. The individual must present two forms of identification, one of which must bear the individual's photograph.

(4) The fingerprint card must be forwarded to FAA at the location specified by the Administrator.

(5) Fees for the processing of the criminal records checks are due upon application. Air carriers must submit payment through corporate check, cashier's check, or money order made payable to ''U.S. FAA,'' at the designated rate for each fingerprint card. Combined payment for multiple applications is acceptable. The designated rate for processing the fingerprint cards is available from the local FAA security office.

(f) *Determination of arrest status.* In conducting the criminal record checks required by this section, the air carrier must not consider the employment history investigation complete unless it investigates arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded and makes a determination that the arrest did not result in a disqualifying conviction.

(g) *Availability and correction of FBI records and notification of disqualification.* (1) At the time Part 2 is initiated and the fingerprints are collected, the air carrier must notify the individual that a copy of the criminal record received from the FBI will be made available to the individual if requested in writing. When requested in writing, the air carrier must make

available to the individual a copy of any criminal record received from the FBI.

(2) Prior to making a final decision to deny authorization to an individual described in paragraph (a) of this section, the air carrier must advise the individual that the FBI criminal record discloses information that would disqualify him/her from positions covered under this rule and provide him/her with a copy of their FBI record if requested.

(3) The air carrier must notify an individual that a final decision has been made to forward or not forward a letter of certification for unescorted access to the airport operator, or to grant or deny the individual authority to perform screening functions listed under paragraph (a)(3) of this section.

(h) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his/her record before the air carrier makes any decision to withhold his/her name from a certification, or not grant authorization to perform screening functions subject to the following conditions:

(1) Within 30 days after being advised that the criminal record received from the FBI discloses disqualifying information, the individual must notify the air carrier, in writing, of his/her intent to correct any information believed to be inaccurate.

(2) Upon notification by an individual that the record has been corrected, the air carrier must obtain a copy of the revised FBI record prior to making a final determination.

(3) If no notification is received within 30 days, the air carrier may make a final determination.

(i) *Limits on dissemination of results.* Criminal record information provided by the FBI must be used solely for the purposes of this section, and no person may disseminate the results of a criminal record check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) Air carrier officials with a need to know; and

(3) Others designated by the Administrator.

(j) *Employment status while awaiting criminal record checks.* Individuals who have submitted their fingerprints and are awaiting FBI results may perform work details under the following conditions:

(1) Those seeking unescorted access to the SIDA must be escorted by someone who has unescorted SIDA access privileges;

(2) Those applicants seeking positions covered under paragraphs (a)(3) and (d)(4) of this section, may not exercise any independent judgments regarding those functions.

(k) *Recordkeeping.* (1) The air carrier must physically maintain and control Part 1 employment history investigation file until 180 days after the termination of the individual's authority for unescorted access or termination from positions covered under paragraph (a)(3) of this section. Part 1 of the employment history investigation, completed on screening personnel must be maintained at the airport where they perform screening functions. Part 1 of the employment history investigation file must consist of the following:

(i) The application;

(ii) The employment verification information obtained by the employer;

(iii) the names of those from whom the employment verification information was obtained;

(iv) The date and the method of how the contact was made; and

(v) Any other information as required by the Administrator.

(2) The air carrier must physically maintain, control and when appropriate destroy Part 2, the criminal record file, for each individual for whom a fingerprint comparison has been made. Part 2 must be maintained for 180 days after the termination of the individual's authority for unescorted access or after the individual ceases to perform screening functions. Only direct air carrier employees may carry out Part 2 responsibilities. Part 2 must consist of the following:

(i) The results of the record check; or

(ii) Certification from the air carrier that the check was completed and did not uncover a disqualifying conviction.

(3) The files required by this paragraph must be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(l) *Continuing responsibilities.* (1) Any individual authorized to have unescorted access privilege to the SIDA or who performs functions covered under paragraph (a)(3) of this section, who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section must, within 24 hours, report the conviction to the air carrier and surrender the SIDA access medium or any employment related identification medium to the issuer.

(2) If information becomes available to the air carrier indicating that an individual has a possible conviction for one of the disqualifying crimes in paragraph (b)(2) of this section, the air carrier must determine the status of the conviction and, if the conviction is confirmed:

(i) Immediately revoke access authorization for unescorted access to the SIDA; or

(ii) Immediately remove the individual from screening functions covered under paragraph (a)(3) of this section.

(m) *Air carrier responsibility.* The air carrier must:

(1) Designate an individual(s), in the security program, to be responsible for maintaining and controlling the employment history investigation for those whom the air carrier has made a certification to an airport operator under § 107.31(n)(1) of this chapter and for destroying the criminal record files when their maintenance is no longer required by paragraph (k)(2) of this section.

(2) Designate individual(s), in the security program, to maintain and control Part 1 of the employment history investigations of screeners whose files must be maintained at the location or station where the screener is performing his or her duties.

(3) Designate individual(s), in the security program, to serve as the contact to receive notification from an individual applying for either unescorted access or those seeking to perform screening functions of his or her intent to seek correction of his or her criminal record with the FBI.

(4) Designate an individual(s), in the security program, to maintain and control Part 2 of the employment history investigation file for all employees, contractors, or others who undergo a fingerprint comparison at the request of the air carrier.

(5) Audit the employment history investigations performed in accordance with this section. The audit process must be set forth in the air carrier approved security program.

Issued in Washington, DC on September 16, 1998.

Jane F. Garvey,

Administrator.

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September 24, 1998

Part V

Department of Housing and Urban Development

24 CFR Part 888

Section 8 Housing Assistance Payments Program: Contract Rent Annual Adjustment Factors, Fiscal Year 1999; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4379–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 1999

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: The United States Housing Act of 1937 requires that assistance contracts signed by owners participating in the Department's Section 8 housing assistance payments programs provide for annual adjustment in the monthly rentals for units covered by the contract. This notice announces revised Annual Adjustment Factors (AAFs) for adjustment of contract rents on assistance contract anniversaries from October 1, 1998. The factors are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing [(202) 708–0477], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Allison Manning, Office of Special Needs Assistance Programs, Office of Community Planning and Development, [(202) 708–1234] for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Frank M. Malone, Acting Director, Office of Asset Management and Disposition, Office of Housing [(202) 708–3730], for questions relating to all other Section 8 programs; and Alan Fox, Economic and Market Analysis Division, Office of Policy Development and Research [(202) 708–0590; e-mail alan—fox@hud.gov], for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Hearing-or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Applicability of AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in the Section 8 housing assistance payments programs. However, the specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used for the Section 8 voucher program or for over-FMR tenancy (OFTO) in the Section 8 certificate program.

AAFs are not used for budget-based rent adjustments. Contract rents for projects receiving Section 8 subsidies under the loan management program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the property disposition program (24 CFR part 886, subpart C) are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.

Under the Section 8 moderate rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent.

Use of Reduced AAF

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by .01:

—For regular tenancy in the Section 8 certificate program, for all units.

—In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

This statutory language is now permanent law. Section 2004 of the Balanced Budget Act of 1997 (Pub. L. 105–33, approved August 5, 1997) provides that these provisions are in effect through fiscal year 1999 and thereafter.

To implement the law, HUD is again publishing two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. Each AAF in Table 2 is computed by subtracting 0.01 from the annual adjustment factor in Table 1.

Adjustment Procedures

The discussion in this Federal Register Notice is intended to provide a broad orientation on adjustment procedures. Technical details and requirements will be described in HUD notices (issued by the Office of Housing and the Office of Public and Indian Housing).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for three program categories:

—The Section 8 new construction and substantial rehabilitation programs (including the Section 8 state agency program); and the moderate rehabilitation programs (including the moderate rehabilitation single room occupancy program).

—The Section 8 loan management (LM) Program (Part 886, Subpart A) and property disposition (PD) Program (Part 886 Subpart C).

—The Section 8 certificate program (including the project-based certificate (PBC) program).

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-

adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless contract rent is reduced by comparability):

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (LM; Part 886, Subpart A) and Property Disposition Program (PD; Part 886 Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Program

The same adjustment procedure is used for rent adjustment in both the tenant-based and project-based certificate programs. The following procedures are used:

—The Table 2 AAF is always used in the Section 8 certificate program; the Table 1 AAF is not used in this program.
—The Table 2 AAF is always applied before determining comparability (rent reasonableness).
—Comparability always applies. If the comparable rent level is lower than the contract rent as adjusted by application of the Table 2 AAF, the comparable rent level will be the new contract rent.

(This adjustment procedure does not apply to an over-FMR (OFTO) tenancy in the Section 8 certificate program.)

AAF Tables

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent. The second column is used where the highest cost utility is not included in the contract rent—i.e., where the tenant pays for the highest cost utility.

AAF Areas

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

—For the metropolitan parts of the ten HUD regions exclusive of CPI areas;
—For the nonmetropolitan parts of these regions; and
—For 99 separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas.

Metropolitan area	Deleted counties
Chicago, IL	DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN.	Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX	Henderson County.
Flagstaff, AZ–UT	Kane County, UT.
New Orleans, LA	St. James Parish.
Washington, DC–VA–MD–WV.	Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren Counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as ''STATE: Hawaii,'' which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

The AAFs in this publication identified as ''Highest Cost Utility Excluded'' are to be used to adjust manufactured home space contract rents. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section.

How Factors Are Calculated

For Areas With CPI Surveys

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

(2) The ''Highest Cost Utility Included'' column in Schedule C was calculated by weighting the rent and utility components with the corresponding components from the 1990 Census.

(3) The ''Highest Cost Utility Excluded'' column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units in the CPI surveys.

For Areas Without CPI Surveys

(1) HUD used random digit dialing (RDD) regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) The change in rent with the highest cost utility included in the rent was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region.

(3) The change in rent with the highest cost utility excluded (i.e., paid separately by the tenant) was calculated in the same manner, after subtracting the median values of utilities costs from the gross rents in the two years. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant.

Other Matters

Environmental Impact

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(6).

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the following Tables:

Dated: September 17, 1998.

Andrew Cuomo,

Secretary.

BILLING CODE 4210–32–P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 052198

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.011	1.009	New England Nonmetropolitan	1.012	1.012
New York/New Jersey Metropolitan	1.010	1.012	New York/New Jersey Nonmetropolitan	1.008	1.010
Mid-Atlantic Metropolitan	1.018	1.019	Mid-Atlantic Nonmetropolitan	1.015	1.015
Southeast Metropolitan	1.020	1.021	Southeast Nonmetropolitan	1.013	1.013
Midwest Metropolitan	1.018	1.018	Midwest Nonmetropolitan	1.017	1.017
Southwest Metropolitan	1.017	1.020	Southwest Nonmetropolitan	1.013	1.014
Great Plains Metropolitan	1.016	1.016	Great Plains Nonmetropolitan	1.016	1.016
Rocky Mountain Metropolitan	1.027	1.028	Rocky Mountain Nonmetropolitan	1.020	1.020
Pacific/Hawaii Metropolitan	1.018	1.018	Pacific/Hawaii Nonmetropolitan	1.015	1.013
Northwest/Alaska Metropolitan	1.015	1.016	Northwest/Alaska Nonmetropolitan	1.012	1.013
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.034	1.033
MSA Anchorage, AK	1.013	1.010	PMSA Ann Arbor, MI	1.024	1.022
MSA Atlanta, GA	1.035	1.035	PMSA Atlantic-Cape May, NJ	1.025	1.024
PMSA Baltimore, MD	1.016	1.016	PMSA Bergen-Passaic, NJ	1.033	1.036
*COUNTY Berkeley, WV	1.012	1.007	PMSA Boston, MA-NH	1.037	1.038
PMSA Boulder-Longmont, CO	1.043	1.042	PMSA Brazoria, TX	1.022	1.024
PMSA Bremerton, WA	1.036	1.039	PMSA Bridgeport, CT	1.033	1.036
PMSA Brockton, MA	1.036	1.038	*COUNTY Brown, OH	1.020	1.016
PMSA Buffalo-Niagara Falls, NY	1.023	1.020	*Chicago, IL	1.040	1.040
*Cincinnati, OH-KY-IN	1.019	1.016	*COUNTY Clarke, VA	1.011	1.008
PMSA Cleveland-Lorain-Elyria, OH	1.034	1.033	*COUNTY Culpeper, VA	1.011	1.008

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 052198

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*Dallas, TX	1.034	1.040
*COUNTY De Kalb, IL	1.040	1.040
PMSA Detroit, MI	1.025	1.022
PMSA Fitchburg-Leominster, MA	1.036	1.038
PMSA Fort Lauderdale, FL	1.020	1.021
*COUNTY Gallatin, KY	1.020	1.015
PMSA Gary, IN	1.040	1.040
PMSA Greeley, CO	1.043	1.042
PMSA Hagerstown, MD	1.011	1.008
*COUNTY Henderson, TX	1.030	1.041
*COUNTY Jefferson, WV	1.012	1.007
PMSA Kankakee, IL	1.040	1.040
*COUNTY Kendall, Il	1.040	1.040
*COUNTY King George, VA	1.012	1.007
PMSA Los Angeles-Long Beach, CA	1.016	1.014
PMSA Manchester, NH	1.036	1.038
PMSA Middlesex-Somerset-Hunterdon, NJ	1.033	1.036
MSA Minneapolis-St. Paul, MN-WI	1.034	1.037
PMSA Nashua, NH	1.037	1.038
PMSA New Bedford, MA	1.036	1.038
*New Orleans, LA	1.034	1.043
PMSA Danbury, CT	1.033	1.036
PMSA Denver, CO	1.043	1.042
PMSA Dutchess County, NY	1.033	1.036
PMSA Flint, MI	1.026	1.022
PMSA Fort Worth-Arlington, TX	1.034	1.040
PMSA Galveston-Texas City, TX	1.022	1.024
*COUNTY Grant, KY	1.020	1.016
*COUNTY Grundy, IL	1.040	1.040
PMSA Hamilton-Middletown, OH	1.019	1.016
PMSA Houston, TX	1.023	1.024
PMSA Jersey City, NJ	1.033	1.035
MSA Kansas City, MO-KS	1.035	1.042
PMSA Kenosha, WI	1.040	1.040
PMSA Lawrence, MA-NH	1.036	1.038
PMSA Lowell, MA-NH	1.037	1.038
PMSA Miami, FL	1.020	1.021
PMSA Milwaukee-Waukesha, WI	1.021	1.018
PMSA Monmouth-Ocean, NJ	1.033	1.036
PMSA Nassau-Suffolk, NY	1.033	1.036
PMSA New Haven-Meriden, CT	1.033	1.036
PMSA New York, NY	1.034	1.035

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 052198

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*COUNTY Westchester, NY	1.034	1.035
PMSA Newburgh, NY-PA	1.033	1.036
*COUNTY Ohio, IN	1.020	1.016
PMSA Orange County, CA	1.016	1.014
PMSA Philadelphia, PA-NJ	1.025	1.024
PMSA Portland-Vancouver, OR-WA	1.038	1.045
PMSA Racine, WI	1.021	1.018
*COUNTY St. James Parish, LA	1.032	1.043
PMSA Salem, OR	1.037	1.045
PMSA San Francisco, CA	1.060	1.061
PMSA Santa Cruz-Watsonville, CA	1.060	1.061
PMSA Seattle-Bellevue-Everett, WA	1.037	1.039
PMSA Tacoma, WA	1.036	1.039
PMSA Trenton, NJ	1.033	1.036
PMSA Ventura, CA	1.016	1.014
*COUNTY Warren, VA	1.011	1.008
PMSA Waterbury, CT	1.033	1.036
PMSA Worcester, MA-CT	1.036	1.038
PMSA Newark, NJ	1.033	1.036
PMSA Oakland, CA	1.060	1.061
PMSA Olympia, WA	1.036	1.039
*COUNTY Pendleton, KY	1.020	1.016
PMSA Pittsburgh, PA	1.017	1.009
PMSA Portsmouth-Rochester, NH-ME	1.036	1.038
PMSA Riverside-San Bernardino, CA	1.016	1.014
MSA St. Louis, MO-IL	1.021	1.025
MSA San Diego, CA	1.025	1.024
PMSA San Jose, CA	1.060	1.061
PMSA Santa Rosa, CA	1.060	1.061
PMSA Stamford-Norwalk, CT	1.033	1.036
MSA Tampa-St. Petersburg-Clearwater, FL	1.026	1.028
PMSA Vallejo-Fairfield-Napa, CA	1.060	1.061
PMSA Vineland-Millville-Bridgeton, NJ	1.025	1.024
*Washington, DC-MD-VA	1.010	1.008
PMSA Wilmington-Newark, DE-MD	1.025	1.024

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 052198

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.001	1.000	New England Nonmetropolitan	1.002	1.002
New York/New Jersey Metropolitan	1.000	1.002	New York/New Jersey Nonmetropolitan	1.000	1.000
Mid-Atlantic Metropolitan	1.008	1.009	Mid-Atlantic Nonmetropolitan	1.005	1.005
Southeast Metropolitan	1.010	1.011	Southeast Nonmetropolitan	1.003	1.003
Midwest Metropolitan	1.008	1.008	Midwest Nonmetropolitan	1.007	1.008
Southwest Metropolitan	1.007	1.010	Southwest Nonmetropolitan	1.003	1.004
Great Plains Metropolitan	1.006	1.006	Great Plains Nonmetropolitan	1.006	1.006
Rocky Mountain Metropolitan	1.017	1.018	Rocky Mountain Nonmetropolitan	1.010	1.010
Pacific/Hawaii Metropolitan	1.008	1.008	Pacific/Hawaii Nonmetropolitan	1.005	1.003
Northwest/Alaska Metropolitan	1.005	1.006	Northwest/Alaska Nonmetropolitan	1.002	1.003
STATE Hawaii	1.000	1.000	PMSA Akron, OH	1.024	1.023
MSA Anchorage, AK	1.003	1.000	PMSA Ann Arbor, MI	1.015	1.012
MSA Atlanta, GA	1.025	1.025	PMSA Atlantic-Cape May, NJ	1.015	1.014
PMSA Baltimore, MD	1.006	1.006	PMSA Bergen-Passaic, NJ	1.023	1.026
*COUNTY Berkeley, WV	1.002	1.000	PMSA Boston, MA-NH	1.027	1.028
PMSA Boulder-Longmont, CO	1.033	1.032	PMSA Brazoria, TX	1.013	1.014
PMSA Bremerton, WA	1.026	1.029	PMSA Bridgeport, CT	1.023	1.026
PMSA Brockton, MA	1.026	1.028	*COUNTY Brown, OH	1.010	1.006
PMSA Buffalo-Niagara Falls, NY	1.013	1.010	*Chicago, IL	1.030	1.030
*Cincinnati, OH-KY-IN	1.009	1.006	*COUNTY Clarke, VA	1.001	1.000
PMSA Cleveland-Lorain-Elyria, OH	1.024	1.023	*COUNTY Culpeper, VA	1.001	1.000

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 052198

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*Dallas, TX	1.024	1.030
*COUNTY De Kalb, IL	1.030	1.030
PMSA Detroit, MI	1.015	1.012
PMSA Fitchburg-Leominster, MA	1.026	1.028
PMSA Fort Lauderdale, FL	1.010	1.011
*COUNTY Gallatin, KY	1.010	1.006
PMSA Gary, IN	1.030	1.030
PMSA Greeley, CO	1.033	1.032
PMSA Hagerstown, MD	1.001	1.000
*COUNTY Henderson, TX	1.020	1.031
*COUNTY Jefferson, WV	1.002	1.000
PMSA Kankakee, IL	1.030	1.030
*COUNTY Kendall, Il	1.030	1.030
*COUNTY King George, VA	1.002	1.000
PMSA Los Angeles-Long Beach, CA	1.006	1.004
PMSA Manchester, NH	1.026	1.028
PMSA Middlesex-Somerset-Hunterdon, NJ	1.023	1.026
MSA Minneapolis-St. Paul, MN-WI	1.024	1.027
PMSA Nashua, NH	1.027	1.028
PMSA New Bedford, MA	1.026	1.028
*New Orleans, LA	1.024	1.033
PMSA Danbury, CT	1.023	1.026
PMSA Denver, CO	1.033	1.032
PMSA Dutchess County, NY	1.023	1.026
PMSA Flint, MI	1.016	1.012
PMSA Fort Worth-Arlington, TX	1.024	1.030
PMSA Galveston-Texas City, TX	1.012	1.014
*COUNTY Grant, KY	1.010	1.006
*COUNTY Grundy, IL	1.030	1.030
PMSA Hamilton-Middletown, OH	1.009	1.006
PMSA Houston, TX	1.013	1.014
PMSA Jersey City, NJ	1.023	1.025
MSA Kansas City, MO-KS	1.025	1.032
PMSA Kenosha, WI	1.030	1.030
PMSA Lawrence, MA-NH	1.026	1.029
PMSA Lowell, MA-NH	1.027	1.028
PMSA Miami, FL	1.010	1.011
PMSA Milwaukee-Waukesha, WI	1.011	1.008
PMSA Monmouth-Ocean, NJ	1.023	1.026
PMSA Nassau-Suffolk, NY	1.023	1.026
PMSA New Haven-Meriden, CT	1.023	1.026
PMSA New York, NY	1.024	1.025

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 052198

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*COUNTY Westchester, NY	1.024	1.025
PMSA Newburgh, NY-PA	1.023	1.026
*COUNTY Ohio, IN	1.010	1.006
PMSA Orange County, CA	1.006	1.004
PMSA Philadelphia, PA-NJ	1.015	1.014
PMSA Portland-Vancouver, OR-WA	1.028	1.035
PMSA Racine, WI	1.011	1.008
*COUNTY St. James Parish, LA	1.022	1.033
PMSA Salem, OR	1.027	1.035
PMSA San Francisco, CA	1.050	1.051
PMSA Santa Cruz-Watsonville, CA	1.050	1.051
PMSA Seattle-Bellevue-Everett, WA	1.027	1.029
PMSA Tacoma, WA	1.026	1.029
PMSA Trenton, NJ	1.023	1.026
PMSA Ventura, CA	1.006	1.004
*COUNTY Warren, VA	1.001	1.000
PMSA Waterbury, CT	1.023	1.026
PMSA Worcester, MA-CT	1.026	1.028
PMSA Newark, NJ	1.023	1.026
PMSA Oakland, CA	1.050	1.051
PMSA Olympia, WA	1.026	1.029
*COUNTY Pendleton, KY	1.010	1.006
PMSA Pittsburgh, PA	1.007	1.000
PMSA Portsmouth-Rochester, NH-ME	1.026	1.028
PMSA Riverside-San Bernardino, CA	1.006	1.004
MSA St. Louis, MO-IL	1.011	1.015
MSA San Diego, CA	1.015	1.014
PMSA San Jose, CA	1.050	1.051
PMSA Santa Rosa, CA	1.050	1.051
PMSA Stamford-Norwalk, CT	1.023	1.026
MSA Tampa-St. Petersburg-Clearwater, FL	1.016	1.018
PMSA Vallejo-Fairfield-Napa, CA	1.050	1.051
PMSA Vineland-Millville-Bridgeton, NJ	1.016	1.014
*Washington, DC-MD-VA	1.000	1.000
PMSA Wilmington-Newark, DE-MD	1.015	1.014

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lee, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
MSA Anchorage, AK: Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr. Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

PMSA	Los Angeles-Long Beach, CA:	Los Angeles
PMSA	Oakland, CA:	Alameda, Contra Costa
PMSA	Orange County, CA:	Orange
PMSA	Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA	San Diego, CA:	San Diego
PMSA	San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA	San Jose, CA:	Santa Clara
PMSA	Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA	Santa Rosa, CA:	Sonoma
PMSA	Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA	Ventura, CA:	Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES

Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Wilmington-Newark, DE-MD: New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES
PMSA Fort Lauderdale, FL: Broward
PMSA Miami, FL: Dade
MSA Tampa-St. Petersburg-Clearwater, FL: Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES

*Atlanta, GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox,Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES

STATE Hawaii:	Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES

*Chicago, IL:	Cook, Dupage, Kane, Lake, Mchenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES

*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

IOWA (Cont.)

Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES

MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES

Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES

Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS: COUNTIES

*Cincinnati, OH-KY-IN: Boone, Campbell, Kenton
*COUNTY Gallatin, KY: Gallatin
*COUNTY Grant, KY: Grant
*COUNTY Pendleton, KY: Pendleton

METROPOLITAN COUNTIES

Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES

Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

CPI AREAS: COUNTIES

*New Orleans, LA: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
*COUNTY St. James Parish, LA: St. James

METROPOLITAN COUNTIES

Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St. Landry, St. Martin, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES

Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Portsmouth-Rochester, NH-ME
York County part: Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part: Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part: Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part: Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part: Winterport town
York County part: Buxton town, Hollis town, Limington town, Old Orchard Beach

NONMETROPOLITAN COUNTIES

Aroostook
Franklin
Hancock
Kennebec
Knox
Lincoln
Oxford
Piscataquis
Sagadahoc
Somerset
Washington
Androscoggin County part: Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part: Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part: Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town
Waldo County part: Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part: Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA Baltimore, MD: Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD: Washington
*Washington, DC-MD-VA: Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD: Cecil

METROPOLITAN COUNTIES

Allegany

NONMETROPOLITAN COUNTIES

Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH

Bristol County part: Berkley town, Dighton town, Mansfield town, Norton town, Taunton city

Essex County part: Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town

Middlesex County part: Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city

Norfolk County part: Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town

Plymouth County part: Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town

Suffolk county part: Boston city, Chelsea city, Revere city, Winthrop town

Worcester County part: Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA

Bristol County part: Easton town, Raynham town

Norfolk County part: Avon town

Plymouth County part: Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA

Middlesex County part: Ashby town

Worcester County part: Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH

Essex County part: Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH

Middlesex County part: Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA

Bristol County part: Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city

Plymouth County part: Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT

Hampden County part: Holland town

Worcester County part: Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westboroughtown, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes
Nantucket

Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES

PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES

MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Hancock, Harrison, Hinds, Jackson, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard,Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town,Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH
Hillsborough county part: Pelham town

PMSA Manchester, NH
Hillsborough county part: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town

PMSA Nashua, NH
Hillsborough county part: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May
PMSA Bergen-Passaic, NJ: Bergen, Passaic
PMSA Jersey City, NJ: Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ: Monmouth, Ocean
PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ: Mercer

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

NEW JERSEY (Cont.)

PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Buffalo-Niagara Falls, NY:	Erie, Niagara
PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES

PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

OHIO (MIDWEST) cont.

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

PMSA	Portland-Vancouver, OR-WA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA	Salem, OR:	Marion, Polk

METROPOLITAN COUNTIES
Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Benton, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

PMSA	Newburgh, NY-PA:	Pike
PMSA	Philadelphia, PA-NJ:	Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA	Pittsburgh, PA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES

Bristol County part:	Barrington town, Bristol town, Warren town
Kent County part:	Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Providence County part:	Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Newport County part:	Jamestown town, Little Compton town, Tiverton town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

RHODE ISLANE (CONT.)

Washington County part:	Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town
Washington County part:	Hopkinton town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES
Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES
Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins,Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES
Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES
Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES
Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Davis, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Clarke, VA:	Clarke
*COUNTY Culpeper, VA:	Culpeper
*COUNTY King George, VA:	King George
*COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS: COUNTIES

*Washington, DC-MD-VA:	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES

Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES

Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES

PMSA	Bremerton, WA:	Kitsap
PMSA	Olympia, WA:	Thurston
PMSA	Portland-Vancouver, OR-WA:	Clark
PMSA	Seattle-Bellevue-Everett, WA:	Island, King, Snohomish
PMSA	Tacoma, WA:	Pierce

METROPOLITAN COUNTIES

Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES

Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Berkeley, WV:	Berkeley
*COUNTY Jefferson, WV:	Jefferson

METROPOLITAN COUNTIES

Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES

Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES

PMSA	Kenosha, WI:	Kenosha
PMSA	Milwaukee-Waukesha, WI:	Milwaukee, Ozaukee, Washington, Waukesha
MSA	Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
PMSA	Racine, WI:	Racine

METROPOLITAN COUNTIES

Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - AREA DEFINITIONS

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grand, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alt, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

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federal register

Thursday
September 24, 1998

Part VI

Department of Housing and Urban Development

24 CFR Part 320
Ginnie Mae MBS Program: Book Entry Securities; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 320

[Docket No. FR–4331–I–01]

Ginnie Mae MBS Program: Book Entry Securities

AGENCY: Government National Mortgage Association, HUD.

ACTION: Interim rule.

SUMMARY: This rule revises the security issuance procedures for Ginnie Mae. Physical securities now will be issued only upon the request of the registered holder. Ginnie Mae is revising two sections of part 320 to reflect this change. These changes bring Ginnie Mae's security issuance procedures up to date with modern practices.

DATES: Effective Date: October 26, 1998, Comment Due Date: November 23, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Regulations Division, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–8000. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Thomas R. Weakland, Vice President, Office of Program Administration, Government National Mortgage Association, Room 6204, Department of Housing and Urban Development, 451 Seventh Street, Washington, D.C. 20410–0500. Telephone (202) 708–2884 (voice) or 202–708–1734 (TTY). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Government National Mortgage Association (Ginnie Mae) guarantees mortgage-backed securities of approved issuers. Ginnie Mae wishes to adopt a true book entry system for the securities that it guarantees, instead of the current system under which a physical security is issued and immobilized (stored). Accordingly, Ginnie Mae is revising § 320.5 to: (1) revise paragraph (a) to indicate that only physical securities will specify payment and maturity dates; (2) indicate the date on and after which physical securities will be issued only at the request of the registered holder; and (3) establish when Ginnie Mae considers a book entry security to be guaranteed. Finally, the current language of § 320.13 states that the Ginnie Mae guaranty must appear on the face of the security. Ginnie Mae has revised this section to remove this statement because there is no physical security under a true book entry system.

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest''.

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that the elimination of the physical security represents an internal Ginnie Mae adjustment which is part of Ginnie Mae's continuing effort to implement paperless pool processing. In connection with this rule, Ginnie Mae notes that the Department of Treasury published a proposed rule on March 4, 1996 (61 FR 8420) that proposed to incorporate recent and significant changes in commercial law addressing the holdings of securities in book entry form through financial intermediaries. Ginnie Mae, in developing its rule, had the benefit of reviewing the Treasury rule and the public comments received on the Treasury proposed rule, which was published in final on August 23, 1996 (61 FR 43626). In issuing this rule published in today's **Federal Register**, Ginnie Mae considered the public comments received on the Treasury proposed rule. In addition, there is only one registered holder of Ginnie Mae book entry securities, which is the designated depository. Ginnie Mae's designated depository is working with Ginnie Mae to effect this program change. Any investor potentially adversely affected by book entry can avoid the adverse impact of the rule by getting a physical security through the registered holder. Further, book entry securities issued without an immobilized security will only be done prospectively. Physical securities backing book entry securities that are already issued will continue to be stored. In consideration of these issues, advance public comment was determined not necessary, but HUD welcomes comments from the public and is soliciting comment on this rule.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Ginnie Mae's designated depository is the only entity affected by this revision, and the designated depository is not a small entity. The interim rule will have no adverse or disproportionate economic impact on small businesses. Notwithstanding HUD's determination that this rule will not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this rule that would meet HUD's objectives as described in this preamble.

Environmental Impact

This rulemaking is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1) which pertains to ''the approval of policy documents that do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out to provide for standards for construction or construction materials, manufactured housing, or occupancy.'' This rulemaking simply amends existing regulations regarding the form of guaranteed securities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this interim rule that would affect the relationship between the Federal Government and State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled **ADDRESS.**

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance number for the Ginnie Mae MBS program.

List of Subjects for 24 CFR Part 320

Mortgages.

Accordingly, 24 CFR part 320 is amended as follows:

PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

1. The authority citation for 24 CFR part 320 continues to read as follows:

Authority: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 4343(d).

2. Section 320.5 is amended by revising the last sentence of paragraph (a) and by adding new paragraphs (e) and (f), to read as follows:

§ 320.5 Securities.

(a) * * * The securities, if issued in physical form, must specify the dates by which payments are to be made to the holders thereof, and must indicate the accounting period for collections on the pool's mortgages relating to each such payment, and the securities, if issued in physical form, must also specify a date on which the entire principal will have been paid or will be payable.

* * * * *

(e) Securities issued on or before October 31, 1998, are issued in physical form. On or after November 1, 1998, securities are issued in book entry form, and physical securities are issued only upon the request of the registered holder.

(f) On or after November 1, 1998, Ginnie Mae guarantees a book entry security when the transfer agent indicates by book entry that a security has been transferred to a registered holder.

(Approved by the Office of Management and Budget under control number 2503–0009)

3. Section 320.13 is revised to read as follows:

§ 320.13 Guaranty.

The Association guarantees the timely payment, whether or not collected, of the interest on the outstanding balance and the specific principal installments. The Association's guaranty is backed by the full faith and credit of the United States.

Dated: August 26, 1998.

George S. Anderson,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 98–25567 Filed 9–23–98; 8:45 am]

BILLING CODE 4210–01–P

Federal Register

Thursday
September 24, 1998

Part VII

Environmental Protection Agency

40 CFR Parts 268 and 271

Land Disposal Restrictions; Treatment Standards for Spent Potliners From Primary Aluminum Reduction (K088); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 268 and 271

[FRL–6168–7]

RIN 2050–ZA01

Land Disposal Restrictions; Treatment Standards for Spent Potliners From Primary Aluminum Reduction (K088)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating treatment standards for spent potliners from primary aluminum reduction (EPA hazardous waste: K088) under its Land Disposal Restrictions (LDR) program. The purpose of the LDR program, authorized by the Resource Conservation and Recovery Act (RCRA), is to minimize threats to human health and the environment due to land disposal of hazardous wastes. As a result of today's rule, spent potliners will be prohibited from land disposal unless the wastes have been treated in compliance with the numerical standards contained in this rule. These treatment standards are necessary to minimize threats to human health and the environment from exposure to hazardous constituents which may potentially leach from landfills to groundwater.

EFFECTIVE DATE: September 21, 1998.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. The Docket Identification number is F–98–K88F–FFFFF. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For specific information, contact Elaine Eby, John Austin, or Katrin Kral, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Elaine Eby may be reached at 703–308–8449, eby.elaine@epamail.epa.gov; John Austin may be reached at 703–308–0436, austin.john@epamail.epa.gov; and Katrin Kral may be reached at 703–308–6120, kral.katrin@epamail.epa.gov. For information on the capacity analysis, contact C. Pan Lee (5302W) at 703–308–8478, lee.cpan@epamail.epa.gov. For questions on the regulatory impact analysis, contact Paul Borst (5307W) at 703–308–0481, borst.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type http://www.epa.gov/rules and regulations.

Affected Entities

Entities potentially affected by this action are generators of spent aluminum potliner from primary aluminum reduction, or entities that treat, store, transport, or dispose of these wastes.

Category	Affected entities
Industry	Generators of the following listed wastes, or entities that treat, store, transport, or dispose of these wastes. K088—Spent potliners from primary aluminum reduction.

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 those entities of which EPA now is aware that potentially could be affected by this action. Other entities not listed in the table also could be affected. To determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully in concert with the amended rules found at the end of this **Federal Register** document. 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.**

Table of Contents

I. Background

A. Process Description

K088 (spent potliners from primary aluminum reduction) (40 CFR 261.32) is generated by the aluminum manufacturing industry. Aluminum production occurs in four distinct steps: (1) mining of bauxite ores; (2) refining of bauxite to produce alumina; (3) reduction of alumina to aluminum metal; and (4) casting of the molten aluminum. Bauxite is refined by dissolving alumina (aluminum oxide) in a molten cryolite bath. Next, alumina is reduced to aluminum metal. This reduction process requires high purity aluminum oxide, carbon, electrical power, and an electrolytic cell. An electric current reduces the alumina to aluminum metal in electrolytic cells, called pots. These pots consist of a steel shell lined with brick with an inner lining of carbon. During the pot's service the liner is degraded and broken down. Upon failure of a liner in a pot, the cell is emptied, cooled, and the lining is removed. In 1980, EPA originally listed spent potliners as a RCRA hazardous waste and assigned the hazardous waste code K088. See 45 FR 47832.

B. Regulation

The Phase III—Land Disposal Restrictions Rule (61 FR 15566, April 8, 1996) prohibited the land disposal of spent potliner unless the waste satisfied the section 3004(m) treatment standard established in the same rulemaking. The

Phase III rule established treatment standards, expressed as numerical concentration limits, for various constituents in the waste (25 in all, with standards for both wastewaters and non-wastewaters). These constituents included arsenic, cyanide, fluoride, toxic metals, and a group of organic compounds called polycyclic aromatic hydrocarbons (PAHs).

With the exception of fluoride, the treatment standard limits established for K088 were equivalent to the universal treatment standards. See 61 FR 15585; see also 40 CFR 268.48 (''Universal Treatment Standards'' Table). The fluoride standard, however, was based generally on data submitted in a delisting petition from the Reynolds Metals Company. In the Phase III rule, the Agency granted a nine-month national capacity variance pursuant to section 3004(h)(2) ''to allow facilities generating K088 adequate time to work out logistics.'' See 61 FR 15589. Unexpected performance problems in the Reynolds treatment process resulted in the generation of leachate exhibiting characteristics of hazardous waste. In addition, the company was disposing of the treatment residues in non-subtitle C units. EPA therefore felt that further time was needed to evaluate whether adequate protective treatment capacity was available (within the meaning of RCRA section 3004(h)(2)), and, as part of this determination, whether Reynolds' practices in fact satisfied the mandate of section 3004(m) that threats posed by land disposal of the hazardous waste be minimized through treatment. Until these questions were answered, and a finding of sufficient protective treatment capacity made, there was insufficient treatment capacity for the waste because Reynolds, at the time, was the only existing commercial treatment facility for spent potliners. Consequently, on January 14, 1997, the Agency extended the national capacity variance, and postponed implementing the land disposal prohibition for an additional six months to be able to study the efficacy of the Reynolds treatment process and the resulting leachate. See generally 62 FR 1992.

In July 1997, EPA announced that, ''Reynolds'' treatment (albeit imperfect) does reduce the overall toxicity associated with the waste,'' and that disposal of treatment residues would occur only in units meeting subtitle C standards and consequently was an improvement over the disposal of untreated spent potliner and provided adequate protective treatment capacity. See 62 FR 37696 (July 14, 1997). On October 8, 1997, the national capacity extension ended and the prohibition on land disposal of untreated spent potliner took effect.

C. Litigation

Petitions for judicial review of the Phase III rule, and the January 1997, and July 1997 rules were filed by Columbia Falls Aluminum Company, and other aluminum producers from the Pacific Northwest. The petitioners argued (among other things) that the use of the Toxicity Characteristic Leaching Procedure (TCLP) did not accurately predict the leaching of waste constituents, particularly arsenic and fluoride, to the environment and that it was therefore arbitrary to measure compliance with the treatment standard using this test. The United States Court of Appeals for the District of Columbia Circuit decided on April 3, 1998, that EPA's use of the TCLP as a basis for setting treatment standards for K088 was arbitrary and capricious for those constituents for which the TCLP demonstratively and significantly underpredicted the amount of the constituent which would leach. 139 F.3d 914; see also 63 FR 28571 (May 26, 1998) (EPA's interpretation Court's opinion). Notwithstanding that this finding affected only two of the hazardous constituents for which EPA established treatment standards, namely arsenic and fluoride nonwastewaters (so that only 2 of 54 treatment standards were implicated), and the Court's express statement that ''[o]ur decision today does not affect the viability of the concentration limits established for other constituents,'' 139 F. 3d at 923, the Court vacated all of the treatment standards and the prohibition on land disposal. *Id.* at 923–24. In its decision, the Court expressly invited EPA to file a motion to delay issuance of the mandate in this case for a reasonable time in order to develop a replacement standard. *Id.* On May 18, 1998, EPA filed a motion with the Court to stay its mandate for four months while the Agency promulgated a replacement prohibition and accompanying treatment standards. The motion explained at length the type of standard EPA expected to adopt and in fact is adopting in this document. The Court granted this motion over the objections of Petitioners, indicating that its mandate would not issue before September 24, 1998. Today's action promulgates interim replacement standards for K088 which will be in place until EPA has fully reviewed all information on all treatment processes which may serve as a basis for a more permanent revised standard.

II. Prohibition on Land Disposal of Untreated K088

As just noted, this rule promulgates a land disposal prohibition for K088 waste and establishes interim treatment standards. EPA is issuing this replacement prohibition to assure that the fundamental premise of the statute—a prohibition on land disposal of hazardous waste not satisfying treatment standards which result in substantial destruction or immobilization of the waste—is not weakened. See *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 22, 25 (D.C. Cir. 1992) (prohibition and treatment standards are the heart of the RCRA hazardous waste management scheme). Congress enacted the prohibition regime due to ''the long-term uncertainties associated with land disposal, the goal of managing hazardous waste in an appropriate manner in the first instance, and the persistence, toxicity, mobility, and propensity to bioaccumulate such hazardous wastes and their hazardous constituents.'' RCRA section 3004(d)(1)(A)–(C). The legislative history states that the statute ''makes Congressional intent clear that land disposal without prior treatment of these wastes with significant concentrations of highly persistent, highly toxic, highly mobile and highly bioaccumulative constituents is not protective of human health and the environment.'' 130 Cong. Rec. S9178 (daily ed. July 25, 1984) (floor statement of Sen. Chafee introducing amendment which became section 3004 (m)).

Spent potliners are exactly this type of waste: highly toxic, containing persistent and bioaccumulative hazardous constituents, and associated with numerous damage incidents arising from improper land disposal. Among the highly toxic, mobile, and bioaccumulative hazardous constituents found in the waste are cyanide, polyaromatic hydrocarbons, and toxic metals. The Agency believes that the land disposal of untreated spent potliners (K088) is a highly undesirable management scenario, that would result in large volumes of hazardous constituents being land disposed, constituents which would otherwise be destroyed or immobilized by treatment.

These untreated hazardous constituents can pose significant threats to human health and the environment. For example, treatment of K088 waste to the interim standards promulgated today will ensure that cyanide—the most dangerous constituent in spent potliners based on its concentration, toxicity, and the extent of

contamination caused by past land disposal of untreated spent potliners—will be largely destroyed. See 62 FR 37696 (July 14, 1997) (spent potliners listed as hazardous due to the presence of cyanide). See also Docket items PH3F–S0015 and S0016 (summary of damage incidents involving improper disposal of spent potliners, showing extensive cyanide contamination of groundwater and soil); see also Section VIII A. below, revising EPA's previous erroneous analysis that cyanide leaching from spent potliners would not pose a threat to groundwater. EPA, in fact, estimates that compliance with the land disposal prohibition and interim treatment standard for cyanide will result in the annual reduction of approximately 300 tons of cyanide being land disposed. Docket item P33F–S0012. Cyanide also will leach from untreated spent potliners in concentrations hundreds of times higher than the highest level observed in leachate from potliners treated to meet existing standards. Docket Item PH3F–S0049A at data set J and 62 FR 37695 (July 14, 1997). EPA thus views the prohibition and treatment standards as reducing by orders of magnitude the amount of cyanide actually leached from these wastes.

In addition, treatment to meet the treatment standards will destroy all the polyaromatic hydrocarbons in spent potliners. These are highly carcinogenic compounds which have caused environmental contamination at the spent potliner damage sites. Docket PH3F–S0015 and S0016. Finally, virtually all of the toxic metals—some of which likewise caused environmental contamination at the damage sites, id.—will be immobilized.

Petitioners nevertheless argue in public comments that EPA should not retain a land disposal prohibition at this time, but rather allow spent potliners to be disposed untreated until the Agency completes its evaluation of different treatment technologies and (potentially) amends treatment standards based upon the performance of these technologies. This result is antithetical to the statutory scheme. Congress has found that land disposal is inherently unsafe because landfills are not capable of assuring long-term containment of certain hazardous wastes, and that land disposal of hazardous waste should be minimized in favor of properly conducted treatment. RCRA sections 1002(b)(7) and 1003(a)(6). Congress therefore intended to end land disposal of hazardous waste without prior treatment: ''The intent here is to require utilization of available technology in lieu of continued land disposal without prior treatment.'' 130 Cong. Rec. S9178 (July 25, 1984) (statement of Sen. Chafee). Petitioners' argument to do no treatment at all because two treatment standards out of 54 are not optimized (and one of which is now being appropriately revised) would frustrate this explicit Congressional intent and EPA's overall commitment to protection of human health and the environment. EPA is simply not willing to permit the continued land disposal of 300 tons of untreated cyanide annually in the face of a statutory scheme calling for untreated land disposal to cease and calling for destruction of cyanide before land disposal. 130 Cong. Rec. S 9179. This is particularly the case when destruction of cyanide (and destruction of PAHs and immobilization of hazardous constituent metals) and consequent minimization of threats will be assured through treatment. Finally, the Congressionally mandated date for prohibiting spent potliners from land disposal—March, 1989 (per RCRA section 3004(g)(4))—has long since passed. Consequently, EPA is acting today to assure that spent potliners remain prohibited from land disposal.

III. Interim Treatment Standards

A. Introduction

EPA has both a short-term and long-term objective for treatment standards for K088 waste. The Agency's long-term goal, expected to be completed within two years, is to promulgate another set of treatment standards for spent potliners (K088) based on the performance of a treatment technology which results in the immobilization of arsenic and fluoride, as well as the other toxic metals in the waste (these metals will be immobilized by meeting the treatment standards established in today's rule). The Agency is aware of numerous technologies that may be used to treat K088 waste, a number of which may be finally coming on line as commercially available.[1] However, at the present time, there are insufficient data or information on these technologies to provide the basis for a rapidly implementable final treatment standard. More information is needed to characterize the performance of these technologies, as well as to assess their safety and (in some cases) the safety of hazardous waste-derived products which may be generated as part of these treatment processes. Cf. *Chemical Waste Management,* 976 F. 2d at 17 (treatment technologies whose air emissions are not adequately controlled are not treating in conformance with requirements of section 3004(m)). The Agency is in the process of gathering and identifying potential technologies that may be evaluated as the basis for a permanently revised treatment standard. EPA is studying technologies such as vitrification, gasification, the ''Cashman Process,'' and the ''Alcoa-Selca'' process. The Agency plans to propose a standard for K088 within the next twelve months.

[1] The Agency notes that although there has been much said about potential marketing of potliner treatment technologies, see 60 FR 11724–11725 (March 2, 1995) (detailing technologies potentially able to treat spent potliners), these technologies were not offered commercially until EPA's promulgation of an actual land disposal prohibition. (The notable exception is the Reynolds Metals process, which the company brought to market a bit before spent potliners were prohibited from land disposal in 1996. *Id.* at 11723.) Without a prohibition further development of commercial treatment thus could easily end. This is another reason EPA believes it imperative to retain the prohibition on land disposal of K088 wastes.

B. Detailed Discussion of the New Treatment Standards

1. Cyanide, Polyaromatic Hydrocarbons, and Certain Metals

The D.C. Circuit found the existing treatment standards arbitrary and capricious because the TCLP was significantly overpredicting the extent to which certain hazardous constituents would be immobilized by treatment. The problem arose because certain constituents in the waste are more soluble in alkaline rather than weakly acidic conditions. Since the TCLP uses a weakly acidic extractant for these constituents, the TCLP was not modeling a reasonable worst case disposal situation at all, but instead was failing to predict what occurs when treated potliners are disposed in industrial landfills. See generally 139 F. 3d at 922.

However, only two of the 54 treatment standards suffer from this deficiency. The treatment standards for cyanide and PAHs do not use the TCLP at all, but rather are implemented on a total constituent concentration basis. (As noted earlier, the Court expressly held that these standards are reasonable. (139 F. 3d at 923.)) Likewise, none of the standards for wastewaters use the TCLP. In addition, none of the standards for metals, except for arsenic and fluoride, suffer from any deficiency even though the TCLP is used to measure compliance. These other metals are not highly alkaline soluble, so that the TCLP will not underpredict environmental performance as occurred with arsenic and fluoride. In fact, leachate sampling data from the Reynolds facility shows reasonable correlation with levels predicted by the TCLP, and further indicates that the TCLP is not

underpredicting leachate levels of these metals. Docket Item P33F–S0002.B.[2]

The Agency is thus today repromulgating those portions of the K088 treatment standard that do not suffer from the deficiencies noted in the Court's opinion. These are the standards for the following constituents in both wastewaters and nonwastewaters: acenapthene, anthracene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(g,h,i)perylene, chrysene, dibenzo(a,h)anthacene, fluoranthene, indeno(1,2,3-cd)pyrene, phenanthrene, pyrene, antimony, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, and cyanide. The nonwastewater treatment standards for cyanide and the organic constituents, and all of the standards for wastewaters, are based on a total composition concentration analysis. The nonwastewater treatment standards for the metal constituents are based on analysis using the TCLP. As noted above, these standards are essential in ensuring that the toxicity of K088 is ''substantially diminished'' and threats to human health and the environment are thereby minimized (RCRA section 3004(m)(2)) through the destruction of cyanides and organics and the immobilization of toxic metals prior to land disposal.

2. Total Arsenic Standard

The Agency is promulgating a revised treatment standard for arsenic in nonwastewater forms of K088, based on a total recoverable arsenic concentration from strong acid digestion, as defined by EPA SW–846 Method 3050, 3051, or the equivalent, hereafter referred to as ''total arsenic.'' This change to the K088 treatment standard addresses the D.C. Circuit's holding that EPA arbitrarily relied on an inaccurately predictive model (the TCLP) in promulgating the K088 treatment standard. The Agency recognizes that for K088 nonwastewaters, arsenic treatment, (i.e., immobilization) may not be accurately predicted through the use of the TCLP because the TCLP uses a weakly acidic extractant, whereas actual disposal conditions are often highly alkaline (due to the potliner's alkalinity), and arsenic is more soluble under highly alkaline than weakly acidic conditions. See 62 FR 1993 (January 14, 1997). Specifically, the TCLP uses a weakly acidic leachate (pH 5.0) which, together with the alkaline treatment residual (K088), results in a leachate pH of approximately 7.6 and not the observed landfill pH of approximately 12.5, at which arsenic is highly mobile. However, because there is no other predictive leaching test available at this time, the Agency has developed an alternative treatment standard for arsenic in K088 nonwastewaters based on the total arsenic present in the treatment residue. As explained below, this total arsenic treatment standard for K088 will be consistent with the current improved performance of the Reynolds process, which has been reconfigured to reduce use of arsenic-containing additives during treatment. The standard also should ensure that the treatment process successfully incorporates the arsenic into the matrix of the treated residual and so minimizes environmental release. This is because arsenic is soluble under strongly acidic conditions, so that the total arsenic analytic method (strong acid digestion) measures all arsenic not incorporated into an impervious silica matrix.

On August 4, 1998 (63 FR 41536), the Agency issued a Notice of Data Availability (NODA) identifying four data sets as possible data sets from which a total arsenic standard could be developed. Two of the data sets represented full-scale data from the treatment of K088 at the Reynolds Metals Company treatment facility[3], and two data sets represented pilot-scale data from vitrification[4] treatment studies. We discuss below the Agency's choice of data set for establishing a revised treatment standard.

The first data set, generated in late 1997 by the Reynolds Metals Company, consists of 30 measurements for total arsenic in treated K088 waste. Total arsenic concentrations ranged from 8.77 to 27.6 mg/kg. Quality assurance/quality control (QA/QC) documentation was provided with the data. The second data set has also been generated by Reynolds and identified as a one-page ''Special Laboratory Report'' (December 6, 1996) showing total arsenic concentrations (mg/kg) for K088 potliner in both the untreated and treated forms. This data set consists of six treated and untreated data pairs. No quality assurance/quality control documentation was provided with these data.

The third data set was submitted to the EPA in 1994 from the Ormet Primary Aluminum Corporation facility in Hannibal, Ohio (see 63 FR 41536, August 4, 1998). These data consisted of arsenic samples, analyzed on a total arsenic basis, taken from a pilot-scale vitrification unit treating K088 waste. This data set consists of five treated and untreated data pairs. Partial quality assurance/quality control documentation was provided with this data set.

The fourth data set, generated in 1997, consists of pilot-scale data from two vitrification studies on K088 waste from two different generators. The first study consisted of only one datum point on total arsenic measuring ''not detected'' (less than 3 mg/kg total arsenic). Total arsenic concentrations (mg/kg) for this second study consisted of seven data points. No quality assurance/quality control nor any waste characterization documentation were provided.

When evaluating any performance data set with regard to its treatment effectiveness on a particular hazardous constituent, the Agency's Land Disposal Restrictions Program (LDR) has specific requirements for any data set evaluated for possible Best Demonstrated Available Technology (BDAT) analysis. A full range of information is necessary to determine whether a treatment and its corresponding performance data warrants further evaluation for possible development of the treatment standard. For example, waste characterization; treatment design and operating conditions; and QA/QC documentation are all necessary components of a ''BDAT quality'' data set. See USEPA ''Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/ Quality Control Procedures and Methodology,'' Office of Solid Waste, October 23, 1991.

[2] Commenters argued that the TCLP could not be used to measure compliance with these standards under the reasoning of *Columbia Falls,* and that there is no information showing that the acidic leaching media used in the TCLP would be a reasonable predictor for leaching of these metals under alkaline disposal conditions. Comment p. 11. As mentioned in the text, these assertions are not correct. The TCLP is not underpredictive of actual leaching for these wastes because the other metals are not more mobile under alkaline conditions. This is borne out by the actual leachate data (cited above) showing reasonable correlation between predicted and actual leachate levels and, most importantly, confirming that all of the other toxic metals are substantially immobilized as required by section 3004(m).

[3] The Reynolds treatment process entails the crushing and sizing of spent potliner materials (K088), the addition of roughly equal portions of limestone and ''sand'' as flux, and the feeding of the combined mixture to a rotary kiln for thermal destruction of cyanide and PAHs, while reducing the mobility of the fluoride and arsenic in the resulting slag. 62 FR 37694, July 14, 1997.

[4] Vitrification is a treatment process which involves dissolving the waste at high temperatures into glass or a glass-like matrix. High temperature vitrification is applicable to nonwastewaters containing arsenic or other characteristic toxic metal constituents that are relatively nonvolatile at the temperatures at which the process is operated. Volatile arsenic compound are usually converted to nonvolatile arsenate salts such as calcium arsenate prior to the use of this process. See USEPA ''Treatment Technology Background Document'', Office of Solid Waste, January 1991. (Document is available in the docket for today's rule. F–98–K88F–FFFFF)

The Agency has completed a thorough evaluation of the four data sets with regard to BDAT protocols. As discussed above, each data set has certain limitations. Faced with imperfect data, EPA has used the best data available to set this interim standard. EPA has determined that the data set consisting of 30 data points submitted by the Reynolds Metals Company is the most appropriate for development of a total arsenic standard for K088 nonwastewaters. This decision was made for a number of reasons. First, when developing any treatment standard, the Agency attempts to collect as much data as possible to reflect the diversity of the waste stream. With respect to the Reynolds 30-day data, the data satisfy this objective by having the most diverse range of total arsenic concentrations (8.77 to 27.6 mg/kg) in treated spent potliners. In fact, the data represented treatment of spent potliners from 15 of the 23 aluminum producers in the United States.[5] Conversely, the vitrification data sets (covering spent aluminum potliners from three different aluminum facilities) show no such diversity and are limited to five, one, and seven data points respectively. While the Agency does not have untreated data on total arsenic concentrations for the Reynolds 30-day data set, the data are consistent with the other data sets and previously reported maximum arsenic concentrations for untreated and treated spent potliner (56 FR 33004, July 18, 1991).

Second, the Reynolds 30-day data are the most current of the four data sets and contain all the necessary quality assurance quality control documentation, unlike the three other data sets. Third, the Reynolds 30-day data set is based on full-scale data while the vitrification data set is based on pilot-scale treatability studies. EPA as part of its LDR program prefers to use full-scale data when developing treatment standards. See ''Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology,'' Office of Solid Waste, October 23, 1991.

Furthermore, the data should be from an optimized and well run process. Reynolds has endeavored to isolate and remove additional sources of arsenic in their process (by changing treatment reagents) and to lower the pH of the residue, which may further reduce arsenic leachability. Reynolds' original process appeared actually to increase the amount of leachable arsenic in the treated waste, possibly due to the destruction of organic components in the K088 combined with the arsenic levels in the sand that is used as a fluxing agent in the process. 62 FR 37694. Reynolds has recently changed the type of sand used as a fluxing agent (from so-called Brown Sand to Red Clay Sand), and the 30-day data was produced using Reynold's revised process utilizing Red Clay Sand as a treatment additive. Two separate landfill leachate analytical results from Reynolds, dated May 26, 1998 and June 25, 1998, indicate that leachate levels for arsenic in Cell 2 (the cell which is currently accepting treated K088 waste and using Red Clay Sand as a treatment additive) are significantly lower than arsenic levels from the leachate in Cell 1 (no longer receiving treated K088 waste and containing instead the waste generated using the Brown Sand fluxing agent): 15.7 mg/L and 21.6 mg/L (Cell 1) versus 3.82 mg/L and 1.23 mg/L (Cell 2), respectively.[6] This suggests that Reynolds is minimizing the amount of arsenic imported to their treatment process, and further minimizing the amount which is released to the environment in accord with section 3004(m). Accordingly, the Agency has calculated and is promulgating an interim final treatment standard of 26.1 mg/kg total arsenic for nonwastewater forms of K088 based on the Reynolds 30-day data set. The total arsenic standard adopted today ''by using data reflecting this improved performance should ensure the observed reduction in mobile arsenic. EPA thus finds that this new standard does result in significant reduction in arsenic mobility and consequent minimization of threats posed by disposal of spent potliners. See RCRA section 3004(m)(1).

3. Fluoride

The solubility of fluoride ions is largely governed by the metal ions present and pH. The conditions of the TCLP fail to predict the mobility of fluoride under actual disposal conditions, since fluoride is more soluble under highly alkaline conditions (like the conditions of a dedicated monofill, such as utilized by Reynolds), and not the neutral to weakly basic conditions that result during the TCLP test conducted on the highly alkaline K088 potliner. 62 FR 1993. Consequently, the Court held that the TCLP was not a proper predictive model for fluoride mobility from these wastes.

EPA has decided not to develop an interim standard for fluoride. It would take significant technical effort to develop a replacement treatment standard for this constituent and EPA would not be able to meet the D.C. Circuit's deadline of September 24, 1998. The current data are insufficient on which to base a treatment standard that would not be TCLP-based. Therefore, EPA would need to engage in a substantial testing and/or a data gathering effort using alternative test methods. EPA believes that this type of considerable technical resource effort is better directed, given current circumstances, to developing the long-term, more permanent treatment standard described earlier. Moreover, as a practical matter, treatment of K088 potliners to meet the other metal treatment standards will result in some immobilization of fluoride as well.[7] As a result, looking at the totality of additional environmental protection gained from these interim standards for the suite of hazardous constituents involved, we conclude that immediate promulgation of these interim standards (even without a specific fluoride standard) constitutes the best practical approach to minimizing threats to human health and the environment. The issue of fluoride treatment will of course be fully explored as part of the longer-term effort to establish more permanent treatment standards for K088 waste.

IV. Capacity Determination

A. Introduction

This section summarizes the results of the capacity analysis for the wastes covered by today's rule. For a detailed discussion of capacity analysis-related data sources, methodology, and summary of analysis for K088 covered in this rule, see the background documents entitled ''Background Document for Capacity Analysis Update for Land Disposal Restrictions—Phase III: Spent Aluminum Potliners (July 1997)'' (62 FR 37694 i.e., referred to as the ''Capacity Background Document'').

In general, EPA's capacity analysis focuses on the amount of waste to be restricted from land disposal that is currently managed in land-based units and that will require alternative treatment as a result of the LDRs. The quantity of wastes that are not managed

[5] Comment K88A–00002.

[6] These leachate levels are in fact significantly lower than the initial treatment standard (5.0 mg/L measured by the TCLP) for arsenic.

[7] For example, the chief existing treatment process, operated by Reynolds Metals, does provide some treatment of fluoride, on the order of at least 28% reduction in fluoride mobility (based on comparison of fluoride leached from untreated potliners using neutral extractant column tests and levels of fluoride in actual leachate from the Reynolds' disposal unit). Docket Items P33F–S0064 and S0049 Attachment A data set J. This level of treatment will necessarily occur, at least in the Reynolds process, because the process does not treat each constituent selectively.

in land-based units (e.g., wastewater managed only in RCRA exempt tanks, with direct discharge to a Publicly Owned Treatment Works (POTW)) is not included in the quantities requiring alternative treatment as a result of the LDRs. Also, wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate treatment technology) are not included in these quantity estimates.

EPA's decisions on when to establish the effective date of the treatment standards (e.g., whether to grant a national capacity variance) are based on the availability of appropriate treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantities of waste that will require either commercial treatment or the construction of new on-site treatment as a result of the LDRs. EPA attempts to subtract from the required capacity estimates the quantities of waste that will be treated adequately either on-site in existing systems or off-site by facilities owned by the same company as the generator (i.e., captive facilities). The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal before meeting the LDR treatment standards. If adequate capacity does not exist, RCRA section 3004(h)(2) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment capacity becomes available, whichever is sooner.

B. Capacity Analysis Results Summary

The D.C. Circuit Court decision vacated the prohibition on land disposal of this waste. EPA therefore needs to make a capacity analysis determination for K088 due to the (nominally) new prohibition of this waste.

As indicated in the Background Documents for Capacity Analysis for Land Disposal Restrictions [8], an accurate projection of annual generation of K088 is difficult to develop. Primary aluminum production rates B one of the key determinants of K088 generation B vary from year to year. Other factors include the differences between potliners in terms of their useful life spans, the lag time between aluminum production and waste generation, and the one-time increases in potliner generation due to production starts and stops. Thus, for the purpose of comparing required treatment capacity to available capacity, EPA combined all the data presented in the Capacity Background Document to estimate that approximately 117,000 tons per year of K088 in the U.S. may require off-site alternative treatment. (See memo to this final rule's docket.)

When estimating the available treatment or recovery capacity, the Agency includes the capacity currently available and operating in its analysis if the facility can meet all treatment standards, including the new treatment standard for arsenic in K088 waste. Available treatment capacity for K088 could vary due to several factors, such as the feed rate of the waste into the treatment unit, downtime of the units, the number of units that will be able to accept K088, and the amount of retreatment needed. Considering these factors, EPA estimates that approximately 120,000 tons per year of capacity could be available for treating K088. (See the Capacity Background Document for detailed analysis and Reynolds' comment to K088 NODA, 63 FR 41536, August 4, 1998.) In addition, one other commercial facility indicated that its treatment process is expected to begin operation sometime this year. Also, additional technologies as mentioned in Section III of this rule are under development and, therefore, additional treatment or recovery capacity may come on-line at on-site or off-site facilities for K088 waste.

Based on the results of the Agency's capacity analysis, adequate commercially available treatment (or recovery) capacity does currently exist for K088 waste. The largely-identical existing prohibition and treatment standards are still in effect, so there are no logistical barriers to immediate compliance. Therefore, LDR treatment standards will become effective immediately for the waste covered under this rule. (See RCRA section 3004(h)(1); land disposal prohibitions must take effect immediately when there is sufficient protective treatment capacity for the waste available).

V. Compliance and Implementation

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Today's rule is being promulgated pursuant to sections 3004 (g)(4) and (m) of RCRA. Therefore, the Agency is adding today's rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. This rule is therefore effective in all states immediately pursuant to RCRA section 3006(g). States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorization

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because today's rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21. All HSWA interim authorizations will expire January 1,

[8] Background Document for Capacity Analysis for Land Disposal Restrictions—Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners (Final Rule, February 1996, Volume I Capacity Analysis Methodology and Results, pages 4–5 to 4–8); Background Document for Capacity Analysis Update for Land Disposal Restrictions—Phase III: Spent Aluminum Potliners (Final Rule, July 1997). to the Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance; Final Rule (62 FR 37694, July 14, 1997).

2003. (See § 271.24 and 57 FR 60132, December 18, 1992.)

VI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant'' regulatory action as one that ''is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

The Agency estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. Because the treatment standard for K088 promulgated in the Phase III final rule has remained in effect and unchanged except for arsenic and fluoride, treatment costs for spent aluminum potliner have been accounted for in the Phase III final rule rather than today's final rule. Accordingly, EPA believes that there are no costs associated with today's final rule. (According to the Court, none of the standards measured by means other than TCLP were affected by the ruling, 139 F.3d at 923, so no costs should be attributed to treating these constituents under this rule in any case.) However, even in the event that treatment costs are attributed to today's final rule, the upper bound treatment estimate of $42 million is not economically significant according to the definition in E.O. 12866. The Agency has, however, determined that this rule is significant for novel policy reasons.

Discussion of the methodology used for estimating the costs and economic impacts attributable to today's final rule for K088 wastes may be found in the background document ''Economic Assessment for Retention of LDR Treatment Standard for Spent Aluminum Potliner (K088) and Evaluation of Draft Groundwater Pathway Analysis For Aluminum Potliners (K088)'' which was placed in the docket for today's final rule.

1. Methodology Section

The Agency examined reported values for K088 generation from the prior Agency estimates in the Phase III LDR final rule to estimate the volumes of K088 affected by today's rule, to determine the national level incremental costs (for both the baseline and post-regulatory scenarios), economic impacts (including first-order measures such as the estimated percentage of compliance cost to industry or firm revenues).

2. Results

a. Volume Results. Spent potliners (SPL) are generated in large volumes ranging from 95,000 to 125,000 tons annually.[9] EPA estimated an average of approximately 120,000 tons annually for purposes of assessing cost and economic impacts from today's final rule. This estimated generation volume for K088 is greater than the estimate used in the capacity section because it includes not only volumes requiring alternative treatment, but also volumes currently undergoing treatment.

b. Cost Results. As stated above, because this rule only modifies the treatment standard for arsenic, the Agency believes that this rule does not impose incremental treatment costs associated with treating K088. EPA notes that analytical costs associated with sampling treated spent aluminum potliner may actually decrease because the cost of completing a totals analysis for arsenic is less than the comparable cost per sample of a TCLP analysis.[10] For purposes of comparison, the Agency has estimated treatment costs for K088. If annual treatment costs were attributed to today's rule, they would range from $9.6 million to $42 million. EPA previously estimated treatment costs between $6.4 million and $42 million for the LDR Phase III final rule. 61 FR 15566, 15591 (April 8, 1996). EPA notes that new K088 treatment technologies are currently being developed that may significantly lower K088 treatment costs nationally.[11] EPA does not believe that this final rule will create barriers to market entry for firms wishing to provide alternative treatment capacity for spent aluminum potliner. The Agency believes that the net effect of today's rule to modify the existing K088 treatment standard by changing the TCLP test for arsenic to a totals number is unlikely to burden alternative treatment processes currently under development for the treatment of spent aluminum potliner.

c. Economic Impact Results. To estimate potential economic impacts resulting from today's proposed rule, EPA has used first order economic impacts measures such as the estimated costs of today's final rule as a percentage of affected firms' sales and/or revenues. When the annual costs of regulation are less than one percent of a firm's annual sales or revenues, this analysis presumes that the regulation does not pose a significant economic impact on the affected facilities absent information to the contrary. Because EPA does not view this rule as imposing costs, the Agency does not believe that this rulemaking imposes economic impacts on regulated entities. But even if treatment costs are attributed to this rulemaking, no significant economic impact will result. In 1996, U.S. primary aluminum producers sold 3.6 million metric tons of aluminum at an average market price of $1400 per ton yielding total sales of $5.04 billion.[12] The $42 million upper bound of the treatment cost estimate represents only 0.8 percent of the total value of the aluminum sold by primary aluminum producers. It is likely, as discussed, that treatment costs will decrease as new firms develop commercial technologies for K088. As a result, this final rule will not pose a significant economic impact on primary aluminum producers in the United

[9] Background Document for Capacity Analysis for Land Disposal Restrictions, Phase III (February 1996, Volume I, pages 4–5 to 4–8)

[10] One commercial testing laboratory provided an estimate of $40 per sample for an arsenic totals analysis. Today's final rule should lower testing costs overall because the $40 cost of total test for arsenic is less expensive than the $90 to $140 that would be required to run a TCLP test for arsenic for a treated residue.

[11] For example, previously Reynolds Metals Company has provided data indicating that the treatment and disposal cost of their process, though variable depending on a series of factors, is between $200 and $500 per ton. Personal Communication with Jack Gates, Vice-President, Reynolds Metals Company, September 28, 1994 as cited in Regulatory Impact Analysis of the Phase III Land Disposal Restrictions Final Rule, U.S. Environmental Protection Agency, Office of Solid Waste, February 15, 1996. Recently, Waste Management has quoted treatment and disposal charges at $160 per ton for treatment capacity now being developed at its Arlington, Oregon facility. Letter from Mitchell S. Hahn, Manager, Environment Health and Safety, Waste Management Inc. to Paul A. Borst, Economist, USEPA, Office of Solid Waste, June 4, 1998. The Waste Management treatment and disposal charge is determined by subtracting the $85 storage price from a new customer price of $245 per ton. Transportation costs are not factored into this estimate. Of the $160 per ton treatment and storage cost, $80 per ton is attributable to treatment and $80 is attributable to disposal. Personal Communication between Mitch Hahn, Chemical Waste Management, and Paul Borst, U.S.E.P.A. August 13, 1998.

[12] Mineral Commodity Summaries 1997, U.S. Department of the Interior, U.S. Geological Survey, February 1997, p. 18.

States. More detailed information on this estimate can be found in the economic assessment placed into today's docket.

d. Benefits Assessment. EPA has not calculated benefits associated with the total limitation on arsenic in today's final rule. Because today's final rule promulgates a prohibition and treatment standard for K088 with modest changes from the previous treatment standard for K088, the Agency believes that there is only likely to be a modest risk reduction because most of the risk reduction has already been accounted for through the K088 treatment standard in the Phase III final rule (as has the cost of treatment), although, as noted earlier, the total arsenic standard will ensure the minimization of leachable arsenic, as shown by recent monitoring data. However, the Agency wishes to correct an error in previous groundwater risk analysis for K088 with respect to cyanide.

EPA's groundwater risk analysis for K088 completed for the Phase III rulemaking indicated that cyanide did not pose a risk to human health.[13] A review of the analysis indicates that the analysis results may have underestimated groundwater risk from cyanides in potliners for a variety of reasons. First, the analysis modeled cyanide ion, CN^- (CAS # 57–12–5), as the cyanide species being considered for mobilization.[14] However, other data indicate that ferrocyanide, $Fe(CN)_6^{-4}$ (CAS # 13408–63–4), rather than cyanide ion is the prevalent cyanide species in spent potliner leachate typically accounting for 89 percent of total cyanide present.[15] This is significant because cyanide ion may be less persistent in the environment than ferrocyanide. Cyanide ion may decompose in soil environments through hydrolysis, biodegradation or other means. Ferrocyanide is an extremely persistent cyanide species.[16] Ferrocyanide mobility may be limited in soil but yet retains the ability to form more toxic forms of cyanide—either hydrogen cyanide or free cyanide decomposition products.[17]

In addition, the groundwater risk analysis modeled K088 cyanide leachate concentrations in a manner lower than what real-world experience has shown. The analysis modeled approximate TCLP cyanide concentrations of 110 ppm.[18] However, in its K088 listing background document, EPA noted slab liquor (the runoff from concrete slabs on which spent potliners were placed during open storage) total cyanide concentrations of 13,000 mg/L total cyanide, more than two orders of magnitude greater than leachate concentration used in the modeling analysis.[19] A second source reports typical cyanide concentrations in potliner leachate at 5000 ppm.[20] See also Docket Item P33F–S0049A data set J (column testing of untreated potliners with neutral extractant showing cyanide concentrations between 1325 and 2885 ppm.)

Third, EPA's groundwater analysis may have underestimated groundwater risk from cyanide by not accounting for high pH conditions caused by the alkalinity of the potliner itself. The analysis used a national distribution of pH values for the saturated zone parameters from EPA's STORET database. This national distribution modeled low (4.9), medium (6.8) and high (8.0) values. However, the pH of the saturated zone in a site where spent potliner is leaching may be substantially higher than the national distribution. Spent aluminum potliner typically has a pH of 12.3 to 12.6.[21] Under these elevated pH conditions, volatilization of cyanide ion as hydrogen cyanide gas, and hydrolysis and biodegradation are limited so cyanide available to contaminate groundwater would not be attenuated (as initially incorrectly modeled).[22]

Finally, at least four damage incidents to groundwater from cyanides from disposed potliner demonstrate the potential of cyanide in this waste to contaminate groundwater. In EPA's listing background document for spent potliner, the Agency documents cyanide contamination of drinking water wells in Washington State from Kaiser Aluminum's Mead Works facility near the Spokane aquifer. Some drinking water wells had levels of cyanide of 1 ppm exceeding the maximum contaminant level (MCL) of 0.2 ppm.[23] In addition, cyanide concentrations in leachate from a landfill containing potliner at a primary aluminum smelter site on the National Priority List (NPL) ranged between 373 and 1280 ppm.[24] Additional damage incidents showing cyanide groundwater contamination caused by improper disposal of spent potliners are summarized at Docket item PH3F–S0015. EPA thus believes the risks of groundwater contamination due to potliner disposal were incorrectly understated in the earlier RIA, and hereby withdraws the earlier conclusions regarding the low possibility and nature of cyanide contamination. Moreover, given the long-term inability of Subtitle C disposal to fully contain hazardous wastes, see RIA for Phase III final rule at 4–13 (Feb. 1996); and Inyang and Tomassoni, *Indexing of Long-Term Effectiveness of Waste Containment Systems for a Regulatory Impact Analysis,* EPA OSW (Nov. 1992), and the demonstrated cyanide contamination of exceeding health-based levels of groundwater already caused by improper disposal of these wastes, EPA finds that disposal of untreated potliners does pose a risk of cyanide contamination of groundwater at levels harmful to human health.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act, 5 U.S.C. 601–612, 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. However, the Agency has determined that this final rule is not subject to the Regulatory Flexibility Act (RFA) and, moreover, it will not have a significant economic impact on a substantial number of small entities.

First, by its terms, the RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Today's rule is not subject to notice and comment requirements under the APA or any other statute. Although today's rule is

[13] Groundwater Pathway Analysis for Aluminum Potliners (K088), Draft, U.S. Environmental Protection Agency, Office of Solid Waste, February 16, 1996. Tables 3–2 and 3–3.

[14] *Ibid.* p. 9.

[15] F.M. Kimmerle, et al., ''Cyanide Destruction in Spent Potlining.'' Light Metals 1989, Proceedings of the Technical Sessions by the TMS Light Metals Committee, 117th TMS Annual Meeting. Phoenix Arizona, January 25–28, 1988 as cited in Jim Mavis, CH2M Hill, ''Aluminum Industry'' in *Pollution Prevention Handbook,* ed. Thomas Higgins (Boca Raton: CRC Press, 1995), p.379.

[16] Adrian Smith and Terry Mudder, *Chemistry and Treatment of Cyanidation Wastes* (London: Mining Journal Books Ltd, 1991) p.11.

[17] U.S.E.P.A., Listing Background Document—Primary Aluminum Production/Spent Potliners from Primary Aluminum Production, p.7.

[18] Groundwater Pathway Analysis, p.9.

[19] Listing Background Document, p.5.

[20] Kimmerle as cited in Mavis, supra note 6, p.379.

[21] Special Laboratory Report, Reynolds Metals Company, 1996.

[22] Adrian Smith and Terry Mudder, *Chemistry and Treatment of Cyanidation Wastes* (London: Mining Journal Books Ltd, 1991) p.49, 64, and 82.

[23] K088 Listing Background Document, p.8.

[24] Record of Decision, Martin Marietta Corp., RODS DATA, September 29, 1988.

subject to the APA, the Agency has invoked the ''good cause'' exemption under APA section 553(b). As discussed below, the good cause exemption provides the notice and comment rulemaking requirements of the APA do not apply to a rulemaking when an agency finds them to be impracticable, unnecessary or contrary to the public interest.

Second, the Agency nonetheless has assessed the potential of this rule to adversely impact small entities. The Agency finds that this final rule does not have the potential to adversely impact small entities. As discussed above, today's final rule does not impose incremental costs to regulated entities. Also, the Agency has evaluated K088 treatment costs previously accounted for under the Phase III final rule and determined that even if these costs were attributed to today's final rule, they would not exceed 1 percent of the sales of small entities subject to this final rule. More information on this analysis can be found in the background document ''Economic Assessment for Retention of LDR Treatment Standard for Spent Aluminum Potliner (K088) and Evaluation of Draft Groundwater Pathway Analysis For Aluminum Potliners (K088)'' placed in the public docket.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. No. 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.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. By these findings, EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Executive Order 12875: Enhancing the Intergovernmental Partnership

To reduce the burden of Federal regulations on States and small governments, President Clinton issued Executive Order 12875 on October 26, 1993, entitled ''Enhancing the Intergovernmental Partnership.'' Under Executive Order 12875, EPA may not issue a regulation that is not required by statute unless the Federal Government provides the necessary funds to pay the direct costs incurred by the State and small governments or EPA provides to the Office of Management and Budget both a description of the prior consultation and communications the agency has had with representatives of State and small governments and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process allowing elected and other representatives of State and small governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

For the reasons described above, today's final rule will not impose any enforceable duty or contain any unfunded mandate upon any State, local, or tribal government; therefore Executive Order 12875 does not apply to this action.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order 13045, entitled ''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) 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. This final rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency has concluded this because this rulemaking establishes treatment standards for hazardous constituents in spent aluminum potliner that minimize both short-term and long-term threats to human health and the environment. The environmental health risks or safety risks addressed by this action do not have a disproportionate effect on children.

F. Environmental Justice E.O. 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste

and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's final rule covers K088 spent potliner wastes from primary aluminum operations. It is not certain whether the environmental problems addressed by this rule could disproportionately affect minority or low income communities due to the location of primary aluminum operations. However, because today's final rule establishes treatment standards for K088 being land disposed, the Agency does not believe that today's rule will increase risks from K088. Indeed, as discussed earlier, these treatment standards will ensure that risks to human health and the environment are minimized for all communities. It is, therefore, not expected to result in any disproportionately negative impacts on minority or low income communities relative to affluent or non-minority communities.

G. Paperwork Reduction Act

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–120 (ICR no. 1573, Part B Permit Application); 2050–120 (ICR 1571, General Facility Standards); 2050–0028 (ICR 261, Notification to Obtain an EPA ID); 2050–0034 (ICR 262, Part A Permit Application); 2050-0039 (ICR 801, Hazardous Waste Manifest); 2050–0035 (ICR 820, Generator Standards); and 2050–0024 (ICR 976, Biennial Report).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) 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.

EPA is not aware of existing voluntary consensus standards that could be used for treatment standards of spent aluminum potliner. EPA believes that such voluntary consensus standards are therefore unavailable. This rulemaking also involves environmental monitoring or measurement. As stated above, this final rule promulgates a revised treatment standard for arsenic in nonwastewater forms of K088, based on a total recoverable arsenic concentration from strong acid digestion as defined by EPA SW–846 Method 3050, 3051 or the equivalent. Consistent with the Agency's Performance Based Measurement System (PBMS), EPA has decided not to require the use of specific, prescribed analytic methods. Rather, the rule will allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for regulated entities. It is also intended to encourage innovation in analytical technology and improve data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Aluminum potliners are not currently generated or treated on any known Indian tribal lands. Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). In the following section, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of September 21, 1998. 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Good Cause for Immediate Final Rule

Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), an agency may forego notice and comment in promulgating a rule when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons for that finding into the rule) that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth below, EPA finds good cause to conclude that notice and comment would be unnecessary and contrary to the public interest, and therefore is not required under the APA.

EPA believes that notice and opportunity for comment has been provided here, albeit not through the means of a proposed rule. The Agency has been in protracted discussions with

the regulated community both directly and through court pleadings. Therefore, members of the regulated community have had opportunity to comment and make their views known. Most recently, the Agency provided for specific notice and comment on the data to be used in the development of a standard based on total arsenic content in treatment residue. See 63 FR 41536, August 4, 1998. EPA received comments addressing every aspect of these standards in response to this document, and is responding to these comments in this preamble and also in a separate Response to Comment Background Document. Furthermore, other than for the arsenic standard, this document makes conforming changes that reinstate and maintain the current standards which were already the subject of exhaustive notice and comment in both the Phase III rulemaking and in response to the January 14 document extending the national capacity variance date. Petitioners in the K088 litigation, for example, filed a multitude of different comments in response to these various documents. Further opportunity to comment therefore is not necessary.

Consequently, EPA today is preserving the core of the K088 treatment standards promulgated in the Phase III rule by ensuring that the K088 wastes are prohibited from land disposal unless they first meet the treatment standards in this rule. At the same time, EPA is eliminating the standards found to be arbitrary by the Court. The Agency also concludes that this action must be taken immediately and that notice and comment would be contrary to the public interest in these special circumstances. Delay past the projected date of issuance of the Court's mandate (September 24, 1998) could result in land disposal of untreated spent potliners, contrary to explicit statutory command that land disposal of this waste be prohibited. (See as well the earlier discussion in this Preamble of the need to assure that this prohibition does not lapse.) For these reasons, EPA believes that there is good cause to issue this final rule immediately without prior notice and comment. This is not to say that EPA would, or could, invoke this type of good cause rationale whenever contemplating promulgation of LDR prohibitions and treatment standards. However, in the present circumstances, where the waste already is prohibited and untreated land disposal of the waste has therefore ended, it appears especially important to avoid backsliding to a regime of untreated land disposal.

For the same reasons, EPA finds, for purposes of 5 U.S.C. 553(d), that there is good cause to make the rule effective immediately. In any case, the statute indicates that LDR prohibitions are to take effect immediately. See RCRA section 3004(h)(1). (Prohibitions on land disposal are effective immediately so long as there is adequate protective treatment capacity available at that time.)

List of Subjects

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

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

Dated: September 21, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. The authority for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.39 is amended by revising paragraphs (c) to read as follows:

§ 268.39 Waste specific prohibitions—spent aluminum potliners; and carbamate wastes.

* * * * *

(c) On September 21, 1998, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste number K088 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

* * * * *

3. Section 268.40 is amended by revising the entry for K088 in the table of Treatment Standards to read as follows: (The footnotes are republished without change.)

BILLING CODE 5460–50–P

TREATMENT STANDARDS FOR HAZARDOUS WASTES Note: NA means not applicable					
WASTE CODE	Waste Description and Treatment/Regulatory Subcategory[1]	Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		Common Name	CAS[2] Number	Concentration in mg/L[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/L TCLP", or Technology Code
* * * * *	* *				
K088	Spent potliners from primary aluminum reduction.	Acenaphthalene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benzo(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene	205-99-2	0.11	6.8
		Benzo(k)fluoranthene	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Indeno(1,2,3,-c,d)pyrene	193-39-5	0.0055	3.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2

Antimony	7440-36-0	1.9	1.15 mg/L TCLP
Arsenic	7440-38-2	1.4	26.1 mg/kg
Barium	7440-39-3	1.2	21.0 mg/L TCLP
Beryllium	7440-41-7	0.82	1.22 mg/L TCLP
Cadmium	7440-43-9	0.69	0.11 mg/L TCLP
Chromium (Total)	7440-47-3	2.77	0.60 mg/L TCLP
Lead	7439-92-1	0.69	0.75 mg/L TCLP
Mercury	7439-97-6	0.15	0.025 mg/L TCLP
Nickel	7440-02-0	3.98	11.0 mg/L TCLP
Selenium	7782-49-2	0.82	5.7 mg/L TCLP
Silver	7440-22-4	0.43	0.14 mg/L TCLP
Cyanide (Total)[7]	57-12-5	1.2	590
Cyanide (Amenable)[7]	57-12-5	0.86	30
* * * * *	* *		

* * * * *

BILLING CODE 6560–50–C

Footnotes to Treatment Standard Table 268.40

1 The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

2 CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

3 Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

4 All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

5 Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264, Subpart O, or Part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

7 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

4. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

5. Section 271.1(j) is amended by adding the following entries to Table 1 and Table 2 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of Regulation	Federal Register reference	Effective date
* * * * * * *			
Sept. 21, 1998	Treatment Standards for Hazardous Waste K088.	[insert Federal Register page numbers]	Sept. 21, 1998
* * * * * * *			

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * * * *			
Sept. 21, 1998	Prohibition on land disposal of K088 wastes, and prohibition on land disposal of radioactive waste mixed with K088 wastes, including soil and debris.	3004(g)(4)(C) and 3004(m)	Sept. 24, 1998 [Insert FR page numbers].
* * * * * * *			

[FR Doc. 98–25643 Filed 9–23–98; 8:45 am]

BILLING CODE 6560–50–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

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